

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. No. 134 of 2001

1. Amrika Bai, Wd/o. Tikeram, aged about 38 years,
2. Lakhanlal, S/o. Tikeram, aged about 20 years,
3. Makhanlal, S/o. Tikeram, aged about 15 years, (Minor), through mother, Amrikabai.

All R/o. Village Nandore Kala, Tahsil Sakti, District Janjgir-Champa (C.G.)

----Appellants

Versus

1. Parmeshwar Singh (since dead) Through L.Rs.
 - (i) Kushum Singh, W/o. Late Parmeshwar Singh, Aged About 50 Years,
 - (ii) Ankita Singh, D/o. Late Parmeshwar Singh, Aged About 25 Years
 - (iii) Ankush Singh, S/O Late Parmeshwar Singh, Aged About 23 Years,
No. (i) to (iii) All R/O Raja Para, Sakti, District- Janjgir-Champa, Chhattisgarh
 - (iv) Pratiksha Singh Banafar, D/O Late Parmeshwar Singh, resident of Rajapara, Ward No. 3, Sakti, District Janjgir Champa Chhattisgarh
2. Tek Chand, S/o. Bhagwandas Jaiswal, Aged About 42 Years, R/o. Bazar Road, Oppst. Hospital, Sakti, District-Janjgir-Champa, Chhattisgarh
3. The Oriental Insurance Company Limited Raipur, Tehsil and District-Raipur, Chhattisgarh.

---- Respondents

For Appellants	: Mr. H.S. Patel, Advocate
For Respondent No.1 (i) to 1(iii) & 2	: Mr. Parag Kotecha, Advocate
For Respondent No.1(iv).	: None present.
For Respondent No.3	: None present.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

06/10/2015

1. The appeal is against the final award dated 27.11.2000, passed in Claim Case No.01/1995, passed by the Additional Motor Accident Claims Tribunal, Sakti.
2. Perusal of the record would show that the accident is of the year 1994. Thereafter, prayer for interim award was rejected, which was subject of appeal before the High Court and subsequently, the matter being remanded, where a direction was given to the Trial Court to proceed with the merits of the case. Ultimately, the award was passed on 27.11.2000, whereby the claim petition was dismissed.
3. It was subject of appeal before this High Court. The High Court initially by an order dated 25.03.2010, passed an order, however, the same was again recalled because of the review application filed by the Takchand and Parmeshwar Singh on the ground that counsel could not appear as the name of their counsel was not published in the cause list. After such order was recalled, the instant appeal is placed for hearing on merits.
4. The facts would show that unfortunate accident happened on 26.08.1994. The claim petition would show the widow and the son of the deceased namely Tikeram filed the claim petition on the ground that on 26.08.1994, while Tikeram was going on his bicycle to village Nandaurkala, a jeep bearing No. MP-26-A-4002 coming from the opposite side, dashed him, whereby he was severely injured and eventually succumbed to the injuries on 09.09.1994. It was contended that the said offending vehicle was owned by the

original non-applicant No.2, Tekchand. It was further stated that at the time of the accident, the deceased was earning Rs.6,000/- per month, wherein the entire family was dependent.

5. The original non-applicant No.1, Parmeshwar Singh, who was stated to be the driver, and the original non-applicant No.2, Tekchand, who was stated to be the owner of the offending vehicle contended before the Claims Tribunal that the jeep bearing No. MP-26-A-4002 is not registered in their name and who is the owner, they are not in the known of it. They further contended that insurer of such vehicle is also not known and false and fabricated case has been filed against them. They further stated that the vehicle bearing MP-26-A-4002 is actually a Luna Moped and it is not a jeep and it was not insured with the respondent No.3.
6. The learned Claims Tribunal after assessment of the evidence adduced, dismissed the claim petition. Hence this appeal.
7. Learned counsel for the appellants would submit that the Tribunal has failed to assess the evidence in correct perspective, thereby, dismissal has resulted. It is further contended that just compensation has not been awarded. Therefore, the appeal may be allowed.
8. Per contra learned counsel appearing on behalf of the respondent No. 1(i) to 1 (iii) & 2 would submit that the order is well merited since as per the evidence, the vehicle which is stated to be involved in the accident do not belong to the non-applicant No.2. It is further submitted that the eye-witnesses are examined in this case namely Sonuram and Dileshwar Prasad and it is not categorically stated

that who was driving the vehicle. He further submits that the driver of the vehicle in this case was also exonerated.

9. I have heard the learned counsel for the parties, perused the evidence and the documents on record.
10. The rejection of the claim petition is predominantly on the ground that the vehicle which was numbered in the claim petition has not been stated to be jeep which was involved in the accident.
11. To examine such finding, the pleading and the evidence of the respondents was surveyed. The written statement of the non-applicant No.1 is on record. It is stated that the offending vehicle Jeep which was bearing No. M.P.-26-A-4002 is not known to him in whose name it is registered. Specific averments have been made in the written statement. As against this, the eye-witness namely Sonuram (AW-2), had stated that at the time of the accident, he was travelling in a tractor and he saw that jeep bearing No. MP-26-A-4002 had dashed a person, which was being driven by Parmeshwar. It was further stated that the jeep belonged to Tekchand Jaiswal. In the cross-examination of this witness, he further affirmed the fact that from a distance of few meters, he has seen the accident and when he reached to the spot, the jeep was in stationary condition therein. The other witness, Dileshwar was examined as DW-4, he further affirmed the fact that he was travelling in the tractor, a jeep overtook them and after a moment it dashed a cycle. It was further stated that who was driving the jeep, he was not in known of the fact. He heard that the jeep belonged to the Tekchand. This witness has further stated that at the time of the

accident, the deceased was riding the cycle on his side. In the cross-examination of both the eye-witnesses, no fact has been suggested about the identity of jeep. Rather reading of the statements of the witnesses would establish the fact that the jeep was involved in the accident.

12. Now the question falls for consideration as to whether the jeep which was having a No. MP-26-A-4002 was involved in the accident or not.
13. Perusal of the record of the criminal case shows that it contains the statement of Dileshwar, who was examined as AW-4. In his statement, the he affirmed the fact that the jeep bearing No. MP-26-A-4002 had dashed the deceased. The statement of the Dileshwar was marked as Ex.P-11C. The document Ex.D-1 is on record, which is a certificate of registration which shows that the vehicle bearing No. MP-26-A-4002 has been described as Luna Moped, therefore the ambiguity has been created as to the number of the vehicle whether it was jeep or not. Perusal of the criminal case record contains an affidavit of Tekchand Jaiswal, the owner of the alleged offending vehicle, which was marked as Ex.P-6C. Perusal of such affidavit, Ex.P-6C, filed in support of the application to get the custody of the vehicle under Section 451 of Cr.P.C., would show that statement on oath was made by Tekchand that vehicle bearing No. MP-26-A-4002 is a jeep vehicle, which belonged to him and the registration book and other papers have been lost, therefore, the documents could not be produced. Similar statement is contained in application under Section 451 of Cr.P.C, which is marked as Ex. P-

7C, wherein it is stated that the vehicle which was seized was given to Parmeshwar on his request, and the vehicle is jeep which bears the number MP-26-A-4002. The final report of the criminal case also affirmed the same. The Ex.P-5, is Form-26, issued by the Registration Authority, wherein it is stated that the documents of the vehicle bearing No. MP-26-A-4002 has been lost/destroyed, consequently, could not be produced. Therefore, taking the admission of the owner of the vehicle, Tekchand, wherein he has stated that the vehicle which was seized by police after the incident belonged to him, this fact is established that the jeep vehicle which was carrying the number MP-26-A-4002 had caused the accident and the affidavit also would show that the offending vehicle belonged to the respondent No.2, Tekchand. The finding of the Claims Tribunal, therefore, is completely absurd that since the driver of the vehicle was not named as such nexus of the accident could not be established with the vehicle. It is quite natural that after an accident, the people would not run to know the name of the driver instead the concentration of the people would be on the injured. In a result, the finding of the learned Claims Tribunal that the claimants have failed to establish the fact that the accident happened with the jeep bearing No. MP-26-A-4002, is set-aside.

14. Further the witness, Sonuram (AW-2), eyewitness, who has stated that at the relevant time, the offending vehicle was driven in rash and negligent manner, which remains unrebutted in the cross-examination and no questions have been asked to rebut the same. Therefore, it is further held that at the relevant time, the offending

vehicle bearing No. MP-26-A-4002 was driven in rash and negligent manner and by such impact it had caused the accident.

15. Now turning to the part of compensation. The claimants has stated that at the relevant time, the deceased, Tikeram was earning Rs.6,000/- per month. The wife and son though have stated that the deceased was earning Rs.6,000/- per month by running hauler-machine but at the same time, except such oral statement nothing has been placed on record. Undoubtedly, the claimants belonged to the unorganized sector and it is not expected that the income would be documented, therefore, to arrive at a notional income, taking into the evidence of wife, PW-3 it can be easily assessed that the deceased earned Rs.1250/- per month and Rs.15,000/- per annum. So considering the date of accident i.e. on 26.08.1994, the income is computed to Rs.15,000/- per annum. By deducting 1/3 towards the personal expenses of the deceased, the dependency would come to Rs.10,000/- per annum. Looking to the fact that the deceased was aged about 40 years, multiplier of 15 would be applicable. By applying the multiplier of 15 to the annual dependency of Rs.10,000/-, the compensation works out to Rs.1,50,000/-. Further on the conventional head, for loss of consortium, the amount of Rs.25,000/- is awarded to the wife and Rs.15,000/- is awarded to the children for loss of love and affection. Further an amount of Rs.10,000/- is awarded for funeral expenses.
16. Apart from the above, the appellants would further entitle to receive the amount which they have incurred upon the treatment of the deceased. The documents in this regard have been filed and proved

as Ex.P-12 to Ex.P-27 and total amount therein comes to Rs.11,267.56. However, a consolidated sum of Rs.15,000/- is awarded as the amount incurred in treatment of the deceased. Thus the total compensation is recomputed as under :-

Sr. No.	Heads	Calculation
1.	For loss of dependency	Rs.1,50,000.00
2.	For loss of consortium to the wife	Rs. 25,000.00
3.	For loss of love and affection to the children	Rs. 15,000.00
4.	For funeral expenses	Rs. 10,000.00
5.	For medical expenditure	Rs. 15,000.00
	Total	Rs.2,15,000.00

17. In the result, the appeal is allowed in part. The appellants will be entitled to the said sum of Rs.2,15,000/-.
18. Considering the date of the accident, and the round of litigation, the interest amount is quantified to Rs.35,000/-.
19. As the offending jeep was not insured with the respondent No.3, therefore, respondents No.1 (i) to 1 (iv) & 2 (driver and owner) shall be jointly and severally liable to pay the amount of compensation to the appellants/claimants.
20. The Registry is further directed to communicate the claimants in writing the amount awarded in this appeal. The said communication be made in Hindi Devanagari language.
21. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge