

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 774 of 2010**

Shoab Khan S/o Salim Khan R/o near Green Tent House, in front of
Advocate Shukla Kelabadi, Durg, District Durg, (CG)

---- Appellant**Versus**

1. Smt. Revti Patel, aged 42 years, W/o late Ashok Patel
2. Rishi Patel, aged 24 years, S/o late Ashok Patel
3. Mahesh Patel, aged 22 years, S/o late Ashok Patel
4. Nelish Patel, aged 20 years, S/o Ashok Patel
5. Neelkant Patel, aged 18 years, S/o late Ashok Patel

(All above R/o Qr. No. 4/b, Avenue A, Sector No.10, Bhilai, District Durg
(CG)

6. United India Insurance Company Limited through Manager, Tara Complex,
G.E. Road Power House, Bhilai, District Durg (CG) (Insurance Company of
Motor Cycle No. CG/07/LN/0133)

---- Respondents

For Appellant	:	Shri B. P. Singh, Advocate
For Respondent No.6	:	Shri H. B. Agrawal, Sr. Advocate along with Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****21/11/2017**

Present is an owner's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 30.04.2010 passed by the 7th Additional Motor Accident Claims Tribunal (FTC), Durg (CG) in Claim Case No.46/2009. Vide the impugned award the Tribunal in a death case under Section 166 of MV Act has awarded a compensation of Rs.3,46,272/- with interest at the rate of 7% per annum with a direction that the claimants shall be entitled for 50% of

the said awarded amount on account of contributory negligence towards the deceased at 50%.

2. While passing the impugned award, the Tribunal has held that the responsibility of payment of compensation would be jointly and severally upon the owner, driver and the Insurance Company of the motorcycle involved in the accident and liberty was granted in favour of the Insurance Company to recover the amount of compensation awarded from the owner. The reason for passing the award of pay and recovery is on the finding that on the date of accident the offending motorcycle bearing registration No. CG 07 LM 0133 was being driven by the appellant Shoab Khan who was having a learner licence and there was no instructor sitting on the motorcycle with a valid licence at the time of accident. It was also the finding of the Tribunal that the vehicle at the relevant point of time did not bear the 'L' sign required when the vehicle was being driven by a person with a learner licence.

3. Counsel appearing for the appellant-owner opposing the order of pay and recovery passed by the Tribunal submits that admittedly there was a pillion rider namely Jeevan John along with appellant Shoab Khan at the time of accident who had a valid licence to drive a motorcycle and therefore the order of pay and recovery by the Tribunal is erroneous and deserves to be set aside. Counsel for the appellant-owner referred to the documents in the criminal case wherein also the statement of the said Jeevan John was recorded and who has accepted the fact that he was sitting as a pillion rider with the appellant Shoab Khan when the accident occurred and that he had a valid licence for driving a motorcycle. This Jeevan John has also been examined before the Tribunal as NAW-2 wherein he has reiterated the stand that he had taken before the Police authorities during the investigation on the accident.

4. So far as the fact whether the motorcycle was having the sign of L at the time of accident is concerned, no evidence in this regard has been adduced by any of the parties before the Tribunal to show that the motorcycle did not have the sign of 'L' at the time of accident. The fact that Jeevan John was a pillion rider having a valid driving licence is also established from the finding given by the Tribunal in paragraphs-23 & 24. The only reason to discard the statement of Jeevan John by the Tribunal while applying the principle of pay and recovery is that Jeevan John was not accompanying the driver Shoab Khan since beginning but had joined Shoab Khan enroute and therefore it has to be presumed that Jeevan John was not travelling on the vehicle as an instructor. This finding of the Tribunal seems to be without much force as admittedly at the time of accident there was a pillion rider with a valid licence to drive a motorcycle. If the pillion rider had a valid licence and the driver was having a learner licence, it has to be accepted that the provisions of Section 3 under the Motor Vehicles Act has been duly complied with.

5. Thus, the finding of the Tribunal so far as applying the principle of pay and recovery is concerned, deserves to be and is accordingly set aside. It is ordered that the responsibility of payment of compensation shall remain upon the Insurance Company and it would not be entitled for recovering the same from the owner.

6. The appeal thus stands allowed.

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