

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 90 of 2018

1. Smt. Sanjula Yadav Wd/o Late Shrawan Kumar Yadav, aged about 30 years (wife of deceased)
2. Yogesh Yadav S/o Late Shrawan Kumar Yadav, aged about 02 years, minor through the mother (natural guardian) appellant No.01, Smt. Sanjula Yadav
3. Shatruhan Yadav S/o Chanduva Yadav, aged about 60 years (father of the deceased)
4. Kirti Bai W/o Shatruhan Yadav, aged about 45 year (mother of deceased)
5. Brihaspati Yadav W/o Chanduva Yadav, aged about 80 years (grand mother of deceased)

All R/o Village – Nawagaon, Tahsil – Sipat, District (Revenue and Civil)- Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Vikas Kumar S/o Devendra Singh, aged about 24 years (service) R/o Kuduwa, Police Station- Shahpur, District Mujaffarnagar, at present C.I.S.F. Fire Camp, N.T.P.C. Sipat, Police Station – Sipat, District (Revenue and Civil) – Bilaspur (C.G.) (Driver/Owner of Vehicle No. C.G. 10/E.D. 4300)
2. Ranjana Matlani D/o Kishor Matlani, R/o M.C. Verma Tower, Jarhabhatha, District (Revenue and Civil) – Bilaspur (C.G.) (Owner of Vehicle No. C.G.10/E.D. 4300)
3. Branch Office, National Insurance Company Limited, Taha Complex, Vyapar Vihar Road Bilaspur, Tahsil & District (Revenue & Civil) – Bilaspur (C.G.) (Insurer of Vehicle No. C.G. 10/E.D. 4300)

---- Respondents/Non-applicants

For Appellants	:	Shri Anand Kesharwani, Advocate
For Respondent No. 1	:	Ms. Rashal Bhawnani, Advocate
For Respondent No. 2	:	None
For Respondent No. 3	:	Shri Pravin Kumar Tulsyan, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

19.03.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of compensation

awarded by the First Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) vide award dated 24.06.2017 passed in Claim Case No. 360 of 2016.

2. The Claimants/Appellants, who are wife, son, parents, and grand-mother of deceased- Shrawan Kumar Yadaw, claimed compensation of Rs.65,50,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of Shrawan Kumar Yadaw.

3. Facts of the case are that on 12.12.2015 deceased Shrawan Kumar Yadaw was going to his in-laws home by motorcycle bearing registration No. CG-11/CH/6492, on the way at Darrabhatha turn, he stopped his motorcycle and went for urination. When after urination he came back towards his motorcycle, non-applicant No. 1, rider of the offending vehicle Hero Honda bearing registration No. CG/E.D./4300, owned by non-applicant No.2 and insured with non-applicant No.3, ridding the said Hero Honda motorcycle in a rash and negligent manner, dashed Shrawan Kumar Yadaw. As a result thereof, Shrawan Kumar Yadaw sustained injuries on his head and other parts of the body. Immediately, he was taken to Life Care Hospital, Bilaspur where he died on 20.12.2015 during treatment.

4. The learned Tribunal, in the impugned award, has assessed total compensation of Rs.16,59,135/-. However, holding the deceased contributory negligent to the extent of 50%, the Tribunal has awarded a total compensation of Rs.8,29,870/- in favour of the Claimants/Appellants with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No.3.

5. Learned counsel for the Appellants/Claimants submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the ground of contributory negligence to the extent of 50% on the part of deceased considered by the Tribunal. He submits that there is no specific evidence of contributory negligence on the part of the deceased and no FIR was lodged by non-applicant No.1 against the deceased and no any evidence adduced by non-applicant No.1 regarding contributory negligence of deceased in the said accident.

6. On the other hand, learned counsel for respective Respondents support 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. They also submit that as per statements of Sushil Kumar Sharma (NAW-2), who is independent witness, he had just reached the spot after the accident occurred. NAW-2 and Vikas Kumar (NAW-1), rider of alleged offending vehicle Hero Honda, both have proved this fact that there is head-on-collision between two motorcycles. Therefore, the Tribunal found non-applicant No.1 as well as the deceased guilty of negligence to the cause of accident to the extent of 50:50%.

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

8. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

9. In this case, no any eyewitness was examined by the Claimants. As per statements of Sanjula Yadaw, Pravesh Vishwakarma and Ajay Kumar Yadaw, they reached the spot after the accident occurred. Only Sushil Kumar Sharma (NAW-2), who is Head Constable, C.I.S.F. in NTPC, Seepat, Bilaspur, reached just after the accident occurred. NAW-2 saw that both motorcycles got dashed against each other and riders of both motorcycles sustained injuries. As per para-3 of the statement of Vikash Kumar (NAW-1), driver of the offending vehicle Hero Honda, he has specifically stated that from the opposite side, the deceased came riding the motorcycle in a rash and negligent manner and dashed the motorcycle of Vikash Kumar. Due to head-on-collision, both riders of the motorcyclists sustained injuries and that evidence remains uncontroverted before the Tribunal. As per statement of Sushil Kumar Sharma (NAW-2), the road where the accident happened was 16 feet wide. As per record, admittedly, the accident was outcome of the head on collision between two motorcycles being ridden by deceased- Shrawan Kumar Yadaw and non-applicant No.1 – Vikash Kumar. Only on the basis of F.I.R. being not lodged by non-applicant No.1 against the deceased, he (non-applicant No.1) cannot be held

fully responsible for the accident.

10. The aforesaid findings recorded by the Tribunal are well reasoned based on material available on record, which in the considered opinion of this Court, the Tribunal has not committed any error in holding the deceased guilty of contributory negligence to the extent of 50% and thereby deducting 50% of the amount of compensation. Therefore, this Court finds no illegality or infirmity in the findings so recorded by the Tribunal warranting interference by this Court.

11. In the result, appeal being without any substance is liable to be dismissed and is accordingly dismissed.

Sd/-
(Gautam Chourdiya)
Judge