

IN THE COURT OF MOTOR ACCIDENT CLAIMS
TRIBUNAL-2, NAGPUR.

M.A.C.P No.663 of 21
Balvir + 3 othrs V/s. Anil

ORDER BELOW EXH.22
(Passed on 03-02-2024)

- 1] Whether Ex-parte order dated 07.06.2022 passed against respondent has to be set aside is the only short point involved in the application filed by respondent.
- 2] Heard Ld. Adv. for respondent Shri.Ashish B Shende as well as heard Ld. Adv. for petitioner Smt.Uma Bhattad.
- 3] The claim petition is filed by the legal heirs of deceased Vivek Fulmale who died in motor accident on 10.06.2019 U/sec. 166 of the Motor Vehicles Act. Respondent is the owner of the offending Swift car bearing registration No.MH-36-H-8471 admittedly the car was not having any insurance policy.
- 4] It is contended by respondent that he did not received RPAD summons and came to know about the claim petition only when his driver attended the court in the meantime Ex-parte order was passed against respondent. It is contended that non appearance of the respondent was neither intentional nor deliberately and it was bonafide. Hence, it is prayed that Ex-parte order be set aside and

permission be granted to respondent to contest the claim petition otherwise irreparable loss will be caused to the respondent.

5] The application is strongly opposed by petitioner Adv. Smt.Uma Bhattad contending that, after service of summons by registered post Ex-parte order is passed by this Tribunal thereafter petitioners led evidence and the evidence of petitioners is also closed and the matter is fixed for final arguments. The amount of NFL is also not deposited by respondent. Hence, it is prayed that, application be rejected with heavy costs.

6] It is important to note that, RPAD notice was issued on the correct address of the respondent therefore, on the basis of the tracking report it has to be presumed that the notice was served to the respondent but he failed to appear before the Tribunal. It is also important to note that, by order dated 19.07.2022 Ex-parte order to pay NFL amount of Rs.50,000/- is already passed against respondent. Respondent want to drag the claim petition to the beginning which was about to conclude. Hence, the hearing of the claim petition will be delayed if opportunity is given to the respondent by setting aside Ex-parte order.

7] Considering the fact that, irreparable loss will be caused to the respondent. It will be in the interest of justice

to allow the application of the respondent by imposing appropriate cost in view of above discussion. Hence, I proceed to pass the following order;

O R D E R

- 1] Application is **allowed** subject to payment of cost of Rs.75,000/- (including the amount of NFL to the petitioners excluding interest).
- 2] Respondent shall pay the amount of cost **on or before next date** otherwise this order will **stands vacated automatically**.
- 3] Application is **disposed off**.

Dated: 03.02.2024

(Krupesh Vijay More)
Member, M.A.C.T.-2 Nagpur

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C.No.663/2021