

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1250 of 2014**

- Smt. Shyam Bai W/o Mohan Sonwani, aged about 55 years, R/o Village- Bhinouda, P.S. Sarsiwa, Tahsil Bilaigarh, District Baloda Bazar-Bhatapara C.G.

---- Appellant**Versus**

1. Subhash Vishal, S/o Indrajeet Vishal, aged about 26 years, R/o Village Sagaripali, P.S. Saraipali, District Mahasamund C.G. (Driver of alleged vehicle Eicher Tractor bearing registration No.CG06-E-2523 & Trolley No.CG06-E-2799)
2. Balak Ram Patel, S/o Motilal Patel, R/o Parsabhadi, P.O. Khoksa, P.S. Basna, District Mahasamund (wrongly Mahasamunder) (CG) (Owner of alleged vehicle Eicher Tractor bearing registration No.CG06-E-2523 & Trolley No.CG06-E-2799)
3. Manager, Insurance Company, The Reliance General Insurance Company Ltd., Office of 570 Restifare House, Naigam Cross Road, Vadla W, Mumbai, 400031.

---- Respondents

For Appellant	:	Mr. A.D. Kuldeep, Advocate
For Respondent No.1 & 2	:	Mr. Shivendu Pandya, Advocate
For Respondent No.3	:	Mr. Saurabh Sharma & Mr. Nilesh Thakur, Advocates

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****Order On Board****Per Parth Prateem Sahu, J****25/09/2020**

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') has been filed against the award dated 27.9.2014 passed by the learned 1st Additional Motor Accident Claims Tribunal, Balodabazar (for short 'the Claims Tribunal') in Claim Case No.12/13 dismissing claim application

filed by claimant/appellant.

2. Facts relevant for disposal of this appeal, in brief, are that on 23.9.2012 at about 7.45 p.m. Dulesh along with one Nitin Mukesh was going to village Bhinoda from Bilaspur Tata on motorcycle bearing registration number CG04-KD-7449. Dulesh was driving the motorcycle and Nitin Mukesh was travelling as pillion rider. When they reached on Main Road of Village Mudpaar, one tractor-trolley bearing registration number CG06-E-2523 & CG06-E-2799 respectively, driven by non-applicant No.1, dashed their motorcycle thereby caused accident. As a result, said Dulesh suffered grievous injuries on his head and died on spot. Accident was reported to Police Station Sarsiva based on which crime bearing No.156/12 for the offence under Sections 279, 337, 338 & 304A of IPC was registered against non-applicant No.1-,driver of offending vehicle and on completion of investigation, charge sheet against him was filed in the Court of jurisdictional Magistrate.
3. Claimants filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking an amount of Rs.29,15,000/- as compensation specifically pleading therein that on the date of accident, deceased was 22 years old and earning a sum of Rs.9,000/- per month by performing job of a 'Mechanic' of television, mobile, watches and electrical goods.
4. Non-applicant No.1 & 2, owner & driver of offending vehicle, filed their reply to claim application and denied the entire pleadings made therein. It was pleaded that deceased driver of motorcycle himself was responsible for the accident in question

as on account of rash and negligent driving of motorcycle by him, he and pillion rider both fell down on road and sustained injuries.

5. Non-applicant No.3- Insurance Company also filed its reply to claim application and denied the averments made therein including relationship between the claimants and the deceased and their dependency on him. Denied the status of non-applicant No.1 & 2 as 'driver' & 'owner' of the offending vehicle. It was pleaded that the offending vehicle was not involved in the accident and the claimants have narrated a false and concocted story in the claim application. On the date of accident, the offending vehicle was plied in breach of conditions of insurance policy as non-applicant No.1, driver of offending vehicle, was not possessed with valid and effective driving license, therefore, the insurance company is not liable to be indemnify the insured.
6. Since the claimants did not enter into witness box to give their evidence, nor examined any witness or produced any public document in support of their case, the Claims Tribunal considering the evidence of non-applicant No.1 and his witness Radheshyam (NAW-3), arrived at a conclusion that the claimants failed to prove their case and accordingly dismissed the claim application vide impugned award.
7. Mr. A.D. Kuldeep, learned counsel for claimant/appellant submits that the claimants, who are poor persons residing in rural area and have lost their young son in a motor road accident, were fully dependent on the counsel engaged by them to prosecute their claim. However, they did not receive

information in time about the date on which their evidence was to be recorded, therefore, they could not give their evidence before the Claims Tribunal. He also submits that during pendency of case, present appellant lost her husband also i.e. claimant No.1, and now there is nobody to take care of her. He submits that appellant, widow mother of deceased, may be given one opportunity to prove her claim application filed before the Claims Tribunal by adducing evidence in support thereof.

8. Per contra, Mr. S. Pandya, learned counsel representing respondents No.1 & 2, opposing the above prayer made on the part of appellant, submits that the Claims Tribunal has granted several opportunities to the claimants for adducing evidence in support of their claim, but they failed to adduce any evidence and only thereafter the Claims Tribunal dismissed their claim application vide impugned award, which does not call for any interference.
9. Resisting the above prayer made on behalf of claimant-appellant, Mr. Saurabh Sharma & Mr. Nilesh Thakur, learned counsel representing Insurance Company submitted that the claimants failed to produce any evidence before the Claims Tribunal even after grant of several opportunities. As the claimants failed to produce any evidence, the Claims Tribunal was justified in dismissing claim application by recording a finding that the claimants failed to prove their case.
10. We have heard learned counsel for the parties and perused the record of claim case.
11. On account of death of their young son aged about 22 years in a

road accident, the claimants i.e. father and mother, have filed an application seeking compensation from the non-applicants. During pendency of case, Mohan, father of deceased, died and this appeal has been filed by appellant, widow mother of deceased.

12. Going through the proceedings of claim case, as recorded by the Claims Tribunal, it is evident that on 29.7.2013 the claim case was adjourned to be listed on 1.8.2013 for fixing the date of recording of evidence and filing of list of witnesses. On 1.8.2013 the matter was again adjourned to be listed on 23.8.2013 for recording of claimants' evidence. On 23.8.2013 at the request of learned counsel for claimants, the matter was adjourned for 24.9.2013. On 24.9.2013 non-applicant No.3 filed an application under Order 8 Rule 1 of CPC along with documents as per list, which were supplied to other side and the matter was ordered to be listed on 11.10.2013 for reply/argument on said application and also for recording of evidence. Thereafter the matter was adjourned from time to time and on 5.3.2014 the application filed by non-applicant No.3 under Order 8 Rule 1 CPC was rejected and the matter was ordered to be fixed on 14.4.2014 for recording evidence of claimants. As the Presiding Officer was on leave from 14.4.2014 to 13.5.2014, the matter could be taken up on 18.6.2014 on which date also the matter has been adjourned for 8.7.2014 for recording evidence of claimants. On 8.7.2014 since the Presiding Officer was on leave, 31.7.2014 was fixed as next date for recording of evidence of claimants. On 31.7.2014 the matter was again

adjourned for 22.8.2014. On 22.8.2014 the Claims Tribunal taking into consideration earlier dates of proceeding rejected the application of claimants seeking time to lead evidence and fixed the case for recording of evidence of non-applicants. The Claims Tribunal after recording evidence of non-applicants, dismissed the claim case holding that the claimants failed to prove their case.

13. Perusal of the entire proceedings of claim case would show that on 12.9.2014 the learned counsel representing claimants moved an application before the Claims Tribunal under Section 151 of CPC praying for grant of an opportunity to lead evidence in support of their case, but the same has been rejected by the Claims Tribunal holding that application filed on behalf of claimants cannot be held to be bona fide. Perusal of application filed under Section 151 of CPC dated 8.9.2014, which is available on record, would show that in this application the claimants have pleaded that due to sickness and non-receipt of any information regarding case, they could not be able to produce their evidence before the Claims Tribunal on the last date of hearing. It has been mentioned that the matter is at preliminary stage, the claimants have interest in the matter, therefore, today they are before the Court to give their evidence. Learned counsel appearing on behalf of the non-applicants have also orally opposed the said application and not filed any reply to it. However, the Claims Tribunal rejected this application.
14. Perusal of record of claim case reveals that documents relating to criminal case including FIR are available in the record of

claim case and a glance of FIR would demonstrate that it has been registered against non-applicant No.1/respondent No.1, driver of offending vehicle and after completion of investigation, charge sheet has also been filed against him before the Court of jurisdictional Magistrate.

15. The Act of 1988 is a beneficial piece of legislation enacted with an object to provide compensation to a person who suffered injuries or family members who lost their relative in a motor vehicular accident. While recording proceedings under the Act of 1988, the strict principles of law are not to be followed but the proceedings are to be drawn in furtherance of the object of the Act of 1988.
16. Taking into consideration the order sheets of the Claims Tribunal as well as the reasons assigned by the claimants in the application filed before the Claims Tribunal under Section 151 of CPC seeking opportunity to adduce evidence in support of their case, and further taking into consideration the fact that during pendency of case, appellant, widow mother of deceased, has also lost her husband, we think that ends of justice would be met if an opportunity is granted to claimant/appellant to prove her claim filed under Section 166 of the Act of 1988 before the Claims Tribunal by adducing evidence in support thereof.
17. In the above circumstance, the impugned award is hereby set aside and the matter is remanded back to the Claims Tribunal for fresh adjudication of claim case after giving an opportunity to the claimant/appellant to amend the pleadings and to adduce evidence (oral and documentary) in support her case. The

respondents are entitled to rebut the evidence adduced by the claimant/appellant.

18. Considering the fact that the claim case was filed as back as on 15.1.2013, it seems necessary to direct that the proceeding should be concluded expeditiously. It is, accordingly, directed that the Claims Tribunal shall decide the claim case within a period of five months from the date of receipt of original record of claim case. The Registry is directed to send back the entire original record to the Claims Tribunal forthwith.
19. The appeal is allowed in the above term.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-