

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 773 of 2012

Manihar S/o Dhanau Gadariya, aged about 30 years, R/o village & Post Nawagaon, Police Station Pulgaon, Tahsil Dhamdha, District Durg (C.G.) (Owner).

---Appellant

Versus

1. Smt. Dulari Bai Wd/o Late Shyam Lal, aged about 58 years.
2. Dushyant Lal S/o Shyam Lal, aged about 40 years.
3. Hemchand S/o Shyam Lal, aged about 35 years.

All are R/o village Funda, Tahsil Dhamdha, District Durg (C.G.) at present R/o Qtr.No.3-H, Street No.18, Sector-6, Bhilai, Tahsil and District Durg (C.G.) (Claimants).

4. Khomlal Patel S/o A.Patel, R/o village Daniya (Nandkatthi) Tahsil Dhamdha, District Durg (C.G.).

---Respondents

For appellant/owner	:	Shri B.P.Singh, Advocate.
For respondents No.1 to 3	:	Shri P.R.Patankar, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/02/2018

1. Present is an appeal filed by the owner under Section 173 of the Motor Vehicles Act assailing the award dated 30/04/2012 passed by the Third Additional Motor Accident Claims Tribunal, Durg (C.G.) in Motor Accident Claim Case No. 45/2005.
2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.1,71,300/- with interest @ 7.5% per annum from the date of application.

3. The brief facts of the case is that, the deceased in the instant case Shyam Lal Dilliwar, aged between 65-70 years while walking on the road was hit by a Motorcycle bearing registration No. MP-24-YA-7053 which was driven by the present appellant/owner of the vehicle on the date of accident.
4. The aforesaid facts are not in dispute.
5. The Tribunal had initially dismissed the claim application vide order dated 23/02/2006. The said rejection was subjected to challenge in MAC No.968/2006. The appeal stood allowed by the division Bench of this Court vide order dated 11/08/2011 and the matter was remitted back to the Tribunal concerned for a fresh adjudication.
6. It is necessary to refer to the findings of the division Bench of this Court at this juncture wherein in paragraphs 4 and 5, it has been held as under:-

“4. We have heard learned counsel for the parties and perused the papers available on record and found that the deceased had got following ante mortem injuries - abrasion on both knee, abrasion on left hand, abrasion on right shoulder, abrasion on back oblique, abrasion on right parietal region, abrasion on left parietal region, pinna left at helix & posterior, abrasion partially healed left side parietal region, extended (Frontal part and lateral part of eye orbital) contusion and bluish right temporal region; and the cause of death was coma due to head injury and fracture of skull bone.

5. The Tribunal has given a finding that the above injuries were not received by the deceased due to the motor accident but might have been caused by falling down on earth, which is

improbable. Further, the vehicle was also seized from the place of accident by the police, the F.I.R. was lodged by the younger son of the deceased and during the investigation the police was of definite view about the involvement of the accident by the use of the motorcycle. That fact has also not been taken care of by the learned claims Tribunal.”

7. After the matter was remitted back, the Tribunal proceeded further with the matter. Though, while remitting, the division Bench had ordered that, the parties would be at liberty to amend their pleadings or lead fresh evidence if any, but neither of the parties before the Tribunal either amended their pleadings nor brought any fresh evidence and the Tribunal proceeded to decide the matter vide the impugned award on 30/04/2012. While passing the impugned award, the Tribunal had fastened the liability of payment of compensation upon the present appellant/owner-cum-driver of the Motorcycle on the date of accident.

8. The counsel for the appellant/owner submits that, there are two grounds which the appellant intends to raise assailing the impugned award. First being that, there was no fresh evidence led by the claimants to substantiate their contention after the matter was remitted. Second ground being that, the present appellant was not the registered owner and therefore the liability if at all was that upon the registered owner namely Khomlal Patel – the respondent No.4 in the present appeal. The counsel for the appellant also relies upon the recent larger Bench decision of the Hon'ble Supreme Court

in the case of **Naveen Kumar V. Vijay Kumar & Ors.** decided in **Civil Appeal No.1427/2018** on 06/02/2018.

9. The counsel for the respondents however opposing the appeal submits that, the award does not warrant any interference as the same is based on the evidence which have come on record and also based on the admitted factual matrix of the case and thus there is no scope of any interference and prayed for rejection of the appeal.

10. Perusal of record what is undisputed is the fact that, on the date of accident, the vehicle bearing registration No. MP-24-YA-7053 being driven by the present appellant himself. Admittedly, as per the appellant himself, he had purchased the vehicle from the respondent No.4 – Khomlal Patel. The purchase was also made wayback in February-2000. What is also undisputed is the fact that, the police has also lodged a criminal case against the present appellant initially for the offence punishable under Sections 279, 336 of IPC and subsequently under Section 304-A of IPC. Though, initially the F.I.R. was lodged against an unknown person, subsequently the chargesheet was filed against the present appellant himself on the basis of investigation which was conducted by the police authorities.

11. Given the facts and circumstances of the case what is undisputed is the fact that, the appellant himself admitted that, he had purchased the vehicle from the respondent No.4 wayback in February-2000. What is also not in dispute as is proved from the criminal case is the driving of the Motorcycle at the time of accident by the appellant himself.

12. Given the aforesaid two admissions or admitted factual matrix of the case this Court is of the opinion that, the principles as have been laid down by the Supreme Court in the case of Naveen Kumar (Supra) referred to by the counsel for the appellant would be distinguishable on its facts itself and the same may not come to the rescue of the appellant herein.

13. Given the aforesaid factual matrix of the case and also in the light of the observations made by the division Bench of this Court while allowing the appeal on an earlier round of litigation, this Court does not find any strong case made out by the counsel for the appellant calling for an interference with the impugned award.

14. The appeal thus being devoid of merits deserve to be and is accordingly rejected.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE