

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1222 of 2012

1. Balram Gupta S/o Bharat Gupta Aged About 31 Years, R/o. Village- Pandatarai, P.S. Pandatarai, Distt. Kabirdham C.G, Pin Code – 491558.
2. Ganesh Gupta S/o Shobha Ram Gupta Aged About 37 Years, R/o. Village - Pondi, P.S. Bodla, Distt. Kabirdham C.G. Pin Code- 491995.

---- Appellants

Versus

1. Gouri Bai Nirmalkar, W/o Late Pakluram Nirmalkar Aged About 38 Years.
2. Mukesh Nirmalkar S/o Late Pakluram Nirmalkar Aged About 14 Years.
3. Ku. Chanda D/o Late Pakluram Nirmalkar Aged About 16 Years
Both respondent Nos.2 & 3, Minors, Thru- Mother- Gouri Bai (R-1).
4. Sahas Bai Nirmalkar, Aged About 60 Years.
Respondents No. 1 to 4, all R/o Village- Agrikhurd, P.S. Thankhamhariya, Distt. Bemetara C.G. Pin- 491993.
5. Insurance Company Manager, Bhartiya Axa General Insurance Company Ltd. 1st Floor, Chawla Complex, Devender Nagar Road, Sai Nagar, Raipur C.G. Pin Code- 492001.

---- Respondents

MAC No. 1223 of 2012

1. Balram Gupta, S/o Bharat Gupta Aged About 31 Years, R/o. Village- Pandatarai, P.S. Pandatarai, Distt. Kabirdham C.G. Pin Code- 491558.
2. Ganesh Gupta S/o Shobharam Gupta Aged About 37 Years, R/o. Village- Pondi, PS- Bodla, Distt. Kabirdham C.G. Pin Code- 491558.

---- Appellants

Versus

1. Indira Bai, W/o Gulab Chand Dewangan Aged About 35 Years.
2. Gulab Chand Dewangan S/o Kalaram Dewangan Aged About 40 Years.
3. Meena Bai D/o Gulab Chand Aged About 14 Years.
4. Aneeta D/o Gulab Chand Aged About 12 Years.
Respondents No. 3 & 4, Minors, Thru- Mother- Indira Bai, (R-1).
All R/o Village - Agrikhurd, P.S. Thankhamhariya, Tah. Saja, Distt. Bemetara C.G. Pin- 491993.
5. Insurance Company Manager, Bhartiya Axa General Insurance Company Ltd. 1st Floor, Chawla Complex, Devender Nagar Road, Sai Nagar, Raipur C.G Pin Code- 492001.

---- Respondents

MAC No. 1224 of 2012

1. Balram Gupta, S/o Bharat Gupta Aged About 31 Years, R/o Village- Pandatarai, P.S. Pandatarai, Distt. Kabirdham (C.G.), Pin Code- 491558.
2. Ganesh Gupta S/o Shobha Ram Gupta, Aged About 37 Years, R/o village Pondi, P.S. Bodla, Distt. Kabirdham (CG) Pin Code- 491995.

---- Appellants

Versus

1. Soni Bai Dewangan, W/o Jhaduram Dewangan Aged About 40 Years.
2. Murli Dewangan S/o Late Jhaduram Aged About 16 Years.
3. Narendra Dewangan S/o Late Jhaduram Aged About 8 Years.
Both Minors, through mother Sonibai (R-1).
4. Smt. Pyari Bai W/o Sukhram Aged About 60 Years.
5. Sukh Ram Dewangan S/o Ramphal Aged About 65 Years, Cultivators.
All respondents No.1 to 5, resident of village Agarikhurd, P.S. Thankhamhariya, Distt. Bemetara C.G. Pin- 491993.
6. Insurance Company Manager, Bhartiya Axa General Insurance Company Ltd. 1st Floor, Chawla Complex, Devender Nagar Road, Sai Nagar, Raipur (CG) Raipur Pin Code:- 492001.

---- Respondents

For Appellants	:	Mr. V.G. Tamaskar, Advocate
For Respondents No.1 to 5	:	Mr. Anurag Singh, Advocate on behalf of Mr. Manoj Paranjpe, Advocate.
For Respondent No.6	:	None though served.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

05/04/2019

1. As the above appeals arise out of the same motor accident, they are being disposed off by this common order.
2. Appellants - owner & driver of offending vehicle bearing registration No.CG09-B-0175 have preferred above appeals questioning correctness of award dated 28.9.2012 passed by the Additional Motor Accident Claims Tribunal, Bemetara, District Durg (for short 'the Claims Tribunal') in different Claim Cases fixing liability on them to pay amount of compensation awarded.

3. Brief facts for disposal of these appeals are that on 25.12.2011 at about 11.30 p.m. in the night, Manohar, Shivnath, Ramkumar & Suraj Nirmalkar were returning on motorcycle bearing registration No.CG07-M-0565 to their village Agrikhurd from village Dashrangpur. Shivnath was driving said motorcycle and other three were travelling as pillion riders. On the way near village Agrikala, said motorcycle dashed with a truck bearing No.CG09-B-0175, which was parked on the road without indicators or parking lights. Driver and all pillion riders of said motorcycle died on the spot. The accident was reported to the police based on which offence under Sections 283 & 304A of IPC was registered vide Crime No.274/2011 and after completion of investigation, final report was filed before the Chief Judicial Magistrate, Kawardha. Claimants i.e. family members of respective deceased, have filed separate claim applications claiming different amount of compensation under various heads on the grounds mentioned therein.
4. Appellants - owner & driver of offending vehicle, filed their reply to the claim applications and pleaded that occupants of motorcycle were found to have consumed liquor and driver was driving the motorcycle in a high speed. Driver of truck had parked his truck down the road with indicators and parking lights only to answer call of nature and in the meantime, accident took place. It was also pleaded that on the date of accident driver of offending vehicle was having valid & effective license and offending vehicle was fully insured, therefore, non-applicant - Insurance Company is liable to pay compensation, if any, awarded by the Claims Tribunal.
5. Insurance Company also submitted its separate reply and denied the claim of claimants. It has been pleaded that there is violation of condition of insurance policy as on the date of accident driver of offending vehicle

was not possessing valid and effective driving license and offending vehicle was also not having valid permit to run on road. At the time of accident four persons were travelling on motorcycle, which is more than its seating capacity, and therefore the claimants are not entitled for any amount of compensation.

6. Learned Claims Tribunal on the basis of pleadings and evidence available on record passed award in favour of claimants after recording a finding that there is contributory negligence on the part of occupants of motorcycle and further exonerated insurance company on the ground that there is violation of conditions of insurance policy as on the date of accident there was no valid permit to run the offending vehicle on road.
7. Learned counsel for appellants- Owner & Driver, argues that all the four persons travelling in the motorcycle were under intoxication of liquor. Four persons were riding on motorcycle as against seating capacity of two, which is in violation of provision of Section 128 of the Act, 1988. They were also not wearing headgear (helmet), as mandated under Section 129 of the Act of 1988. As the deceased persons themselves had violated the law, therefore, the claimants are not entitled for any amount of compensation.
8. Per contra, learned counsel for claimants/respondents No.1 to 5 submitted that there is no independent evidence available on record showing that occupants of motorcycle had consumed liquor. He further argues that the doctor, who conducted post-mortem examination, did not notice liquor smell in the stomach of deceased. It has also not been established by cogent evidence that reason of accident was only due to travelling of more than two persons in a motorcycle. Infact, accident occurred due to negligent parking of truck on the centre of road in night at about 11.30 p.m without any parking light and indicators. The Claims

Tribunal has rightly held driver of offending vehicle to be responsible for the accident.

9. I have heard learned counsel for the parties and perused the record.
10. To appreciate arguments advanced by learned counsel for appellants-owner & driver of offending vehicle regarding contributory negligence, I have perused documents of criminal case filed before learned Claims Tribunal as Ex.P-1 to P-7. Perusal of Ex.P-4, which is post-mortem report of deceased Manohar Dewangan (Claim Case No.7/12) makes it clear that there is mention about 'smell like alcohol', but quantity of alcohol has not been mentioned. Other evidence available on record with respect to consumption of alcohol is evidence of Balram (NAW-1) i.e. driver of offending vehicle. Appellants have not examined the doctor, who conducted post-mortem of deceased, or any other independent witness to prove that deceased persons were in highly intoxicated condition. Even otherwise the claimants in these appeals are legal heirs of pillion riders and not driver of motorcycle and as the owner & driver of offending vehicle have failed to prove by leading cogent, clinching and reliable evidence that occupants of motorcycle had consumed excessive liquor and were not in a position to travel, the argument raised by learned counsel for appellants that the occupants of motorcycle were also contributory negligent is not sustainable. Even there is no specific evidence that cause of accident is consumption of liquor.
11. Next ground urged by appellants is that there is violation of provisions of Section 128 of the Act of 1988 as four persons were travelling in a motorcycle, which is having seating capacity of two only, and further they were not wearing headgear (helmet) as provided under Section 129 of the Act of 1988.
12. Section 127 & 129 of the Act of 1988 reads as under:-

"128. Safety measures for drivers and pillion riders : (1) No driver of two wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the Motor Cycle behind the driver's seat with appropriate safety measures;

(2) In addition to the safety measures mentioned in Sub-Section (1) the Central Government may prescribe other safety measures for the Drivers of two wheeled motor cycles and pillion riders thereon."

"129. Wearing of protective head gear: Every person driving or riding (otherwise than in a side car on a motor cycle of any class or description) shall, while in a public place wear a protective head gear of such description as may be specified by the State Government by rules made by it in this behalf, and different descriptions of head gears may be specified in such rules in relation to different circumstances or different class or description of motor cycle."

13. A plain reading of above quoted provisions would show that those are safety measures provided under the Act of 1988. Violation of above provisions i.e. Sections 128 & 129, by itself may not lead to a finding of contributory negligence on the part of occupants of vehicle who were not driving two wheeler. Learned counsel for appellants neither pleaded nor argued with respect to shifting of liability for payment of compensation on the ground that there is no violation of conditions of insurance policy.
14. From the above discussions, it is clear that appellants have failed to prove that deceased Manohar, Ramkumar & Suraj, pillion riders of motorcycle, were in any manner negligent for the accident warranting dismissal of

claim application filed by their respective family members. Learned Claims Tribunal otherwise recorded a categorical finding that the offending vehicle - truck was parked on road itself without switching on parking lights or indicators and on account of which it has been found that driver of truck was negligent. At the same time, the Claims Tribunal has also rightly held that although the accident occurred due to negligent parking of offending truck by its driver, but the accident would not have occurred if deceased Shivnath, driver of motorcycle, had exercised due care and caution and therefore, he is also contributory negligent to the extent of 50%. The finding of contributory negligence of pillion riders is under challenge in separate appeals or cross-appeal filed by claimants and the same were decided separately.

15. For the foregoing reasons, I do not find any illegality or infirmity in the finding recorded by the Claims Tribunal holding driver of offending truck to be negligent.
16. Accordingly, the appeals preferred by appellant- owner & driver of offending vehicle being devoid of any substance are liable to be and hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

roshan/-