NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 14 of 2017

Sakhan Ram Rajwade S/o Manraj Rajwade, aged about 45 Years Caste- Rajwar, R/o Village- Sohagpur, P.S. Bishrampur, Tehsil- Surajpur, Revenue & Civil District- Surajpur, Chhattisgarh.

---- Appellant

Versus

1. Indramani W/o Jagdish Prasad, aged about 29 Years
2. Chandrasekhar S/o Late Jagdish Prasad, aged about 13 Years

As the respondent No.2 is minor and is represented by his Natural Guardian (Mother) Indramani, W/o Jagdish Prasad,

Both the respondents are Rajwar By Caste, R/o Village- Sohagpur, P.S. Bishrampur, Tehsil- Surajpur, Revenue and Civil District- Surajpur, Chhattisgarh.

3. United India Insurance Company Limited, Branch- Brahma Road, Ambikapur, Revenue & Civil District- Surguja, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Sarfaraz Khan, Advocate.
For respondent No.1&2	:	Shri DN Prajapati, Advocate.
For respondent No.3	:	Shri Dashrath Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

JUDGMENT

Delivered on 18/07/2017

1. The present is a owners appeal under Section 173 of the Motor Vehicles Act challenging the award dated 30.11.2016 passed in claim case No.38/2016 by the IInd Additional Motor Accident Claims Tribunal, Surajpur (in short, the Tribunal). Vide the said award, the Tribunal has discharged the insurance company of its liability of payment of compensation to the claimants and have fastened the

liability upon the present appellant-owner for payment of compensation of Rs. 5,21,000/- along with interest @ 9 percent per annum from the date of application.

2. It is this award which is under challenge in this appeal.

3. The facts in nutshell are that, on 24.11.2006 when the deceased Jagdish Prasad had taken the motorcycle belonging to the present appellant bearing registration No. CG-15-E-5852 and was going to village Bhorga, an-route he dashed against a stone which was lying in the middle of the road which resulted the vehicle getting unbalanced and he fell down causing grievous injuries and he was later on taken to the hospital where he died on 08.12.2006. Subsequent to his death, the widow and daughter of the deceased initially filed a claim application before the claims Tribunal under Section 163-A of the Motor Vehicles Act which was registered as Claim Case No.296 of 2011.

4. The Tribunal dismissed the claim application of the claimants holding it to be not maintainable under Section 163-A of the Motor Vehicles Act. The said order was questioned in an appeal before this High Court in MAC No.866 of 2014. The High Court also did not interfere with the order of Tribunal and dismissed the appeal. However, liberty was granted to the claimants to prefer a claim case under Section 166 of the Motor Vehicles Act before this court below. It was thereafter that the claim application was filed by the claimants before the Claims Tribunal, Surajpur, where the case was registered as claim case No.38/2016.

5. After completion of pleadings and evidence, the Tribunal vide award dated 30.11.2016 has allowed the claim application and have ordered for payment of compensation of Rs.5,21,000/-along with interest @ 9 percent per annum from the date of application. While passing the said impugned award, the Tribunal has discharged the insurance company of its liability of payment of compensation and have fastened the liability upon the present appellant-owner of the motorcycle leading to filing of instant appeal.
6. Learned counsel appearing for the appellant assailing the impugned award submits that the same is not sustainable for the simple reason that the Tribunal itself while appreciating the evidence and the pleadings which have come on record has in paragraph-11 reached to the categoric conclusion that the accident arose because of the rash and negligent driving of the deceased himself. It was also the contention of the appellant that it was a case where the deceased had taken the vehicle from the present appellant and he himself was driving the vehicle. Therefore, he stepped into shoes of the owner himself and as such once when the deceased stepped into shoes of the owner, he cannot himself be construed to be a third party for the purpose of claiming compensation. It was also contended by the appellant-owner that the deceased at the relevant point of time did not have a valid driving licence and on this ground also the award passed by the Tribunal is not sustainable and the same is sought to be quashed.
7. At this juncture, it would be relevant to refer to the judgment of the

Supreme Court in case of Ningamma Vs. United India Insurance Co.Ltd., 2009(13)SCC710. In the said judgment, the Supreme Court in paragraph 25 has laid down the ingredients or the determining factors for considering the case under Section 166 of the Motor Vehicles Act in the given facts of the case. For ready reference, relevant portion of paragraph 25 is reproduced as under:

> "25........When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs..."

8. To add more strength to the case of the appellant, it was contended that deceased at the time of driving the motorcycle was not having valid driving licence at all. This fact has also been proved by the statement of the witness who had adduced evidence on behalf of the insurance company who had on the basis of FIR stated that the driver of motorcycle did not have a licence. Further, it was also stated by the said witness that as per the FIR, at the time of accident there were three passengers travelling in the said motorcycle which again is violation of policy condition. So far as licence part is concerned, the family members or for that matter, the document which were produced before the Tribunal did not reflect that the deceased at the relevant point of time had the licence.

9. The respondents claimants have neither been able to strengthen their case by producing any cogent evidence or justification of the proof of the deceased having a licence at the relevant point of time nor have

they been able to establish before the Tribunal that the accident has not arisen because of the rash and negligent driving of the deceased himself. In the absence of there being sufficient material to disbelieve the finding of rash and negligent driving on the part of the deceased and coupled with the facts that deceased also did no have driving licence at the relevant point of time, this court find it difficult to sustain the award of the Tribunal fastening the liability upon the owner.

10. Only because the Act is a benevolent legislation by itself would not give rise to the claim for compensation upon a person who is not otherwise either responsible for the accident and also where the accident has been established to have been proved to have occurred because of act on the part of the deceased himself.

11. For the foregoing reasons, this court is of the opinion that the award being erroneous, the same is not sustainable and is accordingly set aside/quashed. It is held that the claimants in the given factual matrix of the case are not entitled for any compensation.

12. The appeal of the owner is allowed on the aforesaid terms.

Sd/-

(P. Sam Koshy)
Judge

inder