

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 892 of 2012**

1. G. Joga Rao S/o Late G.A. Erenna age 44 years
2. Lakshmi W/o Shri G. Joga Rao age 42 years
3. G. Krishna Raju S/o Shri G. Joga Rao age 21 years
All R/o C.S.E.B. Colony, Baloda Bazar P.S. and Tah. Baloda Bazar
District Raipur (Now Baloda Bazar-Bhatapara)

---- Appellant**Versus**

1. Tony @ Prakash S/o Jodhi Ram Sahu R/o Lahod P.O. Lahod P.S. Kasdol,
District Raipur (Now Baloda Bazar-Bhatapara)
2. Mahendra Pratap S/o Madho Ram Sahu R/o Lahod P.O. Lahod P.S.
Kasdol, District Raipur (Now Baloda Bazar-Bhatapara)
3. Shiv Prasad S/o Tilak Ram Sahu R/o Near Pital Karkhana Baloda Bazar
P.S. Balod Bazar, District Raipur (Baloda Bazar-Bhatapara)
4. Branch Manager, The New India Insurance Co. Ltd. Office at Garden
Chowk Baloda Bazar P.S. and Tah. Baloda Bazar, District Raipur (Baloda
Bazar-Bhatapara)

---- Respondents

For Appellants	:	Mr. Amiyakant Tiwari, Advocate
For Respondents No.1 & 2	:	Mr. Hemant Gupta, Advocate
For Respondent No.3	:	None
For Respondent No.4	:	Mr. H. P. Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

07/05/2019

1. This appeal has been filed by appellants/claimants under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 29/08/2012 passed by First Additional Motor Accident Claims Tribunal, Baloda Bazar, District Baloda Bazar, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.76/2011 whereby learned Claims Tribunal dismissed the claim application filed by claimants.

2. Brief facts relevant for disposal of this appeal are that on 04/12/2009 at about 10.00 P.M., G. Dhanraju was driving the motorcycle bearing registration No. CG04/DH/3152 along with his two friends, namely, Kirtan Sahu and Jhalli. They were returning from Lavan to Baloda Bazar and on the way when they crossed Lahod Bridge, motorcycle driven by Toni alias Prakash dashed another motorcycle bearing registration No.CG04/DD/9131. In aforementioned accident, G. Dhanraju sustained grievous injuries over his person. He was taken to Government Hospital at Baloda Bazar, from where, he was referred to Superior Hospital and thereafter, G. Dhanraju was admitted in Balaji Hospital at Raipur. During course of treatment, G. Dhanraju succumbed to injuries on 11/12/2009. Matter was reported to concerned Police Station, based on which, criminal case for commission of offence under Section 304-A of IPC was registered against non-applicant No.1.
3. On account of accidental death of G. Dhanraju, appellants/claimants who are parents and brother of deceased have filed claim application before learned Claims Tribunal for grant of compensation claiming Rs.12,48,000/- from the non-applicants therein on all heads on the grounds mentioned therein.
4. Non-applicants No. 1 and 2 submitted reply to claim application and pleaded that false and baseless First Information Report was lodged against them. Non-applicant No.2 was not owner of vehicle bearing registration No.CG04/DD/9137, but owner of other vehicle i.e. CG04/DD/9131. It was further pleaded that motorcycle bearing registration No.CG04/DD/9131 due to some mechanical defect stopped functioning and at the time of accident, non-applicant No.1 was carrying motorcycle by

pushing it. It was further pleaded that accident took place due to rash and negligent driving of motorcycle by deceased himself and accident took place when he was trying to overtake the truck.

5. Non-applicant No.3 submitted reply to claim application and admitted that on the date of accident, he was owner of motorcycle bearing No.CG04/DH/3152, which was insured with non-applicant No.4, therefore, liability for payment of compensation, if any, was on non-applicant No.4.
6. Non-applicant No.4/Insurance Company, insurer of motorcycle bearing registration No.CG04/DH/3152 submitted reply to claim application and pleaded that on the date of accident, three persons were travelling on the motorcycle and there was violation of conditions of insurance policy, accident took place due to rash and negligent driving of driver of motorcycle bearing registration No.CG04/DD/9131 and further that on the date of accident, deceased G. Dhanraju was not holding valid and effective driving licence.
7. Learned Claims Tribunal on the basis of pleadings made by respective parties framed as many as seven issues for consideration and after conclusion of trial, arrived at a finding that claimants failed to prove rash and negligent driving/act of non-applicant No.1 and dismissed the claim application filed by claimants considering that claim application was filed under Section 166 of M.V. Act.
8. Learned counsel appearing for appellants/claimants submitted that accident took place between two motor vehicles which is not in dispute. He further submitted that Police seized motorcycle driven by non-applicant No.1 which was being run without switching on headlight. He lastly

submitted that learned Claims Tribunal has not conducted inquiry as provided under Section 168 of M.V. Act and Rule 226 of State Rules, 1994 and had arrived at erroneous finding.

9. Per contra, learned counsel appearing for respondents No. 1, 2 and 4 supported the impugned award and submitted that accident took place due to rash and negligent driving of motorcycle by deceased himself. They further submitted that on the date of accident, injured was taken to hospital and they have informed that injuries sustained by deceased due to felling off from motorcycle, which itself shows that claimants have subsequently after death of deceased G. Dhanraju put up a false and baseless story involving motorcycle of non-applicant No.1 in the accident.
10. I have heard learned counsel appearing for parties and perused entire record carefully.
11. The prime question which arises for consideration in the facts and circumstances of the case whether accident took place due to rash and negligent driving of motorcycle by non-applicant No.1 or not?
12. Perusal of Exhibit A-4, which is a copy of MLC request dated 05/12/2009 by Pandri Police Station wherein it has been mentioned that on 04/12/2009, at about 10.00 P.M., injured- G. Dhanraju suffered injuries due to felling off from motorcycle. Exhibit A-5, which is an information given by Shri Balaji Superspeciality Hospital to Police Station Pandri Mova, Raipur, Chhattisgarh on 05/12/2009 at about 3.00 A.M. just after few hours of accident also mentions that the injured suffered injury due to felling off from motorcycle. This information has been given to the attendant/doctor of Shri Balaji Superspeciality Hospital by G. Krishna Raju

Rao, who is brother of deceased. On 11/12/2009 authorities of Shri Balaji Superspeciality Hospital has sent death intimation to Police Station Pandri Mova Raipur at about 11.00 P.M., in which also it has been mentioned that deceased G. Dhanraju suffered injury due to felling off from motorcycle. The said death intimation is Exhibit A-6.

- 13.** From reading all contents of Exhibits A-4 to A-6, it is clear that injured/deceased was taken to hospital by brother of deceased himself, in which, he categorically informed the authorities that his brother suffered injuries due to felling off from motorcycle.
- 14.** Claimants in their behalf have examined G. Joga Rao father of deceased as AW-1 and one Akash Wadhwani as AW-2. G. Joga Rao (AW-1) in his statement has categorically stated that he was not present on spot, therefore, his evidence cannot be used to evaluate the rash and negligent act of deceased himself or non-applicant No.1. Akash Wadhwani (AW-2) in his evidence admitted that nine friends were travelling in three motorcycles. He further admitted that in motorcycle driven by G. Dhanraju, Kirtan Sahu and Jhalli were sitting as pillion riders. He also admitted that he reached on spot and saw them lying on the ground.
- 15.** From the contents of evidence of (AW-2) Akash Wadhwani, it is evident and clear that this witness was not an eyewitness, but he reached after happening of accident. He also admitted that when they reached Hospital along with injured they have not informed authorities of the Hospital that deceased suffered injury due to accident between two motor vehicles and further that he himself has not lodged any report.

- 16.** First Information Report has been lodged on 11/12/2009 at about 00.15 hours vide Exhibit A-3, i.e. after seven days of accident. Another First Information Report is also available on record vide Exhibit A-2 which was also lodged on 11/12/2009 at about 10.20 A.M. This report was lodged by one of police officials of Police Station, Lavan, District Baloda Bazar.
- 17.** Perusal of Exhibit A-2 would show that this report was registered on the basis of written report submitted by Kirtan Sahu on 11/12/2009 for the accident dated 04/12/2009. In Exhibit A-3, it has been mentioned that Kirtan Sahu submitted written report, but claimants have not filed any copy of written report made by Kirtan Sahu to concerned Police Station. Even the statement under Section 161 of Cr.P.C. of Kirtan Sahu was not placed on record before learned Claims Tribunal by the claimants. Further, claimants have not examined Kirtan Sahu who was one of occupants of motorcycle driven by deceased G. Dhanraju and who said to have lodged written report to concerned Police Station, on the basis of which, First Information Report was lodged against driver of motorcycle of black colour wherein number was not mentioned.
- 18.** From perusal of exhibited documents i.e. Exhibits A-2 to A-6, it is clear that in all the documents, it has been categorically mentioned that deceased suffered injuries due to falling off from motorcycle. For the first time, one Kirtan Sahu made application before the concerned Police Station after seven days of accident i.e. on 11/12/2009 that deceased suffered injuries due to accident between two motorcycles and he does not mention the number of motorcycle, but only mention colour of motorcycle.

19. Defence taken by non-applicant No.1 was that deceased while driving his motorcycle was trying to overtake truck and dashed motorcycle which was rolling by him by pushing it due to mechanical failure of motorcycle.
20. Looking to specific defence taken by non-applicant No.1 and further claimants for the reasons best known to them have not produced eyewitness and pillion riders of motorcycle as well as lodger of complaint to concerned Police Station as their witnesses, they failed to prove rash and negligent act of non-applicant No.1 which is a *sine quo non* for claiming amount of compensation under the provisions of Section 166 of M.V. Act. To get the amount of compensation under Section 166 of M.V. Act in case of injury/death, claimants are required to prove rash and negligent act of driver of other vehicle, in which, appellants/claimants failed.
21. For the foregoing reasons, learned Claims Tribunal has not committed any error in holding that appellants/claimants have failed to prove negligence on the part of non-applicant No.1 and dismissed the claim application.
22. In view of aforementioned discussions, I do not wish to entertain and discuss other issues framed by learned claims Tribunal. The appeal being devoid of merit which is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge