

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 757 OF 2014

1. Vinay Kumar Sahoo, S/o Tulsiram, aged about 25 years
 2. Tulsiram Sahoo, S/o Udayram Sahoo, aged about 65 years
- Both are R/o Village- Patauta, P.S. Kota, Tehsil- Kota, District Bilaspur (C.G.)

... Appellants

Versus

1. Sunita Bai, W/o Late Narmada Prasad, aged about 25 years
 2. Ku. Anchal, D/o Late Narmada Prasad, aged about 9 years
 3. Pankaj Kumar, S/o Late Narmada Prasad, aged about 6 years
 4. Ku. Ishu, D/o Late Narmada Prasad, aged about 4 years
 5. Nathuram Sahoo, S/o Shyamji Sahoo and father of Late Narmada Prasad, aged about 52 years
 6. Rampyari, W/o Nathuram and mother of Late Narmada Prasad, aged about 49 years
 7. Kalyani, D/o Nathuram, 38 years,
- All are R/o Village- Matsagra, P.S. Takhatpur, Tehsil Kota, District Bilaspur (C.G.)

... Respondents

For Appellants	:	Mr. Dilip Swain, Advocate.
For Respondents	:	Mr. Samir Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/07/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 27.3.2014 passed by the Motor Accident Claims Tribunal, Bilaspur, in Claim Case No. 22 of 2012.
2. Vide the impugned award, the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act, 1988, by the present Respondents No. 1 to 7 i.e. the Claimants, has awarded a compensation of Rs. 6,73,000/- in favour of the Claimants, with interest at the rate of 6% per annum from the date of filing of claim case till realization.
3. The claim of the claimants in short was that on 26.2.2012 the deceased Narmada Prasad, i.e., the husband of Respondent No.1, the father of Respondents No. 2 to 4, the son of Respondents No. 5 & 6 and the brother of Respondent No.7, was going on his motorcycle TVS Sport

along with his friends Sheetal and Mukesh from Laripara to Matsagra and en route they stopped the motorcycle and parked the same by the side of the road. When they were standing by the side of the road suddenly the Appellant No.1 riding the motorcycle (No. CG10-EK/4986) came in a rash and negligent manner and dashed the deceased from behind resulting in grievous injuries being sustained by Narmada Prasad and he was admitted in the hospital but after a period of about 3-4 days he succumbed to his injuries.

4. The Appellants are son and father inasmuch as the Appellant No.1 is the son of Appellant No.2. Appellant No.1 was riding the motorcycle at the time of accident and the Appellant No.2 is the registered owner of the offending motorcycle.

5. The claimants had filed a claim case under Section 166 of the Motor Vehicles Act, 1988, before the Tribunal and the Tribunal after considering the evidence which have come on record, vide the impugned award, has awarded a compensation of Rs. 6,73,000/- with interest at the rate of 6% per annum. Since the motorcycle was not insured, the entire liability of the payment of compensation fell upon the present Appellants.

6. It is this award which is under challenge in the present appeal by the Appellants who are the driver and owner respectively of the offending motorcycle.

7. The contention of the learned Counsel for the Appellants is that no accident whatsoever has occurred from the motorcycle belonging to the Appellants. According to him, the Appellants have been implicated only with an ulterior motive of somehow getting compensation whereas the deceased was not hit by the motorcycle of the Appellants. He also contended that it is a case where in fact the Appellant No.1 had stopped his motorcycle at the place of accident to enquire about the accident and in

the process they have been falsely implicated in the present case. He also contended that it is a case where the deceased and his friends were under the influence of alcohol and the accident in all probability must have occurred because of the fault of the deceased and therefore the Appellants should be exonerated from the liability of payment of compensation.

8. It was further contended by the learned Counsel for the Appellants that the finding of the Tribunal cannot be said to be conclusive as it is on assumption based upon the evidence of two of the interested witnesses who were travelling along with the deceased and therefore their evidence cannot be given that much weightage. Counsel for the Appellants also tried to float a theory of the deceased having sustained injuries at the hands of the two persons travelling with him on account of some personal enmity that they had with the deceased.

9. Learned Counsel for the respondents-claimants however opposes the appeal and submits that the award passed by the Tribunal is just and reasonable and does not warrant any interference as the findings arrived at by the Tribunal are based on the evidence which have come on record both oral as well as documentary and thus prayed for the rejection of the appeal.

10. Having heard the rival contentions put forth on either side and on perusal of the records, apart from the admitted factual aspects so far as the accident having occurred on 26.2.2012, Narmada Prasad sustained grievous injuries to which he succumbed after 3-4 days, the accident having occurred from the use of the motorcycle by Appellant No.1, what is also reflected from the proceeding of the Tribunal is that a criminal case was also registered against the Appellant No.1 vide Crime No. 72 of 2012 at Police Station Kota. The admitted fact which has come from the deposition of the witnesses particularly Mukesh who was accompanying

the deceased at the time of the accident is that they were drunk. Further, from the evidence of another witness Sheetal who was also travelling along with the deceased at the time of accident the admitted fact which has come is that it was very dark. The fact they were under the influence of alcohol is also reflected from the MLC report of the deceased Narmada Prasad wherein the Doctor has given a finding of strong alcohol smell coming from the mouth. Further, from the evidence of the two witnesses who were travelling along with the deceased i.e. Sheetal and Mukesh, if taken into consideration it would reveal that there are a lot of contradictions in the statement made by these two persons so far as the place of accident, the subsequent course of action taken immediately after the accident like- who called for the ambulance, how the accident occurred. There are also contradictions so far as at the time of accident whether the three persons were sitting on the motorcycle or were standing away from the motorcycle. Further, from the evidence of Sheetal it also reflects that the place of accident was upon or near a bridge.

11. From the aforesaid evidence which have come on behalf of the witnesses examined during the course of the evidence particularly the witnesses examined on behalf of the claimants, coupled with the fact that the MLC report also shows the deceased to be under the influence of alcohol, this Court has no hesitation in reaching to the conclusion that there must have been an element of contributory negligence on the part of the deceased also. That the said opinion is formed for the simple reason that the place where they thought of halting was not appropriate, it was dark and it was over or near a bridge where there would not had been sufficient light for the Appellant No.1 to have witnessed the deceased and the other persons from a reasonable distance. All these factors must have contributed for the accident to occur. Thus, this Court is of the opinion that

the ends of justice would meet if the responsibility of the accident is attributed upon both the sides and the percentage of negligence on either side would be equal as the deceased, the persons whom he was travelling with also were under the influence of alcohol. They also stopped at a place which was very dark they should not have halted there.

12. Accordingly, in the opinion of this Court, there is a contributory negligence in the occurrence of the accident and the contribution on either side is equal. Thus, of the compensation awarded by the Tribunal, so far as the Appellants is concerned, they would be liable to pay the compensation to the extent of half of the amount as quantified by the Tribunal. Rest of the conditions imposed by the Tribunal shall remain intact. The appeal stands accordingly allowed in part.

Sd/-
(P. Sam Koshy)
Judge