

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 872 of 2014**

- ICICI Lombard General Insurance Company Ltd. Through- its Legal Manager, ICICI General Insurance Company Ltd., Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur C.G.

---Appellant**Versus**

1. Smt. Lalmen Wd/o Late Puran Rajwade Aged About 28 Years
2. Adesh Kumar S/o Late Puran Rajwade Aged About 11 Years
3. Shubhash S/o Late Puran Rajwade Aged About 7 Years
4. Ku. Ratna D/o Late Puran Rajwade Aged About 7 Years Minor,
5. Ku. Varsha D/o Late Puran Rajwade Aged About 5 Years

Respondent Nos. 2 to 5 being minor are represented by their natural guardian their Mother Smt. Lalmen,

6. Smt. Dhanmet W/o Parmeshwar Aged About 50 Years
7. Parmeshwar S/o Late Rajanram Aged About 55 Years

All are R/o Jarhi, Thana- Bhatgaon, Tah. Pratappur, Distt. Surajpur C.G.

8. Rajendra Gupta S/o Devmuni Gupta Aged About 40 Years R/o Brulia, Thana- Robertganj, Distt. Sonbhadra U.P.
9. Banwari Lal Gupta S/o Magan Gupta Aged About 36 Years R/o Kejrahi, Thana- Karma, Distt. Sonbhadra U.P.
10. United India Insurance Company Ltd. Thru- The Branch Manager, Branch Office, Near Ram Mandir, Ambikapur, Distt. Surguja C.G.

---- Respondents

For Appellant	Shri P. Acharya, Advocate.
For Respondent Nos. 1 to 7	Shri Dashrath Prajapati, Advocate.
For Respondent Nos. 8 & 9	Shri Bishnu Muni, Advocate.
For Respondent No.10	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****05/04/2019**

1. This appeal is by the Insurance Company/non-applicant no.3 against the award dated 20.02.2014 passed by the Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur, C.G. in Claim Case No.09/2012 awarding total compensation of Rs.6,80,000/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant no.3/Insurance Company.
2. As per claim petition, on 09.08.2010 deceased Puran Rajwade, aged about 28 years, earning Rs.500/- per day as Mason and also earning Rs.1,00,000/- per annum from agriculture died in the motor vehicular accident caused due to rash and negligent driving of Truck bearing no.UP64-H-4445 by non-applicant no.1 while he was going to his house by riding motorcycle bearing No.CG15-CD-6151. At the time of accident, the offending vehicle was owned by non-applicant no.2 and duly insured with non-applicant no.3.
3. On claim petition being filed by the claimants i.e. wife, parents and children of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.56,75,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
4. Learned counsel for the appellant submits that though criminal case was registered against non-applicant no.1/driver of the offending vehicle but after conclusion of the trial, the driver was acquitted of the charge under Section 304-A of IPC and as such the Tribunal was not justified in holding that the accident occurred due to rash and negligent driving by non-applicant no.1/driver. He further submits that even if it is accepted that the offending vehicle was involved in the accident, considering the manner in which the accident occurred, the

pleadings and the evidence adduced by the parties, the Tribunal ought to have held that there was contributory negligence on the part of the deceased also. Therefore, Insurance Company is liable to be exonerated of its absolute liability or in the alternative the compensation assessed by the Tribunal be reduced suitably on the ground of contributory negligence on the part of the deceased.

5. Learned counsel for the respondents support the impugned award and submit that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.
6. Heard both the parties and perused the material available on record.
7. So far as liability is concerned, AW-1 Smt. Lalmen has stated that on the date of accident her husband was coming to his house by motorcycle bearing no.CG15-CD-6151, on the way his motorcycle was dashed by non-applicant no.1 due to rash and negligent driving of the offending vehicle, as a result of which her husband suffered grievous injuries and while being taken to hospital for treatment he died. She has stated that offence was registered against the non-applicant no.1 under Section 304-A of IPC. She has filed the copy of final report Ex.A-1, FIR Ex.A-2, Seizure Memo Ex.A-3, Spot Map Ex.A-4 and Ex.A-5 RC of the offending vehicle, its insurance, permit, fitness certificate etc.
8. AW-2 Samal Prasad has stated that on the date of accident while he was going to his house he saw the deceased riding his motorcycle with moderate speed and at that time the driver of the offending vehicle dashed the said motorcycle from wrong side. He states that thereafter he made a call through mobile phone to Ramdhan AW-4

informing him about the accident, on which Ramdhan chased the offending vehicle and got it apprehended by the police. Though, in the cross-examination AW-2 Samal Prasad has accepted that he has not seen the accident but AW-4 Ramdhan has categorically stated that the motorcycle of the deceased was dashed from the wrong side by the driver of the offending vehicle. He has denied the suggestion that it was the head on collision between the vehicles. From perusal of the record, it is seen that soon after the accident FIR Ex.A-2 under Section 304-A of IPC was registered against the non-applicant no.1 and after investigation charge sheet was filed against him. Though after trial non-applicant no.1/driver has been acquitted of the charge under Section 304-A of IPC by the trial Court. However, the said acquittal lead to an inference that non-applicant no.1 was not involved in the accident because the claim cases being in the nature of civil cases are to be decided on the basis of preponderance of probability where strict rule of evidence is not applied.

So far as contributory negligence on the part of the deceased is concerned, as discussed above, it stands proved from the pleadings and evidence witnesses, in particular the evidence of AW-4 Ramdhan, who was the witness to the accident that the accident occurred due to rash and negligent driving of the offending vehicle by non-applicant no.1/driver who dashed the motorcycle from wrong side and categorically denied the fact that it was head on collision between the vehicles. Though, the non-applicant no.3 has contended that there was contributory negligence on the part of the deceased but no evidence whatsoever has been adduced by it to prove the same. Driver of the offending vehicle was also not examined before the

Tribunal. No evidence adduced by the defence regarding any contributory negligence. Therefore, considering the facts and circumstances of the case, the oral and documentary evidence available on record, the manner in which the accident occurred, this Court is of the opinion that the Tribunal was fully justified in not holding contributory negligence on the part of the deceased.

9. On the basis of aforesaid discussion, this Court is of the opinion that since the accident occurred due to rash and negligent driving by non-applicant no.1 of offending vehicle which was duly insured at the relevant time by non-applicant no.3 and the non-applicant no.3 has failed to prove any breach of policy conditions on the part of non-applicant nos. 1 & 2 as also contributory negligence on the part of the deceased, the Tribunal was justified in fastening the liability on non-applicant no.3/Insurance Company jointly and severally along with non-applicant nos. 1 & 2 and recording the finding in the negative in respect of contributory negligence of the deceased.
10. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge