

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1075 of 2013

- The Oriental Insurance Company Limited Dhamtari, Through Divisional Manager, Divisional Office, The Oriental Insurance Company Limited, Parmanand Bhawan Rajendra Park Chowk, by the side of, Bal Petrol Pump, Durg

---- Appellant/Insurer/Non-applicant No.3

Versus

1. Smt. Purnima Bhimte, W/o Late Prakash Kumar, age 42 years, Resident Gureda, Thana- Anda, District Durg
Present Address- By P.L. Goswami, Plat No. 33A, Vidhut Nagar, Durg, District Durg
2. Ku. Renuka Bhimte D/o Late Prakash Kumar, age 20 years, Resident-House No. 328, Near to Ajay Poultry Farm, Five Road, Supela, Bhilai, Tehsil and District Durg

(Claimants)

3. Ajay Kumar Alias Anand S/o Chaituram Sarthi, Age 27 years, Resident-Sanjay Nagar Kanker, Thana- Kanker, District Durg

(Driver/Non-applicant No.1)

4. M/s Bharat Rice Industries, Baijnathpara Raipur, Tehsil and District Raipur
Through Proprietor Gulam Mustafa S/o Late Abdul Gafar, Resident-Baijnathpara, Raipur
Present Resident- Rajapara Kanker, Thana- Kanker, District Kanker

(Owner/Non-applicant No.2)

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate
For Respondents No. 1 to 2	:	Shri Vedant Bhilonde, Advocate appears on behalf of Shri P.R. Patankar, Advocate
For Respondent No. 3	:	None
For Respondent No.4	:	Shri Vivek Sharma, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

09.05.2019

1. This appeal is by the Insurance Company/non-applicant No.3/Appellant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 04.09.2013 passed by the First Additional Motor Accident Claims Tribunal, Durg,

District Durg (C.G.) in Claim Case No. 263 of 2011 awarding total compensation of Rs.24,20,912/- with interest @ 6% per annum from the date of application till realization, fastening liability on the Insurance Company/non-applicant No. 3 alongwith non-applicants No. 1 & 2 jointly and severally.

2. Facts of the case, in brief, are that on 10.09.2008 deceased Prakash Kumar Bhimte was going from Bhilai to village Gureda by his Scooter bearing registration No. CG-07/ZE/4971, when he reached village Chandkhuri near Tikam Dewangan Grocery Shop, non-applicant No.1 Ajay Kumar @ Anand, driver of the offending vehicle- Tata 1109 bearing registration No. CG-04/JA/6786, driving the offending vehicle in a rash and negligent manner, dashed the Scooter of Prakash Kumar Bhimte. As a result thereof, Prakash Kumar Bhimte sustained grievous injuries on various parts of the body and he died on spot.

3. Learned counsel for the Appellant/Insurance Company submits that the Claimants are not dependant of the deceased because Claimant No.1 Smt. Purnima Bhimte was not legally wedded wife of the deceased and Claimant No.2 Ku. Renuka Bhimte is adopted daughter of the deceased. He further submits that there was contributory negligence on the part of the deceased, but the Tribunal has not considered the contributory negligence on the part of the deceased. He also submits that on the date of accident the driver of the offending vehicle was not having a valid and effective driving licence.

4. On the other hand, learned counsel for the respective Respondents support the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation, which needs no interference by this Court.

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

6. As per statement of Purnima Bhimte examined as AW-1 before the Tribunal, she proved the documents Ex.-P/1 to Ex.-P/15. As per Ex.-P/16, marriage certificate issued by Marriage Office, Dhanbad, was proved by Claimant Purnima

Bhimte in re-examination in para-1 of her statement and that document (Ex.-P/16) is uncontroverted. Aruna Bai examined as AW-4 before the Tribunal, who was the first wife of deceased Prakash Kumar Bhimte. AW-4 stated in para-2 of her statement that her marriage was solemnized with Prakash Kumar Bhimte in the year 1989 through social customs and they (both AW-4 & Prakash Kumar Bhimte) were separated through social meeting convened in this regard on their own free will without any pressure or coercion. In para-3, AW-4 stated that thereafter, she has performed marriage with one Harishankar Rogde in the year 1996. That fact is not challenged in cross-examination. Therefore, as per Ex.-P/16 and statement of Purnima Bhimte (AW-1), the Claimants has proved that Purnima Bhimte (AW-1) was legally wedded wife of Prakash Kumar Bhimte and Claimant No.2 Ku. Renuka Bhimte is the daughter adopted by Prakash Kumar Bhimte alongwith his ex-wife Aruna Bai. In view of the above facts and circumstances of the case and material available on record, both Claimants were dependant on deceased Prakash Kumar Bhimte. Therefore, the Tribunal was justified in holding that Claimants i.e. Smt. Purnima Bhimte and Ku. Renuka Bhimte were fully dependant on deceased Prakash Kumar Bhimte and they are entitled for compensation.

7. As per Ex.-P/1 – FIR and Ex.-P/2 -Charge-sheet, it is mentioned that offence under Sections 279, and 304-A of IPC was registered against non-applicant No.1 by the police. FIR goes to show that it is the non-applicant No.1 who was driving the offending vehicle in a rash and negligent manner which resulted in unfortunate accident. Further, non-applicant No.1 - Ajay Kumar Alias Anand was not examined before the Tribunal. Therefore, the Tribunal was justified in not considering the contributory negligence on the part of deceased Prakash Kumar Bhimte.

8. It was also argued that on the date of accident the driver of the offending vehicle was not having a valid and effective driving licence, but the Appellant/Insurance Company has not proved this fact that non-applicant No.1 was not having a valid and effective driving licence. The offending vehicle in question

was duly insured with the Appellant/Insurance Company on the date of accident, therefore, the Insurance Company is liable to indemnify the owner in respect of the claim of the Claimants.

9. The aforesaid findings recorded by the Tribunal are well reasoned based on material available on record, which in the considered opinion of this Court, do not call for any interference. The Tribunal was justified in awarding total compensation in tune of Rs.24,20,912/- in favour of the Claimants which is just and proper compensation.

10. In the result, the appeal filed by the Insurance Company/non-applicant No.3 being without any substance deserves to be dismissed and is, accordingly, dismissed.

Sd/-

(Gautam Chourdiya)
Judge