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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 706 of 2016

- Shaniram Bhagat (dead) through LR's Nagendra Ram Bhagat S/o Late Shaniram, aged about 35 years, Caste- Uraon, R/o Village Ameratoli, Goriyakona, Tahsil Jashpur, District Jashpur (C.G.)

---- Appellant/Non-applicant No.2/Owner

Versus

1. Smt. Jatti Bai Wd/o Late Fagnu Ram, aged about 36 years
2. Naresh Ram S/o Late Fagnu Ram, aged about 20 years
3. Minor Vinita Bai D/o Late Fagnu Ram, aged about 14 years, through natural guardian mother Smt. Jatti Bai

   All by Caste Uraon, R/o village Orkela, Post Ghaghra, Tahsil Manora, District Jashpur (C.G.)

   (Claimants)

4. National Insurance Company Limited, Hero Honda Verticle 101106 VMC House No. Kanod Place, New Delhi 110001

   (Non-applicant No.3)

5. The New India Assurance Company Limited, Branch Office, Raigarh (450593)

   (Insurer of alleged tractor-trolley/Non-applicant No.4)

6. Branch Manager, Central Bank of India, Jashpur Nagar, District Jashpur (C.G.)

   (Non-applicant No.5)

---- Respondents

For Appellant/Owner	:	Shri Manoj Chauhan, Advocate
For Respondents No. 1 to 3/ Claimants	:	Dr. Sanjeet Sharma, Advocate
For Respondent No. 4	:	Shri R.N. Pusty, Advocate
For Respondent No. 5	:	Shri B.N. Nande, Advocate
For Respondent No.6	:	Shri S.S. Baghel, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

22.02.2019

1. This is an appeal by the Owner/non-applicant No.2 challenging the award dated 25.04.2016 passed by the Additional Motor Accident Claims Tribunal (FTC), Jashpur (C.G.) in Claim Case No. 13 of 2013 whereby the Tribunal has awarded compensation of Rs.5,14,000/- with interest @ 6% per annum from the date of application till realization, in favour of the Claimants fastening the liability on the Appellant/Owner.

2. On 20.09.2011 deceased- Fagnu Ram was riding his motorcycle bearing registration No. CG-14/M/4252 which was insured with non-applicant No.4 and was coming from village Orkela to Jashpur, when he reached nearby village Baghima at that time the driver of alleged tractor-trolley namely Mahabir Ram (since deceased)/non-applicant No.1 before Tribunal driving the said tractor-trolley bearing registration No. CG-14/A/3266 & CG-14/A/3267 in a rash and negligent manner, dashed the motorcycle of Fagnu Ram. As a result thereof, Fagnu Ram received multiple injuries on various parts of the body and he was immediately shifted to the Government Hospital Jashpur for primary treatment and on the same day he succumbed to the injuries.

3. The Tribunal considering the evidence available on record by the impugned award granted a total compensation of Rs.5,14,000/- in favour of the Claimants. However, the liability to satisfy the award has been fastened upon the Appellant/non-applicant No.2, owner of the offending vehicle. Being aggrieved by the said award, the Appellant/Owner has filed the instant appeal under Section 173 of the Motor Vehicles Act.

4. Learned counsel for the Appellant/Owner submits that the vehicle (tractor-trolley) was purchased by obtaining loan from Central Bank of India/non-applicant No. 5 and the money with regard to insurance premium has been deducted by Bank/non-applicant No.5 from the account of the Appellant on 17.06.2011. He further submits that the accident happened on 20.09.2011 and after the accident, the amount which was deducted for the premium of insurance has been credited in the account of the Appellant by non-applicant No.5 on 22.12.2011. Therefore, he submits that the liability has wrongly been fastened upon the Appellant/Owner by the Tribunal whereas it ought to have held the Central Bank of India/non-applicant No.5 liable for satisfying the award.

5. On the other hand, learned counsel for the respective Respondents support the impugned award and submit that the Tribunal considering all the relevant aspects of the matter has rightly fastened the liability upon the Owner of vehicle tractor-trolley/non-applicant No.2 which needs no interference by this Court.

6. It is admitted by the parties that no counter appeal has been filed by the Respondents.

7. It is not disputed that the New India Assurance Company/non-applicant No.4 has not taken any premium regarding offending vehicle. No insurance policy has been produced by the Appellant, owner of the offending vehicle. Motorcycle of the deceased was insured with non-applicant No.4, therefore, there is no liability can be fastened on non-applicant No.4.

8. In ***Godavari Finance Company*** Vs. ***Degala Satyanarayanamma, (2008) 5 SCC 107***, the Hon'ble Supreme Court has observed in paras 10 to 13 as under:

> "**10.** Indisputably, as on 10.11.1995 the hire-purchase agreement was cancelled and an information thereabout was sent to the Deputy Transport Commissioner, Kakinada
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> **11.** The appellant admittedly was the financer. As the vehicle was the subject-matter of hire-purchase agreement, the appellant's name was mentioned in the registration book.
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> **12.** Section 2 of the Act provides for interpretation of various terms enumerated therein. It starts with the phrase "Unless the context otherwise requires". The definition of "owner" is a comprehensive one. The interpretation clause itself states that the vehicle which is the subject-matter of a hire-purchase agreement, the person in possession of vehicle under that agreement shall be the owner. Thus, the name of financer in the registration certificate would not be decisive for determination as to who was the owner of the vehicle. We are not unmindful of the fact that ordinarily the person in whose name the registration certificate stands should be presumed to be the owner but such a presumption can be drawn only in the absence of any other material brought on record or unless the context otherwise requires.
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> **13.** In case of a motor vehicle which is subjected to a hire-purchase agreement, the financer cannot ordinarily be treated to be the owner. The person who is in possession of the vehicle, and not the financer being the owner would be liable to pay damages for the motor accident."

9. NAW-3 - Amrit Lal Toppo, Branch Manager, examined by non-applicant No.5, admits in his statement that Appellant- Shaniram had taken loan from Central Bank of India/non-applicant No.5 and also premium for insurance of Rs.6,2,82/- has been taken from the Appellant. He also stated that demand draft of Rs.6,282 was also sent to Cholla Mandlam Insurance Company but it was missing from the post-office and vehicle tractor-trolley was not insured with Cholla Mandlam Insurance Company. Thereafter, on 22.12.2011, amount taken from the Appellant was credited in the account of the Appellant. In para-18, Amrit Lal Toppo stated that it is duty of the owner of the vehicle to get his vehicle insured and it is not the duty of the Central Bank of India. In the present case, no any agreement produced before the Tribunal between the Central Bank of India and the owner of the vehicle fixing the liability of insurance of the vehicle on the said Bank. The Appellant's father Shaniram was the registered owner of the vehicle tractor-trolley. Therefore, the Tribunal has rightly fastened liability upon the Owner of vehicle/non-applicant No.2. Therefore, this appellate court is not in a position to give a specific finding regarding negligence part of Central Bank of India or postal department because the premium of insurance taken by the Central Bank of India from the Appellant, was subsequently credited to the account of owner of the vehicle after the accident. However, the appellant has a right to file an application before the appropriate forum. In these circumstances, this Court finds no illegality in the finding recorded by the Tribunal fastening the liability on Owner/non-applicant No. 2.

10. In view of the aforesaid discussions and keeping in view of the law laid down in *Godavari Finance Company* (supra), the appeal filed by the Owner/non-applicant No.2 being without any substance is liable to be dismissed and is accordingly dismissed.

11. No order as to cost.

Sd/-

(Gautam Chourdiya)
Judge

vatti