

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 11th OF MARCH, 2024

MISC. APPEAL No. 4733 of 2019

BETWEEN:-

1. **MUST. DEVKALIYA @ DEVKALI W/O LATE RAMVISHWAS VERMA (CHOUDHARY), AGED ABOUT 43 YEARS, OCCUPATION: HOUSE WIFE, R/O VILLAGE NAYAGAON NAIBASTI POLICE STATION SABHAPUR DISTT. SATNA (MADHYA PRADESH)**
2. **RAMBHOLE S/O LATE RAMVISHWAS VERMA (CHOUDHARY), AGED ABOUT 25 YEARS, OCCUPATION: LABOUR, R/O VILLAGE NAYAGAON NAIBASTI, POLICE STATION SABHAPUR, DISTRICT SATNA (MADHYA PRADESH)**
3. **NANDLAL CHOUDHARY S/O LATE RAMVISHWAS VERMA (CHOUDHARY), AGED ABOUT 29 YEARS, OCCUPATION: LABOUR R/O VILLAGE NAYAGAON NAIBASTI, POLICE STATION SABHAPUR , DISTRICT SATNA (MADHYA PRADESH)**
4. **VIJAY CHOUDHARY S/O LATE RAMVISHWAS VERMA (CHOUDHARY), AGED ABOUT 20 YEARS, OCCUPATION: LABOUR, R/O VILLAGE NAYAGAON NAIBASTI, POLICE STATION SABHAPUR, DISTRICT SATNA (MADHYA PRADESH)**
5. **AJAY CHOUDHARY S/O LATE RAMVISHWAS VERMA (CHOUDHARY), AGED ABOUT 18 YEARS, OCCUPATION: STUDENT, R/O VILLAGE NAYAGAON NAIBASTI, POLICE STATION SABHAPUR, DISTRICT SATNA (MADHYA PRADESH)**
6. **SANDEEP CHOUDHARY S/O LATE RAMVISHWAS VERMA (CHOUDHARY), AGED ABOUT 14 YEARS, OCCUPATION: MINOR THROUGH LEGAL GUARDIAN MOTHER APPELLANT NO.1 R/O VILLAGE NAYAGAON NAIBASTI, POLICE STATION SABHAPUR, DISTRICT SATNA (MADHYA PRADESH)**

.....APPELLANTS

*(BY SHRI RAJENDRA MARAVI - ADVOCATE)***AND**

1. **DHARMENDRA SINGH S/O SHRI LALLU SINGH, AGED ABOUT 26 YEARS, VILLAGE POINDHAKALA POST DAGDEEHA POLICE CHOUKI BABUPUR P.S. KOLGAWAN DISTT. SATNA (MADHYA PRADESH)**
2. **MANAGER IFFKO TOKYO GENERAL INSURANCE COMPANY LIMITED 1ST FLOOR CHOURASIYA COMPLEX NEAR SAFARI HOTEL, IN FRONT OF BUS STAND REWA ROAD SATNA (MADHYA PRADESH)**

.....RESPONDENTS

*(RESPONDENT NO.1 BY NONE, DESPITE SERVICE OF NOTICE)
(RESPONDENT NO.2 BY SHRI B.P.VISHWAKARMA - ADVOCATE)*

Reserved on: 25.1.2024

Pronounced on: 11.03.2024

*This appeal having been heard and reserved for order, coming on for pronouncement this day, **JUSTICE AVANINDRA KUMAR SINGH** passed the following:-*

ORDER

Record is received. Considered I.A.No.11718/2019, which is an application under section 5 of the Limitation Act for condonation of delay in filing the appeal.

2 . It is stated that there is delay of 85 days in filing the appeal. For the reasons stated in the application, it appears that there exist sufficient cause for condonation of delay for not filing the appeal within prescribed time. Accordingly, I.A.No.11718/2019 is allowed. The delay in filing the appeal is condoned.

3 . Heard on admission. The appeal is admitted for hearing. With the

consent of learned counsel for the parties, it is heard finally.

4 . This Misc.Appeal under section 173(1) of the Motor Vehicles Act, 1988 [for short the "Act"] has been filed by the appellants/claimants against dismissal of their Claim Case No.3400550/2016 by the 8th Additional Motor Accidents Claims Tribunal, Satna [hereinafter referred to the as the "Tribunal"] vide award dated 05.2.2019.

5 . Brief facts of the case are that appellants/claimants filed claim petition under section 166 of the Act stating that on 10.8.2016 at about 7.30 p.m. husband of appellant/claimant No.1, namely, Ramvishwas was returning to home from his field by feet and As soon as he reached near Mohariya field at that juncture the respondent No.1 driving his motorcycle (MP-19/MN-9317) in rash and negligent manner dashed against deceased-Ramvishwas resulting in grievous injuries as a result of which he ultimately died in District Hospital during treatment, therefore, compensation of Rs.22,55,000/- be granted.

6 . The learned Tribunal held that it is not proved that deceased died on account of accident caused by respondent through dash of motorcycle in question. The Tribunal has not recorded any finding in respect of Issues No.2, 3 & 4 on the ground that accident is not proved. Accordingly, it dismissed the claim petition.

7 . Learned counsel for the appellant submitted that Tribunal did not allow parties to adduce evidence and proceeded to dismiss the claim petition and hence, matter be remanded to the Tribunal with a direction to the concerned Tribunal to afford opportunity to all the parties to lead proper evidence on all issues.

8 . Learned counsel for the respondent No.2 has supported the impugned award and submitted that deceased died as he was crushed by an Ox

but after about a month false story was made to get compensation.

9 . Having heard learned counsel for the parties and perused the record. On perusal of the record it is seen that deceased got seriously injured. On getting information the Police registered Marg intimation. On the basis of Marg enquiry, Crime was registered for offences under sections 279 and 304-A of the Indian Penal Code against the respondent No.1. After investigation charge-sheet has also been filed against respondent No.1. The respondent No.1 did not file written statement before the Tribunal and chose to remain *ex parte*. The Insurance Company in its written statement before the Tribunal raised an objection that in Marg intimation it is mentioned that a male person was crushed by an Ox and was brought dead on 10.8.2016 and in that case information about motorcycle was not given and there was breach of Insurance Policy as he was not possessing driving licence.

10. In the Tribunal the statement of niece of deceased was recorded. The niece-Ankita Verma has been examined as AW.2 who has supported the claim case and submitted that she was with her 'Tauji'/'Bade Papa'. She also stated that when they went to lodge a report, the Police did not lodge report on that day, therefore, report was lodged on the next date. The witness on behalf of Insurance Company, namely, Mohd.Sadik (NA.No.1) deposed before the Tribunal that deceased-Ramvishwas died due to accident with an Ox, although he admitted in his cross-examination that at the time of accident he was not present at the spot.

11 . Very crucial to this case is that on 31.10.2018 on behalf of the applicants the Investigation Officer-Shyam Sunder Manjhi, Police Station, Sabhapur was sought to be summoned but this application was rejected by the

Tribunal on 02.1.2019 on the ground that on 13.9.2017 the applicants evidence has been closed on his request. Therefore, now this application cannot be allowed.

12 . The Tribunal has dismissed the claim petition on account of Marg intimation (Exhibit-P/3). In Exhibit-P/3 it is mentioned that informant-Shiv Pratap Singh s/o Buddhiman Singh, Ward Boy of the District Hospital, Satna informed that due to collision with an Ox on 10.8.2016 at about 09.13 pm deceased-Ramvish was brought dead. This information was given to Police Officer, Head Constable Saukhi Lal who further informed to to Sub Inspector Sudhir Singh. The Tribunal in paragraph 13 of the award has mentioned about FIR (Exhibit-P/2). The Tribunal also mentioned above delay of 25-26 days. But this delay is of not such period only on account of which claim petition can be dismissed.

13. The important aspect is that Marg Intimation (Exhibit-P/3) was not given by the appellants/claimants or their family members but by a Ward Boy who was not the eye witness. Needless to say that when any accident occurs and some person dies, the first priority of the family is to take steps regarding deceased and not in filing of claim or criminal case. It is pertinent to note that in charge-sheet aforesaid Ward Boy Shiv Pratap Singh has not been made a witness by the Police. It is the duty of the Court to go into the root of the matter but that effort has not been made by the learned Tribunal. The application of the appellants/claimants to summon the Investigating Officer who could have thrown light as on what basis charge-sheet was filed against the respondent No.1, who remained *ex parte* before the Tribunal, has erroneously been dismissed but in such circumstance adverse inference should have been drawn against the respondent No.1. Normally, when a person does not appear in the

Court it is presumed that he has nothing to say regarding the claim or he does not want to oppose it. If the respondent No.1/non-applicant had any objection he should have filed some objection against lodging of false case against him, however, that is also not on record.

14 . Remarkably, on 13.9.2017 when the applicants closed their evidence thereafter on the next date of hearing ie.. 13.10.2017 the respondent No.2/non-applicant No.2 (Insurance Company) filed an application to summon the Police Officer- Head Constable Saukhilal Verma who recorded Marg (Exhibit-P/3). On 31.10.2018 an application filed by applicants to summon Investigating Officer-Shyam Sunder. The Insurance Company objected to such application and on 02.1.2019 the application was dismissed by the Tribunal. Therefore, it is peculiar that Tribunal has erred in dismissing the application of both the parties for summoning the Police Officer who recorded Marg (Exhibit-P/3) and Investigating Officer who permitted the charge-sheet to be filed after investigation.

15 . Thus, in the considered opinion of this Court, now at this stage Investigating Officer-Shyam Sunder is a necessary witness and without examining him no correct finding can be recorded regarding accident and on what basis charge-sheet was filed.

16 . It is also mentioned that in the order-sheet dated 01.2.2019 the Claims Tribunal has observed that charges to summon the witnesses the Insurance Company has not been deposited but from perusal of record it is seen that the situation is otherwise as summon charges were already deposited vide Book no.636 Receipt No.7 dated 31.1.2018 and this aspect is mentioned in 'Talwana'. Therefore, the Tribunal has erroneously closed the right of Insurance

Company in this regard.

17. Hence, in the light of discussion made hereinabove, the award dated 05.2.2019 is set aside and matter is remanded to the Tribunal to give an opportunity to both the parties to lead their respective evidence regarding investigation. After recording of evidence, give findings on all issues. The Tribunal is further directed to dispose of the claim petition within a period of three months from the date of receipt of certified copy of this order.

18. Accordingly, with the aforesaid observation and direction the appeal stands disposed of.

RM



(AVANINDRA KUMAR SINGH)
JUDGE