

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 109 of 2019**

- Branch Manager, The Oriental Insurance Company Limited
Madina Building, Kachheri Chowk Jail Road, Raipur, District-
Raipur, Chhattisgarh

---- Appellant**Versus**

1. Bhamradi Bai W/o Late Shyamlal Yadav Aged About 40 Years
2. Lakhanram Yadav S/o Late Shyamlal Yadav Aged About 21 Years
3. Minor Garun Yadav S/o Late Shyamlal Yadav Aged About 13 Years
4. Minor Ku. Fuleshwari Yadav D/o Late Shyamlal Yadav Aged About 11 Years
Respondents No. 3 & 4 are minor through natural guardian mother respondent No.1 Bhamradi Bai W/o Late Shyamlal Yadav, Caste Rawat, All R/o Village Mudagaon, P.S. & Tahsil Devbhog, Distt. Gariyaband (CG)
5. Naresh Kumar Sahu S/o Pawan Kumar Sahu Aged About 38 Years R/o New Shanti Nagar, Jagdalpur, Tahsil And District- Jagdalpur Through Abdul Kayyum S/o Abdhul Rahim, R/o Paragaon Road, Near Naya Talab, Gariyaband, District- Gariyaband, Chhattisgarh.....(Driver Of Truck No. C.G. 04-JB-5653)
6. Abdul Kayyum S/o Abdhul Rahim R/o Paragaon Road, Near Naya Talab, Gariyaband, District- Gariyaband, Chhattisgarh.....(Owner Of Truck No. CG-04-JB-5653)

---- Respondents

For Appellant	:	Shri H.P. Agrawal, Advocate.
For Respondent Nos. 1 to 4	:	Shri A.L. Singroul, Advocate.
For Respondent Nos. 5 & 6	:	None.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****20/06/2019**

This appeal is by the insurer under Section 173 of the Motor Vehicles Act, 1988 against the award 17.9.2018 passed by Additional Motor Accident Claims Tribunal, Gariyaband (CG) in Claim Case No.38/2017 awarding total compensation of Rs.11,80,144/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company.

02. As per claim petition, on 4.7.2017 Shyamlal Yadav as a pillion was going to Mudagaon on motorcycle which was being ridden by Gunmat Yadav. However, on the way since non-applicant No.1 Naresh Kumar Sahu, driver of vehicle Truck bearing registration No. CG 04 JB 5653, owned by non-applicant No.2 and insured with non-applicant No.3, stopped the vehicle suddenly while driving rashly and negligently without any indicator, the motorcycle ridden by Gunmat Yadav got hit against the said truck. In the said accident, Gunmat Yadav died on the spot whereas Shyamlal Yadav died during treatment.

03. On claim petition being filed by the claimants, wife and children of the deceased Shyamlal Yadav, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurer submits that Gunmat Yadav rider of the motorcycle was not maintaining proper distance from the truck, he was in drunken condition and therefore, due to negligence on the part of Gunmat Yadav the accident took place in which the deceased Shyamlal Yadav suffered grievous injuries and succumbed to the same. He submits that since the entire negligence was on the part of rider of the motorcycle Gunmat Yadav, application u/s 166 of the Motor Vehicles Act was not maintainable. He submits that the Tribunal has wrongly fastened liability on the insurance company.

Reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Renukadevi, H. Etc. Vs. Bangalore Metropolitan Transport Corporation Etc., 2008 AIR SCW 2277*** and ***Nishan Singh and others Vs. Oriental Insurance Company Ltd., (2018) 6 SCC 765***.

05. Learned counsel for respondents/claimants opposes the contention of the appellant/insurer. The claimants have also filed cross-objection under Order 41 Rule 22 of CPC seeking enhancement of compensation. He submits that it is not a case of contributory negligence on the part of the deceased as he was a pillion rider. At the most present can be said to be a case of composite negligence and in

such a case, the claimants are entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several. He submits that no evidence was adduced to prove the fact that rider of the motorcycle was drunk. Further, in this case non-applicant No.1 Naresh Kumar, driver of the offending truck is not examined before the Tribunal, who could have been the best person to describe the manner in which the accident took place but he did not enter the witness box and also remained ex-parte. Therefore, the Tribunal rightly fastened liability on non-applicant No.3/insurance company.

As regards enhancement, he submits that in this case there are four dependents upon the deceased which has been duly proved by the claimants but the Tribunal wrongly deducted 1/3rd in place of 1/4th towards personal and living expenses of the deceased. He submits that though he has assailed the award of the Tribunal on other grounds also but is not pressing the same and is confining his argument to the above extent only.

06. Learned counsel for the appellant opposes the contention of the claimants and supports the award insofar as it relates to quantum of compensation.

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

08. It is not disputed by both the parties that deceased Shyamlal Yadav was pillion rider in the motorcycle being ridden by Gunmat Yadav. No evidence has been adduced by the insurance company to prove that Gunmat Yadav was driving the vehicle in a drunken condition or that he was so drunk that he lost control over the motorcycle. Looking to the entire evidence adduced by the claimants i.e. charge sheet Ex.P/1 filed against non-applicant No.1, FIR (Ex.P/2) lodged against non-applicant No.1, spot map Ex.P/3, merger intimation Ex.P/4, postmortem report, statement of witness Lalit Ram Netam (AW-2) who specifically mentioned regarding the accident which remained unchallenged in cross-examination, the fact that no contrary evidence

adduced by the non-applicants, driver of the offending truck was not examined before the Tribunal, this Court is of the opinion that the Tribunal has rightly observed that due to sudden and negligent application of brake by non-applicant No.1 without indicator the accident occurred in which Shyamlal Yadav sustained injuries and succumbed to the same and there was no negligence on the part of the deceased.

The judgments relied upon by learned counsel for the appellant are of no help to him because in the present case the deceased was pillion rider, there was collision between two vehicles – truck and the motorcycle ridden by Gunmat Yadav and there is nothing on record to show that the deceased was in any manner negligent in causing the accident.

09. So far as cross-objection filed by the claimants is concerned, looking the number of dependents upon the deceased i.e. four, in view of decision of the Hon'ble Supreme Court in the matter of **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121**, there has to be 14/th deduction towards personal and living expenses of the deceased. Since rest of the assessment by the Tribunal has not been challenged and the same appear to be just and proper, the compensation is to be recomputed only by modifying the deduction part towards personal and living expenses as under:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.7,930/- per month.	95, 160/- per annum
02.	25% of (i) above to be added towards future prospects.	95,160 + 23,790 = 1,18,950/-
03.	1/4th deduction towards personal and living expenses of the deceased	1,18,950 – 29,737 = 89,213
04.	Multiplier of 14 to be applied	12,48,982/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	70,000/-
	Total compensation	13,18,982/-

Since the Tribunal has already awarded Rs.11,80,144/-, after

deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,38,838/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal filed by the insurance company is dismissed whereas the cross-objection filed by the claimants is allowed with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)

Judge