

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 265 of 2015

1. Ushatlal Lahare S/o Dujeram Lahare Aged About 25 Years R/o Sohagpur, Police Station Sarsiwa, Tahsil Bilaigarh, District Baloda Bazar, Chhattisgarh.
2. Soni Kumar Tandon S/o Santosh Tandon R/o Jhumka, Police Station Sarsiwa, Tahsil Bilaigarh, District Baloda Bazar, Chhattisgarh.

---- Appellants

Versus

1. Shyam Kumar Sharma S/o Late Shri Shankar Lal Sharma Aged About 60 Years.
2. Smt. Radha Devi W/o Shyam Kumar Sharma Aged About 50 Years Both are R/o Pendraavan, Thana- Sarseeva Distt.- Baloda Bazar, Bhatapara, Chhattisgarh.
3. Smt. Radha Bai Panka, W/o Kushudas Panka R/o Lanka Huda, Thana - Sarseeva Distt.- Baloda Bazar, Bhatapara, Chhattisgarh.

---- Respondents

For Appellants	: Smt. Savita Tiwari, Advocate.
For Respondents	: None.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

19/08/2019

- 1 Appellants (driver & owner of Tractor & Trolley bearing registration No.CG04-D-5046 & CG04-D-5047 respectively (hereinafter shall be referred to as "offending vehicle") have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 24.11.2014 passed by learned First Additional Motor Accident Claims Tribunal, Baloda Bazar, Distt. Baloda Bazar Bhatapara, (C.G) (for short 'the Tribunal') in Claim Case No.106/2012, whereby the Tribunal allowed claim application in part and awarded total sum of Rs.4,20,000/- along with interest @ 7% p.a. as compensation in a death case.

- 2 Brief facts relevant for disposal of this appeal are that on 05.03.2012 at about 7:30 pm, deceased -Premchandra Sharma was coming to his village Pendraavan from Sarsiwa on motorcycle bearing registration No.CG04/CC/1253, when he reached main road, village- Pendraavan, offending vehicle driven by non-applicant no.1-Ushatlal Lahare, dashed against his motorcycle, as a result of which, he fell down and suffered grievous injuries over his person. He was taken to Primary Health Center, Sarsiwa, where during the course of treatment he succumbed to his injuries. Matter was reported to PS- Sarsiwa, based on which crime bearing No.40/2012 was registered against driver of offending vehicle for offences under Section 279, 337, 304-A of IPC.
- 3 Claimants, who are parents of deceased Premchandra Sharma, filed claim application under Section 166 of the Act of 1988 before competent Claims Tribunal claiming Rs.28,25,000/- as compensation on account of death of their son.
- 4 Non-applicant nos.1 & 2/appellants herein, driver & owner of offending vehicle as well as non-applicant no.3/respondents no.3 herein submitted their reply to claim application and pleaded that on the date of accident, deceased was not having driving license to drive the motorcycle and he was carrying 'wheat' on motorcycle borrowed from one Hira Deewangan. It was further pleaded that deceased himself while overtaking offending vehicle dashed another motorcycle Glamour bearing registration No.CG13/AF/3354, which was driven by one Pramod Banjare. No

accident took place from offending vehicle and driver of offending vehicle has been falsely implicated in accident.

- 5 Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that accident took place due to rash and negligent driving of driver of offending vehicle and in the said accident deceased Premchandra Sharma died. On the basis of above findings, the Tribunal allowed claim application in part, awarded total sum of Rs.4,20,000/- to claimants as compensation and fastened liability upon non-applicant nos.1 & 2, jointly and severally.
- 6 Learned counsel for the appellants submits that the Tribunal committed error in not considering the material placed on record by the appellants that accident took place due to negligent act of deceased himself and in the accident, offending vehicle driven and owned by the appellants respectively is not involved in any manner. She further submits that the Tribunal also erred in assessing income of deceased as Rs.3,000/- per month without there being any cogent and reliable piece of evidence.
- 7 I have heard learned counsel for the appellants and perused the records.
- 8 Claimants have examined Shyam Kumar Sharma (father of deceased) as AW-1 & Durgesh Aditya, who is one of eye-witness of the accident, as AW-2.
- 9 AW-1 Shyam Kumar Sharma in his evidence has specifically stated that accident took place from offending vehicle and his son Premchandra Sharma died in said accident. He further stated that on the date of

accident, his son was aged about 32 years and working as 'Manager' in Poonam Rice Mills and thereby earning Rs. 9,000/- per month. He placed on record the relevant documents, which are part of criminal case registered against driver of offending vehicle. Though AW-1 was cross examined in detail by counsel engaged by the appellants, but nothing adverse could be elicited. In fact, suggestion given by counsel for the appellants that deceased was not working on the date of accident has been denied.

10 AW-2 has specifically stated in his examination-in-chief that accident took place due to negligent act of driver of offending vehicle. In the cross-examination, he has stated that after accident with offending vehicle, deceased was dragged by offending vehicle itself. This witness denied the suggestion given by counsel for appellants before the Tribunal that on the date of accident, he saw another Glamour motorcycle bearing registration No.CG13/AF/3354. Lastly he stated that deceased was dashed from front portion of offending vehicle.

11 Appellants have examined one Tarun Patel as NAW-3, who in his evidence stated that accident took place from one another Glamour motorcycle bearing registration No.CG13/AF/3354, which was coming from opposite direction, but in cross examination he stated that he is mentioning this fact and manner of accident for the first time before the Court. He also stated that he informed the police but the police has not taken any action.

12 NAW-2 Charan Das has been produced as one of witness by the appellants before the Tribunal and he also stated that accident took place from one Glamour motorcycle bearing registration No.CG13/AF/3354. But during the course of cross-examination, he admitted that he is stating this fact for the first time.

13 Driver of offending vehicle was examined as NAW-3 and in his examination-in-chief he stated that deceased dashed with Glamour motorcycle bearing registration No.CG13/AF/3354, which was coming from opposite direction. In cross-examination he had shown ignorance regarding registration of criminal case registered against him, but admitted the fact that criminal case is pending against him before Bhilaigarh Court. He also admitted that he has not made any complaint before any higher authority with regard to false implication in criminal case.

14 Perusal of FIR (Ex.A-2) lodged by deceased himself after two hours of accident reveals that deceased himself has mentioned that driver of offending vehicle while driving offending vehicle rashly and negligently dashed his motorcycle, due to which, he fell down and suffered grievous injuries. It cannot be accepted that deceased who met with an accident suffered with injuries of serious nature will make a false complaint.

15 From the aforementioned evidence available on records, it is evident that accident took place with offending vehicle and, therefore, the Tribunal has not committed any error in holding that accident took place due to rash and negligent driving by driver of offending vehicle.

16 In view of above, first ground raised by learned counsel for the appellants that offending vehicle is not involved in any manner in accident is not sustainable and is hereby repelled.

17 So far as next ground raised by counsel for the appellants that the Tribunal erred in assessing income of deceased as Rs.3,000/- per month without any documentary evidence placed on record by claimants is concerned, claimants have pleaded and stated that on the date of accident deceased was working as 'Manager' in Poonam Rice Mills and thereby earning Rs.9,000/- per month. But the Tribunal has not considered income pleaded and stated by claimants as Rs.9,000/- for want of reliable piece of evidence and assessed income of deceased as Rs.3,000/- on notional basis, which can not be said to be an excess amount of income assessed by the tribunal. Therefore, second ground raised by counsel for the appellants that income of deceased assessed by the Tribunal is on higher side is also not sustainable and is hereby repelled.

18 No other ground has been raised by learned counsel for the appellants.

19 For the foregoing discussion, this Court is of the view that appeal being devoid of merits is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge