HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 174 of 2014

1. Smt. Pushpa Jain Wd/o Late Rajesh Kumar Jain, Aged About 44 years R/o Mahabir Ward, Bhatapara, Tah. And P.S. Bhatapara, Distt. Raipur C.G., Present Distt. Baloda Bazar-Bhatapara C.G.

2. Rahul Jain S/o Late Rajesh Kumar Jain Aged About 24 Years R/o Mahabir Ward, Bhatapara, Tah. And P.S. Bhatapara, Distt. Raipur C.G., Present Distt. Baloda Bazar-Bhatapara C.G.

3. Kumari Rashi Jain D/o Late Rajesh Kumar Jain Aged About 21 Years R/o Mahabir Ward, Bhatapara, Tah. And P.S. Bhatapara, Distt. Raipur C.G., Present Distt. Baloda Bazar-Bhatapara C.G.

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Versus

1. Krishna Kumar Sinha S/o Keval Sinha Aged About 30 Years R/o Tekari, P.S. Bhatapara Rural, Tah. Bhatapara, Distt. Raipur , Present Distt. Baloda Bazar-Bhatapara C.G.

2. Ramchandra Dhruv S/o Mohar Dhruv R/o Tekari, P.S. Bhatapara Rural, Tah. Bhatapara, Distt. Raipur C.G., Civil and Revenue Distt. Baloda Bazar-Bhatapara C.G.

3. The Oriental Insurance Com. Ltd. Through- Divisional Manager, The Oriental Insurance Company Limited, Madina Manzil, Kachhari Chowk, Raipur, Civil and Revenue Distt. Raipur C.G.

4. Bholaram Sahu S/o Mohanlal Sahu Aged About 22 Years R/o Hathnipara, P.S. Bhatapara Town, Tah. Bhatapara, Civil and Revenue Distt. Baloda Bazar-Bhatapara C.G.

5. Suresh Jain S/o Indra Kumar Jain R/o Mahatma Gandhi Marg, Baloda Bazar, Tah. And P.S. Baloda Bazar, Distt. Raipur, Present Civil and Revenue District Baloda Bazar-Bhatapara C.G.

6. Vinay Sharma S/o Bajrang Lal Sharma R/o Nayaganj Ward, Bhatapara, Tah. Bhatapara, Distt. Raipur C.G., Present Civil and Revenue Distt. Baloda Bazar-Bhatapara C.G.

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And

MAC No. 129 Of 2014

Suresh Jain S/o Indra Kumar Jain, (As per order sheet not known) but appellant here in is Aged About 57 years R/o Mahatma Gandhi Marg, Baloda Bazar, P.S. Baloda Bazar, Distt. Raipur Now Baloda Bazar-Bhatapara C.G.

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Vs

1. Smt.Pushpa Jain W/o Late Rajesh Jain Aged About 44 years R/o Mahaveer Ward, Bhatapara, Tah. Bhatapara, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

2. Rahul Jain S/o Late Rajesh Jain Aged About 24 Years R/o Mahaveer

Ward, Bhatapara, Tah. Bhatapara, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

3. Ku. Rashi Jain D/o Late Rajesh Jain Aged About 21 Years R/o Mahaveer Ward, Bhatapara, Tah. Bhatapara, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

4. Krishna Kumar Sinha S/o Kewal Sinha Aged About 30 Years R/o Tekari, P.S. Bhatapara, Distt. Raipur Now Distt. Baloda Bazar-Bhatapara C.G.

5. Ramchandra Druw S/o Mohar Druw R/o Tekari, P.S. Bhatapara, Distt. Raipur Now Distt. Baloda Bazar-Bhatapara C.G.

6. The Oriental Insurance Co.Ltd. Through- Divisional Manager, Madina Manzil, Kachahri Chowk, Raipur C.G.

7. Bholaram Sahu S/o Mohan Lal Sahu Aged About 22 Years R/o Hathanipara, P.S. Bhatapara City, Tah. Bhatapara, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

8. Vinay Sharma S/o Bajrang Sharma R/o Nayaganj Ward, Bhatapara, Tah. Bhatapara, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

---- Respondents

<u>MAC No.174 of 2014</u>
For appellants – Shri Ashok Kumar Soni, Advocate.
For Respondent No.3 – Shri Raj Awasthi, Advocate.
For Respondent No.4 – Shri Shrawan Agrawal, Advocate.
For Respondent No.5 – Shri Hemant Gupta, Advocate.
For Respondent No.6 – Shri Punit Ruparel, Advocate.

<u>MAC No.129 of 2014</u>
For appellant – Shri Hemant Gupta, Advocate.
For respondents No.1 to 3 – Shri Ashok Kumar Soni, Advocate.
For respondent No.6 – Shri Raj Awasthi, Advocate.
For respondent No.7 – Shri Shrawan Agrawal, Advocate.
For respondent No.8 – Shri Punit Ruparel, Advocate.

<u>Order</u>

<u>4/08/2015</u>

1. Both these appeals are being decided together by this common order being arising out of the same award dated 25th October, 2013 by the Additional Motor Accident Claims Tribunal, Bhatapara in Claim Case No.41/2009. MAC No.174/2014 is filed by the claimants for enhancement of the award whereas MAC No.129/2014 is by one of the owner of the offending vehicle on

whom liability is fastened.

2. The brief facts of the case are that on 22/05/2009 at about 6.20 am the deceased Rajesh Kumar Jain went to fetch milk in his vehicle TVS Scooty bearing No. C.G. 04 DF 5893. After taking milk from the diary, he was coming back in moderate speed, at that time the Hero Honda motorcycle driven by original non-applicant No.4 Bholaram Sahu in a rash and negligent manner dashed the Scooty whereby Rajesh Kumar Jain fell down on the road. At the same time, tractor bearing No.CG 04 D 3127 along with trolley bearing No. CG 04 D 2600 which was driven by original non-applicant No.1 Krishna Kumar Sinha passed over the deceased who fell down on the road as a consequence Rajesh Kumar Jain died on the spot. Report was made to the police that accident had occurred due to the rash and negligent driving of the motorcycle driven by Bholaram Sahu and simultaneously for rash and negligent driving of original non-applicant No.1 Krishna Kumar Sinha who was driving the tractor and trolley. It was contended by the claimants that deceased Rajesh Kumar Jain was a 50 years old person and was carrying on the business under the name and style Mahavir Motors. It was further stated that he was a income tax payee and an amount of Rs.20 lakhs was claimed for.

3. The non-applicant No.1 Krishna Kumar Sinha the driver of the tractor and trolley and non-applicant No.2 Ram Chandra Dhruv the owner of tractor and trolley contended that accident had occurred due to the rash and negligent act of the deceased himself. It was

further stated that deceased Rajesh Kumar Jain died because of the impact of dash by respondent No.4 Bholaram Sahu who was driving the motorcycle. Further it was contended that tractor and trolley was insured with original non-applicant No.3 the Oriental Insurance Company Limited and therefore respondent Insurance Company and driver of the motorcycle Bholaram Sahu was liable to make good the amount of compensation.

4. The insurance company contended that at the time of the accident driver of the offending tractor was not having the valid licence, therefore the insurance company cannot be held liable to make good the payment.

5. The non-applicant No.4 driver of the motorcycle had stated that deceased died because of his own negligence since he was coming with milk can and could not control the vehicle and because of that it resulted into accident.

6. The original non-applicant No.5 Suresh Jain submitted that the said vehicle i.e. Hero Honda motorcycle bearing No. CG 04 C 6552 was sold by Suresh Jain to Vinay Sharma who is arrayed as respondent No.6 in original petition and therefore on that date non-applicant No.5 Suresh Jain was not owner of the vehicle, consequently, he is not liable to pay the compensation.

7. The original non-applicant No.6 Vinay Sharma stated that he too was not owner of the vehicle on the date of accident since after said purchase from Suresh Jain on 4/04/2009 it was sold to

Bholaram Sahu, the non-applicant No.4 who was driving the said vehicle at the time of accident, therefore non-applicant No.6 also cannot be held liable.

8. Learned tribunal after evaluating the facts and the evidence came to a finding that for the accident deceased was contributory negligence to the extent of 30%. It was further held the driver of the motorcycle and driver and owner of tractor trolley were composite liable for accident and hence passed an award of Rs.8,82,310/-. Since it was held that deceased himself was liable for 30% contributory negligence for the accident, thereby an amount of Rs.2,64,693/- was deducted from total award. Consequently, amount of Rs.6,32,617/- was awarded which was further divided to be paid to the extent of 50% on driver of the motorcycle and on driver and owner of the tractor and trolley to the extent of 50%.

9. Two appeals have been preferred. One appeal is by the claimants bearing MAC No. 174/2014 and one appeal is by the registered owner of the Hero Honda motorcycle Suresh Jain which is bearing MAC No.129/2014.

10. Learned counsel for the claimants Shri Ashok Soni appearing in MAC No.174/2014 would submit that learned court below without any rhyme and reason and evidence on record has came to a finding of contributory negligence. He would submit that according to the eye witness at the time of accident, deceased was on the left side of the road while he was dashed by the offending motorcycle and when he fell down to the road he was ran over by the offending

tractor and trolley. Consequently, it cannot be stated that simply because there had been head on collusion deceased was contributory negligent. It is further contended that future prospect has also not been awarded and on the conventional head meager amount has been awarded which too needs re-assessment.

11. Shri Hemant Gupta, learned counsel appearing in MAC No.129/2014 would submit that liability has been wrongly fastened over the appellant Suresh Jain despite the fact that on the date of accident the vehicle was sold to other respondent. It is submitted that admission to this extent exist on record by the driver and owner of the motorcycle itself namely Bholaram Sahu which would go to show that appellant did not have any control over the vehicle at the time of accident and the physical possession of the vehicle was delivered and therefore liability cannot be fastened.

12. Shri Shrawan Agrawal, learned counsel appearing for Bholaram Sahu who was arrayed as respondent No.7 in appeal has preferred cross appeal in both the cases with an application for condonation of delay. On due consideration, delay in filing the cross appeal of 131 days is condoned. Same is also heard. Learned counsel would submit that court has wrongly fastened the liability over the respondent Bholaram Sahu. He would submit that entire accident had occurred due to the rash and negligent driving of the tractor and trolley and therefore there cannot be composite liability of this appellant with owner and driver of tractor and trolley. It is therefore submitted that finding of composite liability should be set

aside.

13. Shri Raj Awasthi, learned counsel appearing for the insurance company and Shri Punit Ruparel learned counsel for respondent Vinay Sharma supported the award and would submit that award is well merited which do not call for any interference.

14. I have heard learned counsel for the parties at length and perused the evidence on record.

15. Since two appeals are filed. Initially the appeal filed by the claimants for enhancement of the award is being dealt with. The claimants on their behalf had examined Rahul Jain, son of deceased who is not eye witness to the incident. Eye witness examined in this case was one Siddarth Jain. He has stated that on the date of accident on 22/05/2009 while he was also on road, he saw accident from a distance of 15-20 feets. It is stated that Rajesh Jain was going on his TVS Scooty bearing No. C.G. 04 DF 5893 and was on his side and at that time, the vehicle driven by Bholaram Sahu bearing No.CG 04 C 6552 driven in a rash and negligent manner dashed the said Rajesh Jain and by impact of such dash, Rajesh Jain fell down to the road and at that moment the tractor and trolley driven at a high speed by Krishna Kumar Sinha ran over the deceased whereby he died on the spot. In his cross examination, witness maitained his version that he has seen the accident and after dash with motorcycle of Bholaram Sahu deceased fell down on the road. Witness in his cross examination have stated that after deceased fell down tractor being driven in a rash and negligent

manner dashed the deceased.

16. As against this, respondent, Bholaram Sahu driver of the motorcycle has stated that deceased Rajesh Jain was coming in a Scooty wherein can of the milk was kept on the handle. Thereafter said can of the milk got stuck to some part of the body of the Scooty whereby deceased lost his balance. It is stated that thereafter deceased could not control the vehicle and dashed him i.e. Bholaram Sahu and fell down to the road. Simultaneously, he was ran over by the tractor which was coming at a high speed. In the cross examination of this witness, he reaffirms the fact. One other witness namely Satyanarayan Thakur who is said to be eye witness also corroborated the same fact that deceased Rajesh Jain while was going on his motorcycle with a can of milk, the milk can stuck into the handle of the Scooty whereby deceased could not control and dashed into the vehicle of Bholaram. The nature of the movement is also corroborated by FIR Ex.P-2 wherein it was reported that deceased while carrying milk in his Scooty dashed against the motorcycle and thereafter when he fell down, he was ran over by the tractor.

17. Therefore, conjoint reading of the evidence which has come on record, this fact is established that at the time of accident deceased was travelling in his Scooty met with the accident and there was head on collision with the motorcycle. This fact that at the time of accident the deceased was carrying the milk can in handle of the Scooty not rebutted. So the facts gives a probable acceptable

fact and give rise to natural inference that at the time of accident deceased himself was to some extent liable. Learned tribunal has held contributory negligence of the deceased to the extent of 30%. In view of the evidence which has come on record, in my considered view same is required to be re-assessed and way the accident has occurred according to the witness it would be proper to hold that contributory negligence of the deceased to the extent of 20% instead of 30%.

18. Now coming to the quantum of compensation. Learned tribunal has assessed the income of the deceased to Rs.1,20,315/- according to Ex.P-16. Perusal of the Ex.P-16 corroborate the fact that before the incident said income tax return which was dated 24th March, 2009 was filed with the income tax office with seal of the office. Therefore it would give presumption that income of the deceased at the time of incident was Rs.1,20,300/- approximately. The award would show that the learned tribunal has not awarded any future prospect. Admittedly, as per the averment and the evidence on record the age of the deceased has been shown as 52 years at the time of the accident according to the postmortem report Ex.P-5. Since he was aged in between age group of 50 to 60 years, therefore applying principle laid down in **Rajesh and others Vs. Rajbir Singh and others, (2013) 9 SCC 54,** future prospect of 15% would be added as he was self employed person within the age group of 50-60 years. Therefore, by addition of 15% which comes to Rs.18,045/- on Rs.1,20,300/- and the annual income comes to

Rs.1,38,345/-.The accident was of 22/05/2009. Therefore, according to the assessment year 2010-2011 amount of income comes within limited slab and no income tax would be payable on it. Further the claim petition was filed by wife and the two children. Consequently, for personal expenses 1/3rd would be deducted which comes to Rs.46,115/-, therefore dependency comes to Rs.92,230/-. Age of the deceased was shown to be 52 years, so a multiplier of 11 would be applicable as per law laid down in case of **Sarla Verma Vs. DTC (2009) 6 SCC 121** and by application of multiplier the compensation comes to Rs.10,14,530/-. On the conventional head Rs.15,000/- has been awarded for loss of consortium and no compensation has been awarded in other head. In the opinion of this court, as the deceased was carrying on the business, therefore certainly there would be loss of estate and compensation has to be awarded for loss of love and affection to the children apart from funeral expenses. So, following the law down in case of **Asha Verman & Ors. v. Maharaj Singh & Ors.** reported in **2015 AIR SCW 3577** for loss of estate one lakh is awarded and for loss of consortium to wife one lakh is awarded and for loss of love and affection to the children one lakh is awarded and Rs. 25,000/- is granted for funeral expenses. Therefore, compensation is re-assessed as under:-

S.No.	Heads	Calculation
(i)	Annual Income	Rs.1,38,345/-
(ii)	1/3 of (i) deducted as personal expenses of the deceased as the number of dependents were 3.	Rs.1,38,345 - Rs.46,115 = Rs.92,230/-

(iii)	Compensation after multiplier of 11 is applied	Rs.92,230 x 11 = Rs.10,14,530/-
(iv)	For loss of estate	Rs.1,00,000/-
(v)	For loss of consortium	Rs.1,00,000/-
(vi)	For loss of love and affection to the children	Rs.1,00,000/-
(vii)	For funeral expenses	Rs.25,000/-
	Total amount	Rs.13,39,530/-

19. Therefore, total amount comes to Rs.13,39,530/-. Out of the said amount since contributory negligence has been held to the extent of 20%, 20% amount of Rs.13,39,530/- would be deducted which comes to Rs.2,67,906/- and after deducting 20% i.e. Rs.2,67,906/- the claimants shall be entitled to total compensation of Rs.10,71,624/-. After deducting Rs. 6,32,616/- awarded by the tribunal, the enhancement would be Rs.4,39,008/-. The claimants would be entitled to the said sum of Rs.4,39,008/- in addition to what is already awarded with interest at the rate of 9% per annum from the date of enhancement of the award.

20. Now reverting to the other MAC No.129/2014, this appeal is by the registered owner of the motorcycle Suresh Jain. Suresh Jain is the erstwhile registered owner of the offending Hero Honda motorcycle. Reading statement of Suresh Jain it would reveal that it is stated that motorcycle was sold to Vinay Sharma who was arrayed as original non-applicant No.6 in claim petition. In statement of Bholaram Sahu, the original non-applicant No.4, in his cross

examination, the document Ex.D-1 is proved. By such document he admits the fact that said motorcycle was purchased by him from Vinay Sharma. Therefore, necessary inference which is established by reading statement of Suresh Jain along with document Ex.D-1 would show that vehicle was sold by Suresh Jain to Vinay Sharma and it was purchased by Bholaram Sahu from Vinay Sharma. The document Ex.D-1 is a agreement dated 4/04/2009 which purports that Vinay Sharma in turn has sold the Hero Honda motorcycle bearing no. CG 04 C 6552 to Bholaram Sahu, thereby this fact is established that though registration was in the name of Suresh Jain, vehicle i.e. Hero Honda motorcycle was actually sold and was held in possession by Bholaram Sahu. Now the question arises as to whether Suresh Jain would be held to be owner in view of admitted facts of the parties.

21. Similar proposition came up before Hon'ble Supreme Court in case decided between **HDFC Bank Ltd. v. Kumari Reshma and Ors**. reported in **AIR 2015 SC 290** & **Purnya Kala Devi v. State of Assam & Anr**. reported in **2014 (4) Scale 586** wherein it is held as under :-

> “22. …..................The High Court failed to appreciate the underlying legislative intention in including in the definition of "owner" a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-purchase agreement to the effect that a person in control and possession of the vehicle should be construed as the "owner" and not alone the registered

owner. The High Court further failed to appreciate the legislative intention that the registered owner of the vehicle should not be held liable if the vehicle was not in his possession and control. The High Court also failed to appreciate that Section 146 of the 1988 Act requires that no person shall use or cause or allow any other person to use a motor vehicle in a public place without an insurance policy meeting the requirements of Chapter XI of the 1988 Act and the State Government has violated the statutory provisions of the 1988 Act. " (Emphasis supplied)

22. Further reading of Motor Vehicles Act of 1988 the word 'owner' is defined in section 2(30) of the Act. It reads as under:

> “2.Definitions-In this Act, unless the context otherwise requires,-
>
> (30) “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of the hypothecation, the person in possession of the vehicle under that agreement.”

23. Under Section 40 of the MV Act, 1988, every owner of a motor vehicle is to cause the vehicle to be registered. Similarly, section 41 of the MV Act, 1988, deals with the application by or on behalf of the owner of a motor vehicle for registration. Therefore, the word “owner” appearing in Chapter IV in the context will not mean a registered owner as the vehicle is yet to be registered and for which application is required to be made for registration. Section 50 of the MV Act, 1988 is pari materia with section 31 of the MV Act, 1939. A conjoint reading of sub-sections (3) and (5) of Section 50 of the MV Act, 1988, shows that if the transferor or the transferee fails to report to the Registering Authority the fact of transfer,

the Registering Authority may require the transferor or the transferee to pay such amount not exceeding one hundred rupees as may be prescribed under sub-section (5) in lieu of any action that may be taken against him under section 177. Sub-section (5) contemplates that the State Government may prescribe different amount having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2). It, thus, transpires that the ownership of a movable property is not dependent upon the entries in the registration certificate. For the delay in seeking mutation of change in the registration certificate, the transferor or the transferee, as the case may be, can be penalized and proceeded against in terms of Section 177 of the MV Act, 1988. Such default is again compoundable on payment of prescribed fee under sub-section (5) of Section 50 of the MV act, but the ownership of the movable property is not dependent upon the registration Certificate."

24. Therefore, reading the relevant provisions of Motor Vehicles Act of 1988 and the principles laid down in the aforesaid cases, survey of evidence would shows that Bholaram Sahu has admitted the fact that he has purchased the vehicle by Ex.D-1, therefore the property stood transferred as per Ex.D-1. If transfer of the name in registration certificate has not been done in terms of Section 159 of the Motor Vehicles Act, 1988 by the transferee then in that case he may be liable for punishment under Section 177 of the Motor Vehicles Act, 1988 but the property was transferred as the actual control admittedly was with Bholaram Sahu.

25. In a result, liability cannot be fastened in this instant case over Suresh Jain. Accordingly, it is held that liability which is been fastened over Suresh Jain is set aside. Appeal filed by Suresh Jain is also allowed to the above extent.

26. In view of fore-going finding the liability to pay the compensation is fastened over Bholaram Sahu driver and owner of the vehicle Hero Honda motorcycle bearing No. CG 04 C 6552, then driver and owner of the tractor and trolley namely Krishna Kumar Sinha and Ramchandra Dhruv along with it's insurer shall be jointly & severally liable to make good the payment of compensation to the claimants.

27. In the result, appeal MAC No.174/2014 filed by the claimants is partly allowed and appeal MAC No.129/2014 filed by Suresh Jain is allowed. No order as to cost.

Sd/-
(Goutam Bhaduri)
JUDGE

Gouri