

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 311 of 2014

1. Smt. Kamla Thakur W/o Late Onkar Singh Aged About 42 Years
2. Akhileshwer Singh S/o Late Onkar Singh Aged About 19 Years
3. Sharad Singh S/o Late Onkar Singh Aged About 13 Years

Appellant No.3 Minor through Natural Guardian Mother Smt. Kamla Thakur, W/o Late Onkar Singh, All R/o Purani Basti, Korba, Distt. Korba C.G.

---- Appellants

Claimants

Versus

1. Jamuna Tiwari S/o Munna Tiwari Aged About 30 Years R/o Village- Shadra Vihar, Quarter No. MIG- 1 B/42, Korba C.G.,
2. Mohd. Anish Meman S/o Late Abdul Aziz Aged About 42 Years R/o Purani Basti, Korba, Distt. Korba C.G.,
3. The Oriental Insu.Co.Ltd. S/o Thru- Branch Manager Office, Distt. Korba C.G.,

---- Respondents

For Appellants	:	Shri Vikas Pandey, Advocate.
For Respondent No.3	:	Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

06/12/2018

This appeal is by the claimants against the award 12.11.2013 passed by Additional Motor Accident Claims Tribunal (FTC), Korba in Claim Case No.205/2013 awarding total compensation of Rs.1.42 lacs with interest @ 7% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

02. As per claim petition, on 16.2.2006 at around 9 am Onkar Singh was going on his motorcycle when his motorcycle was dashed by Mini

Bus bearing No. CG 12 9837, which was being driven in a rash and negligent manner, by non-applicant No.1 Jamuna Tiwari, as a result of which Onkar Singh suffered grievous injuries.

03. On claim petition being filed by the claimant Onkar Singh under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award dated 13.2.2008 in Claim Case No.141/07 granting compensation of Rs.4.25 lacs in favour of the claimant with interest @ 9% per annum from the date of application till realization fastening liability on non-applicants jointly and severely.

04. The said award was challenged by non-applicant No.3/insurance company by filing appeal i.e. MAC No.1014/2008 which was allowed, the said award was set aside and the matter was remanded to the Tribunal for decision afresh after framing issue regarding contributory negligence and affording due opportunity to the parties vide order dated 31st March, 2011.

05. After remand of the matter, when the matter was pending before the Tribunal, the claimant/insured Onkar Singh died on 16.8.2010 and thereafter, the present appellants being LRs of the deceased claimant were incorporated as applicants/claimants and they contested the case.

06. Learned Tribunal considering the evidence adduced by the parties passed a fresh award dated 12.11.2013 as mentioned above.

07. Learned counsel for the appellants/claimants submits that the Tribunal was not justified in holding injured/deceased Onkar Singh contributory negligent to the extent of 20% without there being any evidence to this effect by the insurance company and therefore, the said finding is liable to be set aside and the claimants are entitled for the entire amount of compensation assessed by the Tribunal.

08. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded

compensation, which needs no interference by this Court.

09. Heard learned counsel for the parties and perused the material available on record.

10. Looking to the evidence adduced by the parties, it is apparent that victim Onkar Singh examined himself before the Tribunal and categorically stated that it was the bus driver non-applicant No.1 Jamuna Tiwari who was driving the vehicle rashly and negligently and dashed his motorcycle. There is no evidence adduced by the insurance company or any other party. As per Ex.P/1, charge sheet was also filed against non-applicant No.1 Jamuna Tiwari for driving the vehicle in a rash and negligent manner under Sections 279 and 338 of IPC. As per FIR (Ex.P/2) along with Dehati Nalishi (Ex.P/3), this fact is also mentioned that driver of the bus i.e. non-applicant No.1 was driving the vehicle in a rash and negligent manner. The report was lodged by injured Onkar Singh against non-applicant No.1 Jamuna Tiwari. Injury report Ex.P/4 and spot map Ex.P/5 also support the contention made by injured Onkar Singh. However, no evidence has been adduced by the insurance company to prove that the deceased was negligent in any manner but it appears that the Tribunal only on the basis of presumption has held so, which is not acceptable without there being any cogent and trustworthy evidence in this regard.

11. In the result, the appeal is allowed in part. The finding of contributory negligence of the deceased recorded by the Tribunal in the impugned award is hereby set aside. Consequently, the appellants/claimants are held entitled for the entire compensation of Rs.1,76,772/- with interest as awarded by the Tribunal.

Sd/

(Gautam Chourdiya)

Judge