

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 166 of 2016**

Kamlesh S/o Ramnath Yadav, Aged About 25 Years R/o Dhorbhata, Near Chakarbhata, P.S.- Hirri, District- Bilaspur, Chhattisgarh(Claimant)

---- Appellant**Versus**

1. Laxmi Rajak S/o Panchram Rajak, Aged About 50 Years R/o Bandhwapara, Indira Vihar, Bilaspur Police Station- Sarkanda, District- Bilaspur, Chhattisgarh (Driver Of Offending Vehicle Mazda Bearing Registration No. C.G.-12-E-7123)
2. Ujjawal Lamba S/o Late Gurjeet Kumar Lamba, Aged About 28 Years R/o Usha Heights A/303, Vaishali Nagar, Bilaspur, District- Bilaspur, Chhattisgarh (Owner Of Offending Vehicle Mazda Bearing Registration No. C.G.-12-E-7123)
3. Oriental Insurance Company Limited, Through Branch Manager, Transport Nagar, Korba, District- Korba, Chhattisgarh (Insurer Of Offending Vehicle Mazda Bearing Registration No. C.G.-12-E-7123)

---- Respondents**MAC No. 186 Of 2016**

1. Smt. Sunita Yadav W/o Santosh Yadav, Aged About 45 Years
 2. Sheetla Yadav D/o Santosh Yadav, Aged About 17 Years
 3. Khushbu Yadav D/o Santosh Yadav, Aged About 14 Years
 4. Dharmendra Yadav S/o Santosh Yadav, Aged About 13 Years
 5. Sundhya Yadav D/o Santosh Yadav, Aged About 11 Years
- Nos. 2 to 5 are Minor, Represented Through Her Mother Smt. Sunita Yadav, Aged About 45 Years,
All are R/o Village Muru, Police Station Hirri, Bilaspur, District Bilaspur (Chhattisgarh).....(Claimants)

---- Appellants**Vs**

1. Laxmi Rajak S/o Panchram Rajak, Aged About 50 Years R/o Bandhwapara, Indira Vihar, Bilaspur, Police Station Sarkanda, District Bilaspur (Chhattisgarh).....(Driver Of Offending Vehicle Mazda Bearing Registration No. C G 12 E 7123)
2. Ujjawal Lamba S/o Late Gurjeet Kumar Lamba, Aged About 28 Years R/o Usha Heights A/303, Vaishali Nagar, Bilaspur, District Bilaspur (Chhattisgarh).....(Owner Of Offending Vehicle Mazda Bearing Registration No. C G 12 E 7123)
3. Oriental Insurance Company Limited Through Branch Manager, Transport Nagar Korba, District Korba (Chhattisgarh).....(Insurer Of Offending Vehicle Mazda Bearing Registration No. C G 12 E 7123)

---- Respondent**And****MAC No. 170 Of 2016**

1. Smt. Sheetla Yadav W/o Suraj Yadav, Aged About 20 Years
2. Muskan Yadav D/o Suraj Yadav, Aged About 2 Years Minor Through Legal Guardian Mother Smt. Sheetla Yadav,
3. Pramila Yadav W/o Sunil Yadav, Aged About 40 Years
4. Sunil Yadav S/o Shivnath Yadav, Aged About 45 Years

All are R/o Village- Dhorabhata, Tahsil- Bilha, Police Station- Hirri, District- Bilaspur, Chhattisgarh(Claimants)

---- Appellants

Vs

1. Laxmi Rajak S/o Panchram Rajak, Aged About 50 Years R/o Bandhwapara, Indira Vihar, Bilaspur Police Station- Sarkanda, District- Bilaspur, Chhattisgarh (Driver Of Offending Vehicle Mazda Bearing Registration No. C.G.-12-E-7123)
2. Ujjawal Lamba S/o Late Gurjeet Kumar Lamba, Aged About 28 Years R/o Usha Heights A/303, Vaishali Nagar, Bilaspur, District- Bilaspur, Chhattisgarh (Owner Of Offending Vehicle Mazda Bearing Registration No. C.G.-12-E-7123)
3. Oriental Insurance Company Limited, Through Branch Manager, Transport Nagar, Korba, District- Korba, Chhattisgarh (Insurer Of Offending Vehicle Mazda Bearing Registration No. C.G.-12-E-7123)

---- Respondents

For appellants	:	Shri Sushobhit Singh, Advocate.
For Oriental Insurance Co.		Shri Deepak Gupta, Advocate, in MAC Nos.166 & 186 of 2016. Shri Arvind Shrivastava and Shri Vikas Shrivastava, Advocates, on behalf of Shri Anumeh Shrivastava in MAC No. 170 of 2016.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

13.10.2017

1. By this common judgment these three appeals are being disposed of as common facts & issues are involved arising out of the same accident.
2. These appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 14.01.2016 passed by the Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case Nos.560/2014, 561/2014 and 559/2014 respectively. Vide the said impugned award, the Tribunal has rejected the claim applications on the ground that the claimants have not been able to prove their case so far as the accident to have occurred from the offending vehicle.

3. The facts of the case are that, on 19.04.2013 near Verma Dhaba at Village Mohbhata, a motorcycle in which the deceased as well as two other persons were travelling was hit by Swaraj Mazda bearing registration No.CG-12-E-7123. The injured as well the legal representatives of the deceased filed separate claim applications which were registered as Claim Case Nos. 560,561 and 559 of 2014 respectively. The Tribunal vide impugned order had rejected the claim applications on the ground that the claimants have not been able to prove their case so far as the accident to have occurred from the offending vehicle.
4. At this juncture, it would be relevant to refer to decision of this High Court in case of M.Vijay Laxmi & Ors. Vs. Laxmi Prasad Yadav & Ors. 2017 ACJ 1983, decided on 26.08.2016, wherein referring to series of decisions of the Supreme Court as well as different High Courts, it has been held that the claimants are required to prove their case on the touchstone of preponderance of probability. The standard of proof required for proving the case under Motor Vehicles Act is entirely different than the standard of proof required for proving a criminal case where the proof required is that of beyond reasonable doubt.
5. It would be relevant to refer paragraphs 22 and 23 of the said judgment, which for ready reference is reproduced as under :

“22. In the present case, it appears that while dismissing the claim case the Tribunal failed to take into account the settled legal position that strict rules of Evidence Act are not to be insisted on by the Tribunal on being limited jurisdiction. In the facts and circumstances of the case, maxim res ipsa loquitur is fully attracted which means accident speaks for itself or

accident tells its own story. In such a case, the claimant is required to prove the accident only and nothing more. The claimants are merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. None of the parties have specifically denied the factum of accident, record of the criminal case instituted against driver of the offending vehicle was with the Tribunal and therefore, as per Sections 158(6) and 166(4) of the Motor Vehicles Act, the Tribunal was not required to go into any further technicality by directing the claimants to still prove that the offending vehicle was involved in the accident unless, of course, the party opposing the petition specifically denies the involvement of such vehicle.

23. Thus, having examined the facts and circumstances of the present case in the light of above principles of law governing the field, this Court is of the considered view that the Tribunal was not justified in dismissing the claim case merely on the ground that the claimants failed to prove that the deceased died in an accident involving the offending vehicle. The Tribunal has further erred in law in holding that case of the claimants is liable to be dismissed on the ground of non examination of eyewitness.”

6. In the instant case admittedly the accident did occur on 19.04.2013 and FIR was also lodged on 05.07.2013 i.e. after a gap of around 2 and ½ months. On query being put to counsel for the appellants, he submits that after the FIR lodged, challan has also been filed against the driver of the offending vehicle i.e. respondent No.1 in the instant case and which is still pending consideration before the appropriate criminal court. The offence charged against him is that of Sections 279, 304-A and 307 IPC.
7. What is pertinent to take note of the fact is that in the event if the criminal case which has been filed against the respondent No.1 gets concluded by holding the respondent No.1 guilty of the charges levelled against him, the accident would stand proved by itself and under such circumstances the findings given by the Tribunal would

be rendered inconsequential and would also lead to ambiguity to the finding in this regard of the appellants having failed to prove the occurrence of accident involving the offending vehicle.

8. To avoid such circumstances and also keeping in view the observations made by this court in case of Smt. M. Vijay Laxmi (Supra), this court is of the opinion that ends of justice would meet if the order dated 14.01.2016 passed by the Tribunal in three cases are set aside. It is ordered accordingly and the matters are remitted back to the concerned Tribunal to pass a fresh order after affording an opportunity of hearing to all the parties in the dispute and to lead further evidence, if any.
9. Since the parties are present before this court, they are directed to appear before the Tribunal on 21.11.2017. Meanwhile, the Registry is directed to send back the records of the case forthwith so that it may reach to the concerned Tribunal before the next date of hearing i.e. 21.11.2017.
10. With the aforesaid observations, all the claim cases stand allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge