

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1573 of 2017**

1. Data Singh S/o Ram Manohar Singh, Aged About 40 Years (Driver).
2. Sushma Singh W/o Data Singh, Aged About 35 Years
Both are R/o House No. 1547, Housing Board Colony, Fauzi Nagar, Near Raju Kirana Store, Bhilai, District Durg Chhattisgarh (Owner).

---Appellants**Versus**

1. Biras Markam S/o Aayatu Ram Markam, Aged About 41 Years.
2. Biran Markam, W/o Biras Markam Aged About 41 Years.
Both are R/o Village Chhote Bhirawand, Tahsil And District Kondagaon Chhattisgarh.
3. Branch Manager, Chola M. S. General Insurance Company Limited, Regional Office, Second Floor, Simran Tower, In Front Of S I C Building, Pandari, Raipur District Raipur Chhattisgarh (Insurer).

---Respondents**AND****MAC No.1576 of 2017**

1. Data Singh S/o Ram Manohar Singh, Aged About 40 Years (Driver).
2. Sushma Singh W/o Data Singh, Aged About 35 Years
Both are R/o House No. 1547, Housing Board Colony, Fauzi Nagar, Near Raju Kirana Store, Bhilai, District Durg Chhattisgarh (Owner).

---Appellants**Versus**

1. Jethu Ram S/o Gagaru Ram, Aged About 41 Years.
2. Budhmani Netam, W/o Jethu Ram, Aged About 38 Years.
Both are R/o Village Sargipara, Baniyagaon, Tahsil And District Kondagaon, Chhattisgarh.
3. Branch Manager, Chola M. S. General Insurance Company Limited, Regional Office, Second Floor, Simran Tower, In Front Of S I C , Building, Pandari, Raipur, District Raipur, Chhattisgarh. (Insurer)
4. Biras Markam, S/o Aayatu Ram Markam, Aged About 41 Years R/o Village Chhote Bhirawand, Tahsil And District Kondagaon, Chhattisgarh.

---Respondents

For appellants : Ms.Kiran Singh on behalf of Shri Uttam Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/11/2017

1. These are the two appeals filed by the driver and owner under Section 173 of the Motor Vehicle Act arising out of the Motor Accident Claim Case Nos. 10/2017 and 12/2017 passed by the learned Motor Accident Claims Tribunal, Kondagaon, District Kondagaon (C.G.) vide its order dated 13/01/2017.
2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has allowed the Claim Applications and have awarded the compensation of Rs.5,49,370/- and Rs.5,23,120/- respectively in the two claim cases with interest @ 9% per annum from the date of application.
3. The facts of the case is that, on 14/09/2016, the offending vehicle i.e. Truck bearing registration No.CG-04-J-2505 was parked on the National Highway No.30 at village Kondagaon, District Kondagaon (C.G.) and when it was parked, the deceased who was traveling on a Motorcycle bearing registration No.CG-27-A-1831 came from behind and dashed the parked Truck. The claimants filed the claim application before the Motor Accident Claims Tribunal seeking for compensation.
4. The Tribunal while passing the award exonerated the Insurance Company of its liability and have fastened the liability of payment

of compensation upon the present appellant for the reason, that the vehicle at the relevant point of time was not insured.

5. The challenge to the impugned award is on the ground, that the Tribunal has not taken into consideration the contributory negligence aspect as there was apparent negligence on part of the deceased who was driving the Motorcycle. Further it was contended, that the deceased also was not wearing helmet which could have avoided grievous injuries on his head. It was also contended, that the driver of the offending vehicle had taken all the necessary precautions while the vehicle was being parked on the road and therefore the present appellants could not have been saddled with the responsibility of payment of compensation.

6. Perusal of record show, that during the course of the evidence before the Tribunal, the tyre repairing shop nearby the accident sight belonging to the one Tej Singh has examined as AW/2 and who has clearly stated, that at the time of the accident, the vehicle was parked at the middle of the road and it did not have the indicator lights or the parking lights when the accident occurred and he had reached the spot of the accident upon hearing the noise of the accident.

7. Further, the driver Data Singh i.e. appellant No.1 has himself examined before the Tribunal and from his deposition, the accident stands established. However, the other aspects so far as the defence which have been raised by the appellants in the present appeal does not stands proved or established.

8. Moreover, before the Tribunal, the spot map in the Criminal Case was also produced and marked as Exhibit-P/9 wherein also the spot of accident is shown to have occurred in the middle of the

road which further strengthens the case of the claimants of the negligence being on part of the driver of the Truck.

9. What is all the more pertinent to take note is of the evidence of AW/2-the tyre mechanic who had deposed, that it was around 8.00 p.m. and it was also raining on the said date and if that be so, if the vehicle is parked on the middle of the road, there is all likelihood of the accident to occur and the appellants should have ensured taking all the precautions for parking the vehicle beside the road so as to avoid any accident.

10. In the instant case, there is no evidence in this regard brought which could be taken into consideration as evidence on behalf of the present appellants.

11. Accordingly, this court does not find any strong case made out by the counsel for the appellants calling for an interference with the impugned award.

12. Both the appeals thus being devoid of merits deserves to be and is accordingly rejected.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit