

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 1205 OF 2013**

1. Jitendra Dubey S/o Shambhunath Dubey, aged about 35 years.
 2. Rahul Dubey S/o Jitendra Dubey, aged about 14 years, minor through the natural guardian father Jitendra Dubey S/o Shambhunath Dubey.
- Both are residents of Kedarpur Ring Road Ambikapur, District Sarguja Chhattisgarh.

---- Appellants**Versus**

1. Chhotelal Ram S/o Late Shri Sukhram, aged about 48 years, Occupation Teacher R/o village Devri, Police Station Kusmi, presently resident of Ambikapur, Muhalla Pundardihari District Sarguja Chhattisgarh.
2. Maghani Kindo W/o Chhotelal Ram, Occupation House Wife, aged about 42 years, R/o village Devri, Police Station Kusmi, presently resident of Ambikapur, Muhalla Pundardihari, District Sarguja Chhattisgarh.
3. Reliance General Insurance Company Limited, Branch Office New Bhatti Road, Kedarpur, Ambikapur, District Sarguja Chhattisgarh.

---- Respondents

For Appellant	: Mr. Jitendra Shrivastava, Advocate.
For Respondents No. 1 & 2	: Mr. Amarnath Pandey, Advocate.
For Respondent No. 3	: None.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****26/04/2019**

1. By this instant appeal, appellants who are owner and driver of motorcycle bearing registration No.C.G.15/C/9287 (hereinafter referred to as the 'offending motorcycle') have challenged the

legality, validity and propriety of impugned award dated 26/09/2013 passed by learned First Additional Motor Accident Claims Tribunal, Ambikapur, Sarguja, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.140/2011, wherein learned Claims Tribunal partly allowed the claim application filed by claimants and awarded a total sum of Rs.3,45,000/- as compensation in a death case and held appellants to be liable for payment of compensation.

2. Brief facts for disposal of this appeal are that on 23/10/2008, at about 6.30 am, when Raju Kindo was returning from Bus Stand, Ambikapur on his motorcycle bearing registration No.C.G.15/C/9237, at that relevant time, offending motorcycle driven by appellant No.2 and owned by appellant No.1, dashed Raju Kindo. In the aforementioned accident, Raju Kindo sustained grievous injuries and succumbed to those injuries on spot.

3. On account of death of Raju Kindo, claimants who are parents of deceased Raju Kindo filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'M.V. Act') before the competent Claims Tribunal claiming total compensation of Rs.15,10,200/- on various heads.

4. Appellants, who were non-applicants No.1 and 2 before learned Claims Tribunal submitted reply to claim application and

denied adverse pleadings made in claim application against them. They pleaded that it is the deceased i.e. Raju Kindo, who drove his motorcycle No.C.G.15/C/9237 rashly and negligently and dashed offending motorcycle, in which, appellant No.2 also sustained injuries. It has further been pleaded that at that relevant time, Shyamnarayan Sharma (NAW-2) was the driver of offending motorcycle, but at the time of accident, he had gone to answer the call of nature by parking his motorcycle. It has lastly been pleaded that they have been falsely implicated in the case as it is the deceased i.e. Raju Kindo who himself was driving his motorcycle rashly and negligently.

5. Respondent No.3/Insurance Company submitted reply to claim application and pleaded that appellant No.2 was driving offending motorcycle at the time of accident and not possessing valid and effective driving licence with him. It has further been pleaded that there was violation of conditions of insurance policy and Insurance Company has not insured the motorcycle bearing No.C.G.15/C/9237 (vehicle driven by deceased).

6. Learned Claims Tribunal after considering the pleadings, materials and evidence placed by respective parties on record, framed as many as four issues for consideration and after conclusion of trial held that accident took place due to rash and negligent driving of appellant No.2 (minor) in which Raju Kindo

died and there was violation of conditions of insurance policy, therefore, appellant No.1 is liable for payment of amount of compensation of Rs.3,45,000/- as assessed by it.

7. Learned counsel appearing for appellants submits that on the date of accident, appellant No.2 was not driving offending motorcycle, but Shyamnarayan Sharma (NAW-2) was driving offending motorcycle and at the time of accident also, offending motorcycle was parked by Shyamnarayan Sharma (NAW-2). He further submits that learned Claims Tribunal erred in holding appellant No.2 negligent in the aforementioned accident. He lastly submits that as there is head on collision between two vehicles, therefore, learned Claims Tribunal committed an illegality in not holding the deceased to be contributory negligent in the accident.

8. Per contra, learned counsel appearing for respondents No.1 and 2 submits that learned Claims Tribunal rightly passed the impugned award on the basis of evidence available on record. He further submits that looking to the rash and negligent act of appellant No.2, driver of offending motorcycle, a criminal case was registered against him and final report was also submitted before the competent Court for offence punishable under Section 304A of IPC.

9. I have heard learned counsel appearing for parties and perused the entire record carefully.

10. Perusal of record would show that First Information Report was registered on the same day of accident i.e. 23/10/2008 at about 9.35 am before concerned Police Station for offence punishable under Section 304A of IPC against driver of offending motorcycle, which is marked as Ex. A-3. After conclusion of investigation, final report was submitted before the competent Court against appellants mentioning therein that offending motorcycle was driven by appellant No.2 at the time of accident.

11. Chhotelal (AW-1) filed a judgment dated 18.08.2010 passed by Principal Magistrate, Juvenile Justice Board, Ambikapur, in Criminal Case No.325/2008 (Ex. A-12) wherein appellant No.2 admitted his guilt and therefore, Juvenile Justice Board imposed only fine of Rs.2,500/- against appellant No.2. Though before learned Claims Tribunal, appellants examined one Shyamnarayan Sharma as NAW-2, who in his statement, stated that on the date of accident, he was driving the offending motorcycle, but admitted that he has not given any intimation with this regard to Police. He further stated that Police has not initiated any proceedings against him. He also admitted that after parking offending motorcycle, he had gone to answer the call of nature, whereas appellant No.2 Rahul Dubey was standing near

the motorcycle and at that relevant time, deceased i.e. Raju Kindo came on motorcycle in high speed and dashed offending motorcycle with his motorcycle. He also stated that in the said accident, appellant No.2-Rahul Dubey also sustained head injury.

12. On considering documentary evidence available on record with respect to criminal case and oral evidence of Shyamnarayan Sharma (NAW-2), it is clear that evidence of Shyamnarayan Sharma (NAW-2) is not reliable, particularly when a criminal case was registered against appellant No.2 for his rash and negligent act and before the competent Court appellant No.2 himself admitted his guilt and fine was imposed against him vide Ex. A-12. Appellant No.2 was minor on the date of accident and he was not possessing valid and effective driving licence.

13. In view of specific evidence available on record with regard to driving of offending motorcycle by appellant No.2 at the time of accident, it is apparent that appellants have not approached Claims Tribunal with clean hands and tried to mislead Claims Tribunal by taking false defence in their reply. First ground raised by learned counsel for appellants that appellant No.2 was not driving offending motorcycle at the time of accident is not sustainable. For the aforementioned reasons, learned Claims Tribunal has not committed any error in holding that there was

violation of conditions of insurance policy and exonerating insurance company from its liability.

14. So far as next ground raised by learned counsel for appellants that as there is head on collision, therefore, learned Claims Tribunal ought to have held the deceased i.e. Raju Kindo, to be contributory negligent in the accident is concerned, contributory negligence is a fact required to be proved by the person/party who takes a plea of contributory negligence.

15. It is a settled law that by mere head on collision of two vehicles, it cannot be said that driver of both the vehicles are contributory negligent in the accident. Contributory negligent is a fact which is required to be proved before the Court/Tribunal by placing specific evidence.

16. In the case at hand, on considering oral evidence led by appellants and their witnesses, it is evident that they have not made correct statement with respect to manner in which accident took place. In fact, they have only stated that at the time of accident, offending motorcycle was parked by its driver-Shyamnarayan Sharma (NAW-2) and it is the deceased Raju Kindo who came there driving his motorcycle rashly and negligently, which is contrary to statement made by appellant No.2 in a criminal case wherein he himself admitted guilt of his rash and negligent act.

17. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the matter of **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors.**¹ dealt with the plea of contributory negligence taken by Insurance Company where neither the driver nor any independent witness was examined to prove the allegation of contributory negligence. The Supreme Court, while setting aside the finding of contributory negligence, held as under:

“12.-----The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet- Exh. 1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW.2 and PW3 in their cross-examination and placed reliance on them to record the finding on issue No. 1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No. 1 holding that there is contributory negligence on the part of the deceased driver in

¹ 2013 AIR SCW 5375

the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law.”

18. In the matter of **Jiju Kuruvila and others v. Kunjujamma**

Mohan and others², the Hon'ble Supreme Court held as under:-

“20.5 The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

19. In the light of law laid down by Hon'ble Supreme Court with respect to prove of contributory negligence and looking to evidence available on record, second ground raised by learned counsel for appellants is also not sustainable for want of specific and reliable piece of evidence. No other ground is raised in this appeal.

20. In view of above discussions, I do not find any good ground calling interference with the impugned award dated 26/09/2013

passed by learned Claims Tribunal. The appeal being devoid of substance is liable to be and is hereby dismissed.

**Sd/-
(Parth Prateem Sahu)
Judge**

Yogesh