

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1559 of 2017**

1. Yogesh Chandrakar S/o Ravi Chandrakar, Aged About 24 Years Village Khertha Bazar, Thana Devri, Tehsil Daundilauhara, District Balod, Chhattisgarh. (Driver Of Vehicle Bearing Registration No. C. G. 07/ G. /7983)
2. Ghanshayam Patel S/o Paras Ram Patel, Aged About 25 Years R/o Village Khertha Bazar, Thana Devri, Tehsil Daundilouhara, District Balod, Chhattisgarh. Purchaser/owner Of The Vehicle Bearing Registration No. C. G. 07/ G /7983

---Appellants**Versus**

1. Ramesh Kumar Bhuarya S/o Tijauram Bhuarya, Aged About 43 Years Village Hathaud, Thana Devri, Tehsil Daundilouhara, District Balod, Chhattisgarh. Through Smt. Shakun Bai Wife Of Ramesh Kumar Bhuarya, Village Hathaud, Thana Devri, Tehsil Daundilouhara, District Balod, Chhattisgarh.
2. Mohan Lal Yadu, S/o Gangadin Yadu, Village Sanjari, Post Sanjari, Tehsil Daundilouhara, District Balod, Chhattisgarh. (Registered Owner Of Vehicle Bearing Registration No. C. G. / 07/ G /7983)

---Respondents

For appellants : Shri Kapil Maini on behalf of Shri
Avinash Chand Sahu, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****16/11/2017**

1. Heard on I.A.No.1, which is an application for condonation of delay.
2. Finding the reasons assigned in the application to be satisfactory, particularly taking the plea of the death of the counsel, I.A.No.1 is allowed and delay of 355 days in filing the appeal stands condoned.

3. Present is an appeal by the driver and possessive owner of the vehicle under Section 173 of the Motor Vehicles Act assailing the award dated 16/08/2016 passed by the learned 1st Additional Motor Accident Claims Tribunal, Balod, District Balod (C.G.) in Motor Accident Claim Case No.14/2013.

4. Vide the impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.2,31,910/- with interest @ 7.5% per annum from the date of application.

5. The counsel for the appellants submits, that the Tribunal has imposed an error of law in as much as not appreciating the fact, that the appellant No.2 was not the registered owner of the vehicle and rather the respondent No.2 was the registered owner and therefore any liability should have been shifted upon the respondent No.2. It was further contended, that the amount of compensation awarded is also on the lower side in as much as there was no proof of income of the injured so also there was no proof of the age of the injured with which the compensation could have been assessed properly.

6. Perusal of record show, that undisputedly, the accident did take place on 13/08/2009 and the vehicle involved was a Motorcycle bearing registration No. CG-07-G-7983 which was being driven by the appellant No.1 on the date of the accident and the vehicle was in possession of the appellant No.2 from whom the appellant No.1 had borrowed the vehicle and was driving when the accident occurred.

7. The appellant No.2 has accepted the fact, that the vehicle was in his possession and that the appellant No.1 had borrowed the vehicle from appellant No.2 goes to prove the fact, that the appellant No.2 in the instant case was the possessive owner of the vehicle. The case thus would be squarely covered by the decision of the Hon'ble Supreme Court in the case of ***Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari & Ors.*** **[{1997} 7 SCC 481]**.

8. So far as the quantum of compensation is concerned, considering the fact that the accident is of the year 2009, it cannot be said that assessing Rs.200/- per day i.e. Rs.6,000/- per month to be on the higher side as under any circumstances, even an unskilled labour during the said period would be earning much more than what has been assessed by the Tribunal. The ground so raised by the counsel for the appellants also stands negated.

9. As far as the age of the injured is concerned, since, the Tribunal has not applied any multiplier, the exact age of the multiplier would not had been of much relevance.

10. The appeal of the owner thus being devoid of merits deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge