

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 498 of 2013**

1. Ahmed Ismile Khan, S/o. Khalil Ahmed Khan, Aged About 50 Years, R/o. Garden Square Baloda Bazar, Post- Baloda Bazar, P.S. Baloda Bazar, Civil & Revenue Distt. Raipur Now Distt. Baloda Bazar-Bhatapara C.G.
2. Kamal Narayan, S/o. Ashok Kumar Banjare, Aged About 18 Years, R/o. Garden Square Balodabazar, Post- Baloda Bazar, P.S. Baloda Bazar, Civil & Revenue Distt. Raipur, Now Baloda Bazar-Bhatapara C.G.

----Appellants**Versus**

1. Purnima Bai, W/o. Kamal Dhruv, Aged About 21 Years, R/o. Village Puraina Khapari, P.S. & Tah. Baloda Bazar, Police & Civil District Raipur Now Baloda Bazar-Bhatapara C.G.
2. Ku. Anjali, D/o. Kamal Dhruv, Aged About 7 Years, Minor through its Mother Purnima Bai, R/o. Village Puraina Khapari, P.S. & Tah. Baloda Bazar, Police & Civil District Raipur, Now Baloda Bazar-Bhatapara C.G.
3. Ram Prasad, S/o. Somnath Dhruv, Aged About 55 Years, R/o. Village Puraina Khapari, P.S. & Tah. Baloda Bazar, Police & Civil District Raipur, Now Baloda Bazar-Bhatapara C.G.
4. Bedan Bai, W/o. Ram Prasad, Aged About 50 Years, R/o. Village Puraina Khapari, P.S. & Tah. Baloda Bazar, Police & Civil District Raipur, Now Baloda Bazar-Bhatapara C.G.

---- Respondents

For Appellants	:	Mr. Manoj Paranjpe & Mr. Vikram Dixit, Advocates
For Respondents	:	Mr. S.K.Guha, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****09/09/2015**

1. The instant appeal is against the award dated 08.03.2013, passed in Claim Case No.47/2007, by the Court of learned First Additional Motor Accident Claims Tribunal, Balodabazar.
2. Briefly stated facts are that the claim case was filed by the widow Purnima Bai, minor daughter Ku. Anjali, father Ramprasad and Bedanbai mother of the deceased. It was pleaded that on 20.04.2007 while the deceased

Kamal Dhruv was returning to his village Puraina Khapari on his Bicycle, he was dashed by another motorcycle bearing No.C.G.04/C.C./8908 which was being driven by the Non-applicant No.2, Kamal Narayan, in rash and negligent manner as they were traveling into number three in the vehicle. By impact of such accident, Kamal Narayan died on the spot. It was stated that at the time of accident, the deceased used to earn Rs.6,000/- per month. Consequently, on the different heads, an amount of Rs.16,08,000/- was claimed.

3. The Non-applicant No.1, owner of the vehicle, stated that his actual name is Ahmed Ismile Khan and his name was wrongly been described in the claim petition. The other averments of the claim petition was also refuted. The Non-applicant No.2, driver of the offending vehicle, contended that at the time of accident, he was holding a valid licence and the vehicle was driven in a moderate speed. It was further contended that at the time of accident, the deceased had consumed liquor and because of that he could not control himself and fell down on the road and thereby he sustained injuries on his head and no accident had actually happened with the offending vehicle and a submission was made that the petition may be dismissed.
4. On the basis of the evidence adduced by the parties, the learned Tribunal after evaluating the facts and evidence held that at the relevant time, the vehicle was being driven in rash and negligent manner and the non-applicants are liable to pay the compensation amount of Rs.5,01,000/-.
5. The instant appeal is by the owner and driver of the vehicle namely Ahmed Ismile Khan & Kamal Narayan.
6. Learned counsel for the appellants would submit that at the relevant time, the claimant has failed to establish the fact that the accident had happened by the offending vehicle. He submits that even for the sake of submission, it is held that the accident had happened by the rash and negligent driving of the

vehicle, however, it cannot be held that the driver of the motorcycle was solely responsible for the accident. He would submit that at the relevant time, the deceased was drunk and therefore he could not control the Cycle and fell down on the road and thereby he sustained injuries. Consequently, in the facts of this case, the owner and driver cannot be held liable to make good the payment.

7. Per contra, learned counsel for the claimants/respondents would submit that the award is well merited which do not call for any interference. He would further submit that the just compensation has not been awarded and the compensation should have been enhanced.
8. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.
9. The claimants on their behalf had examined the eye-witness namely Santosh Kumar Sahu. He stated that while he was going on his Bicycle at a distance of 10 feet, he saw the motorcycle coming from the opposite side in rash and negligent manner and dashed the deceased Kamal Dhruv whereby Kamal Dhruv fell down in the middle of the road and for the injury caused, he died on the spot itself. He further stated that the motorcycle while trying to fled away from the scene, they were caught by the villagers of village Dasharma and the deceased was taken to the Hospital in the same motorcycle. The report was made to the police by Ex.P-1. In the cross examination, this witness was suggested that while the accident happened, the eye-witness was in a different Cycle and was at a distance of 10 feet. On suggestion being given to the witness that at the relevant time the motorcycle was moving on a moderate speed, same was denied. He further affirms the fact that by the impact of the accident and dash, the deceased fell down on the road. The FIR (Ex.P-1) would reveal that the report in respect of the accident was made on the same date on 20.04.2007 at about 17:55 and the time of accident was reported to be of 16:00 p.m. The FIR also falls in line to the same statement

which corroborated the fact that at the relevant time the offending vehicle was driven in rash and negligent manner. The number of vehicle, however, though has not been mentioned but in the written statement of the Respondent No.2, he stated that at the relevant time he was driving the vehicle at a slow speed and the deceased himself fell down from the Cycle on the road and sustained injuries. Consequently, the identity of the vehicle and presence of it at spot has been established by the non-applicants themselves.

10. Furthermore, Ahmed Ismile Khan, NAW-1, the owner of the vehicle, in his statement has stated that it was informed by Kamal Narayan that the deceased was drunk and he himself dash into the motorcycle. He further in his statement has stated that Kamal Narayan had taken the motorcycle from him and he do not remember the number of motorcycle. Kamal Narayan, the driver of the motorcycle, had stated that at the relevant time he was driving the motorcycle and a person who was riding on a Bicycle fell down and by such falling to the road, he sustained injuries on his head and he further stated that thereafter he alighted from the motorcycle and saw that the person who had fallen down from the Bicycle was drunk.
11. Therefore, perusal of the statement of Non-applicant No.1 & 2 would show that there are a contradictory statement have come up. The Non-applicant No.1 had stated that Kamal Narayan told him that the Bicycle had dashed into the motorcycle but Kamal Narayan in his statement before the Court stated that actually no accident had happened with the motorcycle but the deceased who was traveling in the Bicycle fell down himself. In view of the contradictory statement, the statement of the eye-witness Santosh Kumar Sahu AW-2 fortified by the reading of all statements of witness and the document of criminal case, it cannot be stated that no accident had happened by the offending motorcycle.

12. Therefore, after due consideration of entire evidence, statement and records, I am of the opinion that the finding arrived at by the learned Tribunal about involvement of the vehicle in the accident cannot be faulted with.
13. In view of the above, the appeal filed by the owner of the offending vehicle has no merit and it is accordingly dismissed. No order as to cost.

Sd/-
(Goutam Bhaduri)
JUDGE

Ashok