

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1521 of 2015**

1. Smt. Chameli Bai W/o Ramkumar Manikpuri, Aged About 48 Years
2. Ramkumar Manikpuri S/o Late Rattandas Manikpuri, Aged About 52 Years

Both are R/o Village- Semartaal, Police Station- Koni, Bilaspur, District- Bilaspur, Chhattisgarh(Claimants)

---- Appellants**Versus**

1. Shamsher Ali S/o Sh. Saffik Ali, Aged About 33 Years R/o Jarhabhata, Kumharpara, Bilaspur, District Bilaspur, Chhattisgarh, Presently Residing At Yadunandan Nagar, House No. 117, Near Water Tank, Tifra, P.S.- Sirgitti, District- Bilaspur, Chhattisgarh (Driver And Owner)
2. Shri Ram General Insurance Company Limited, Through Manager, Industrial Area, Sitapura, Jaipur (Rajasthan) (Insurer)

----Respondents**MAC No. 1522 of 2015**

1. Jageshwari Bai Dheewar W/o Rath Ram Dheewar, Aged About 20 Years
2. Kumari Sakshi Dheewar D/o Rath Ram Dheewar, Aged About 05 Months, Minor, Through Appellant No. 01,

Both are R/o Village Semartaal, Police Station Koni, Bilaspur, District Bilaspur (Chhattisgarh).....(Claimants)

---- Appellants**Versus**

1. Shamsher Ali S/o Sh. Saffik Ali, Aged About 33 Years R/o Jarhabhata, Kumharpara, Bilaspur, District Bilaspur (Chhattisgarh) Presently R/o Yadunandan Nagar, House No. 117, Near Water Tank, Tifra, P. S. Sirgitti, District Bilaspur (Chhattisgarh).....(Driver And Owner)
2. Shri Ram General Insurance Company Limited, Through Manager, Industrial Area, Sitapura, Jaipur (Rajasthan).....(Insurer)

----Respondents

For Appellant	:	Mr. Goutam Khetrapal, Advocate
For respective Respondents	:	Mr. A.L. Singroul, Advocate
	:	Mr. S.S. Rajput, Advocate
	:	Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

13/11/2017

1. These are two appeals arising out of the order passed by the Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, in Motor Accident Claim Case Nos. 332/2014 & 333/2014. Matter pertains to an accident that took place on 05.03.2014.
2. Vide the impugned award the Tribunal has rejected the claim cases 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 as also of negligence to have occurred on the part of the vehicle involved in the accident.
3. The counsel for the appellants submits that the issue involved in the instant case is squarely covered by the order passed by this Court on 13.10.2017 in a bunch of appeals leading case of which is MAC No.166/2016 and other analogous matters. The counsel for the appellants submits that in the instant case also a Criminal case has been registered against the Driver of the offending vehicle, which is still pending consideration and in the event, in the criminal case ends of in the conviction of the Driver, the accident would stand established in itself and under the given circumstances, the dismissal of the claim case at this juncture would be detrimental.
4. The counsel for the appellants further submits that the claimants in the instant case have also adduced the evidence of eyewitnesses, so also the statement of the owner of the offending vehicle, who

though have denied the accident, but also at the same time stated that if at all an accident has occurred he is not aware of the same. Thus, from the statement of the owner also it is not conclusively proved that the accident has not occurred from his vehicle.

5. At this juncture, it would be relevant to refer to the decision of MAC No. 166/2016, passed by this Court on 13.10.2017, wherein in paragraphs no.4, 5, 7 & 8 this Court has held as under:-

“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."

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."

6. In the light of the aforesaid observations and keeping in view the decisions of the Coordinate Bench of this Court in the case of "Smt. M. Vijay Laxmi vs. Laxmi Prasad Yadav & Others" passed in bunch

of appeals leading of which is MAC No. 1201/2015 and other analogous matters, decided on 26.08.2016, this Court is inclined to set-aside the award and remit the matter back to the trial Court for a fresh adjudication.

7. Since the parties are present before this Court, they are directed to appear before the Tribunal on the 13th of December, 2017. The parties shall also be entitled for leading further evidence if any to prove or disprove the respective contentions.
8. Meanwhile, the Registry should ensure sending the records back forthwith, so that it reaches the Tribunal before the next date fixed by this Court i.e. on 13th of December, 2017. It is also expected that the trial Court shall ensure an early and expeditious disposal of the matter.
9. The two appeals thus stand allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge