

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 349 OF 2012

1. Arvind Kumar Soni, S/o Krishna Kumar Soni, aged about 35 years, R/o Village Beltara, Thana Ratanpur, District Bilaspur (C.G.)
2. Naval Singh Raj, S/o Dhan Singh Raj, aged about 28 years, R/o Village- Jaali, Thana- Ratanpur, District Bilaspur (C.G.)

... Appellants

versus

1. Chameli Bai Markam, Wd/o Late Chandrapal Singh, aged about 28 years
 2. Ku. Sharda Markam, aged about 10 years
 3. Sadhram Markam, aged about 8 years
 4. Ku. Aasha Markam, aged about 6 years
 5. Ku. Sadhna Markam, aged about 1 year
- No. 2 to 5 are father of Late Chandrapal Singh, through his guardian mother Chameli Bai, Wd/o Chandrapal Singh Markam.
6. Budhari Bai Markam, W/o Laxman Prasad, aged about 65 years.
All R/o Village Belpara (Beltara), Thana- Ratanpur, District Bilaspur (C.G.)
 7. Laxman Prasad Markam, S/o Late Narayan Prasad Markam, aged about 60 years, R/o Village- Belpara (Beltara), Thana- Ratanpur, District Bilaspur, present address Village Dhenka, Thana Torwa, Tahsil and District- Bilaspur.
 8. Branch Manager, National Insurance Co. Ltd., Vyapar Vihar Road, Bilaspur, District Bilaspur (C.G.)

... Respondents

For Appellants : Mr. Samir Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/02/2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellants *i.e.* the owner and the driver of the offending vehicle.
2. Challenge in the present appeal is to the award dated 23.2.2011 passed by the First Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case No. 51/2010.
3. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.4,00,000/- in favour of the claimants with interest thereon at the rate of 9% per annum from the date of presentation of the claim application.

While passing the award, the learned Tribunal has exonerated the insurance company of its liability and has fastened the liability for payment of compensation upon the owner and the driver of the offending vehicle *i.e.* a motorcycle, bearing registration no CG10-EE-5673.

4. Learned counsel for the appellants submits that the finding of the Tribunal that the driver of the offending vehicle was not having a valid licence to drive a motorcycle so also he was driving the vehicle in a drunken condition is bad in law and is without any substantial basis. He further submits that the owner has got examined himself and denied the said fact but the Tribunal has not properly appreciated the said aspect.

5. A perusal of record would show that the owner has produced before the Tribunal two set of licence in favour of the driver. One licence shows that he had a licence to drive only a Light Motor Vehicle but it did not have an endorsement of a permission to drive the motorcycle and thus it amounts the motorcycle being driven without licence. It would also reveal that the owner in the instant case has subsequently produced another duplicate licence issued from the of office of RTO, Bilaspur, which again on perusal seems to be a doubtful document inasmuch as the said licence was issued much after the accident to have occurred on 21.11.2008. Moreover, there is no sufficient proof adduced before the Tribunal to show that the driver at the time of accident was not under the influence of alcohol and there being a breach of policy condition.

6. Given the aforesaid factual matrix of the case, this Court is of the opinion that since there has been no sufficient cogent evidence led by the appellants to establish the fact that driver had a valid licence at the relevant point of time and that the driver was not under the influence of alcohol, this Court is of the opinion that no strong case has been made out by the appellants calling for an interference with the impugned award.

7. The appeal thus being devoid of merits, the same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/