

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 121 of 2016**

1. Smt. Rajni Beldar W/o Late Udal Beldar, Aged About 30 Years
2. Sonu Beldar S/o Late Udal Beldar, Aged About 12 Years
3. Mintu Beldra S/o Late Udal Beldar, Aged About 8 Years
4. Ku. Asha Beldar D/o Late Udal Beldar, Aged About 6 Years
Respondents No.2 to 4 are Minors Through Guardian Mother
Appellant No. 01-Smt. Rajni Beldar.
5. Smt. Sonia Beldar W/o Late Shri Laxman, Aged About 60 Years
All are R/o Maihar, P.S.- Maihar, Satna, Present Address- Munna Ita
Bhatta, Village- Ghuma, P.S.- Torwa, Dist.- Bilaspur,
Chhattisgarh(Claimants).

---- Appellants**Versus**

1. Dhanesh Singh Yadav S/o Bahoran Singh Yadav, Aged About 42
Years R/o Village- Salka, P.S.- Ratanpur, District- Bilaspur,
Chhattisgarh (Driver Of Offending Vehicle, Truck Bearing
Registration No. C.G.-04 Z C- 6482).
2. Praveen Chandra Verma S/o S.C. Verma, R/o Gondpara, District-
Bilaspur, Chhattisgarh (Owner Of Offending Vehicle, Truck Bearing
Registration No. C.G.-04 Z C- 6482)
3. The Oriental Insurance Co. Ltd., Through Divisional Manager,
Divisional Office, Add-Oppsote Rajiv Plaza, U T I Building, Bus Stand,
District- Bilaspur, Chhattisgarh (Insurer Of Offending Vehicle, Truck
Bearing Registration No. C.G.-04 Z C- 6482)
4. Bind Lal S/o Tulai Manhar, R/o Darri Ghat, P.S.- Masturi, District-
Bilaspur, Chhattisgarh.

---- Respondents

For appellants	:	Shri Azad Siddique, Advocate.
For Respondents 1&4	:	Smt. Minu Banerjee, Advocate.
For respondent No.3	:	Shri Sandeep Shrivastava, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****11.12.2017**

1. This appeal under Section 173 of the Motor Vehicles Act has been
preferred against the award dated 07.09.2015 passed by the Motor
Accident Claims Tribunal, Bilaspur, in Claim Case No.446/2014. Vide
the said impugned award, the Tribunal has rejected the claim

application on the ground that there is no sufficient evidence produced by the claimants to show that accident resulted on account of negligence on the part of the driver of the offending vehicle i.e. Truck involved in the accident and that as there was no eyewitness to the incident, the negligence could not be proved.

2. Be that as it may, on specific query being put counsel for the parties, they fairly admitted before the court that the respondent No.1- Dhanesh Singh Yadav, was prosecuted in a criminal case for the offence punishable under Section 304-A IPC. However, none of the parties could give the outcome of the criminal case registered against the respondent No.1-driver.
3. 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.
4. 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.”

5. 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 and negligence 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 in regard to the appellants having failed to prove the negligence of driver of offending vehicle i.e. Truck bearing registration No.CG-04-ZC-6482.
6. 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 07.09.2015 passed by the Tribunal is set aside. It is ordered accordingly and the matter is remitted back to the concerned Tribunal to pass a fresh award after affording an opportunity of hearing to all the parties in the dispute and to lead further evidence, if any, in rebuttal.

7. Since the parties are present before this court, they are directed to appear before the Tribunal on 23.01.2018. 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. 23.01.2018.
8. With the aforesaid observations, the appeal stands disposed off.

Sd/-
(P. Sam Koshy)
Judge