

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 66 of 2013**

1. Smt. Mankunwar Verma, W/o Late Goverdhan Verma, aged about 50 years
2. Kanhaiya Lal Verma, S/o Late Goverdhan Verma, aged about 25 years,

Both are R/o Sanjay Colony, Baloda Bazar, Distt. Raipur (CG)

---- Appellants

Versus

1. Surendra Kumar Chhabda, S/o Haveli Ram Chhabda, Panjabi Para, Bemetara, P.S. Bemetara, Distt. Durg (CG)
(Owner of alleged vehicle road roller without number)
2. Narottam Patel (Lodhi), S/o Nathuram Lodhi, R/o Hadgaon, P.S. Bemetara, Distt. Durg (CG)
(Driver of alleged vehicle road roller without number)
3. National Insurance Company Limited, Tatibandh Business Center, in front of Bharat Mata School Tatibandh, Distt. Raipur (CG) (Driver of alleged vehicle road roller without number Chasis No.1692001 Engine No.1137311)

---- Respondents

For Appellants : Shri S.P. Sahu, Advocate

For Respondent No.3 : Shri Shivendu Pandya, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per P. R. Ramachandra Menon, CJ

20/05/2020

1. This appeal is at the instance of the claimants, who are wife and son of the deceased.
2. Grievance is against rejection of the claim by the 2nd Additional Motor Accident Claims Tribunal, Balodabazar (for short 'the Claims Tribunal') holding that the accident was not proved, to have the compensation awarded as sought for.

3. The sequence of events shows that on 18.5.2011 the deceased was proceeding on a TVS moped and when the moped reached the place of occurrence, it collided against a road-roller (allegedly without any registration number), which was stated lying/proceeding along the same side of the road through which the deceased was also proceeding. The rider of the moped sustained serious injuries in the said accident resulting in his death, in turn, leading to filing of a claim application by the claimants before the Claims Tribunal seeking a total compensation of Rs.11,20,000/- under various heads. Claim was sought to be resisted from the part of respondents No.1 & 2 and also by respondent No.3- Insurer by filing separate written statement.
4. Going by the discussions made by the Claims Tribunal in the award under challenge, it is seen that the insurance coverage of the road-roller was admitted, though there was a contention that there was breach of condition in the insurance policy, as taken note by the Claims Tribunal in Para-4 & 5 of the impugned award. The Claims Tribunal, after evaluation of facts, figures and materials brought on record, held that the claimants/ appellants had failed in proving the accident with the involvement of the said road-roller so as to shift the liability to the shoulders of the respondent-Insurer or any other respondent. It was accordingly, that the claim petition was dismissed vide award dated 29.11.2012, which is sought to be interdicted in this appeal.
5. On going through the impugned award, it is seen that in connection with the accident in question, a crime was registered

as Crime No.176/11 at Police Station Balodabazar and criminal case was pending. Registration of FIR and subsequent proceedings *prima facie* indicate involvement of said road-roller in the accident. There is no dispute that the above vehicle was involved in the accident and that the injuries caused in the accident led to the death of the sole breadwinner of the claimants/appellants.

6. The discussion made by the Claims Tribunal does not disclose anything with regard to the role played by the road-roller and the circumstances under which the accident had occurred. When the Claims Tribunal has held that the claimants had failed to prove negligence on the part of the driver of the road-roller, there is no much discussion with regard to specific averment as to the absence of any registration mark, absence of any light or as to the details of license stated to be possessed by the driver of the road roller. That apart, the police had registered a crime against the driver of the road-roller leading to a criminal case pending before the competent Court. Registration of a crime is *prima facie* an instance to show involvement of the vehicle. Whether there was any 'contributory negligence' atleast on the part of the driver of the road-roller is a matter to be looked into, particularly with reference to the lie & location of the road, nature of vehicles involved (particularly when two wheeler used by the deceased was only a Moped), time at which the accident occurred and whether visibility was enough, besides such other relevant aspects.

7. Considering the facts and circumstances, we are of the view that a further opportunity should be given to the appellants herein, who are claimants before the Claims Tribunal, and also to the respondents concerned to establish the actual facts and figures and to have finalized the matter accordingly.
8. In the above circumstances, we allow this appeal. The impugned award passed by the Claims Tribunal stands set aside and the matter is remanded to the Claims Tribunal, with liberty to both the sides to supplement pleadings and adduce further evidence, if any. The matter shall be decided by the Claims Tribunal in accordance with law by passing an award afresh, as expeditiously as possible, at any rate within 'three months' from the date of receipt of a copy of this judgment.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

roshan/-