

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 463 of 2014**

1. Sanjay Yadav S/o Usatlal Yadav Aged About 22 Years R/o Bhursapali, Chowki- Baloda, P.S. Saraipali, Distt. Mahasamund C.G.
2. Usatlal Yadav S/o Andi Yadav Aged About 40 Years R/o Bhursapali, Chowki- Baloda, P.S. Saraipali, Distt. Mahasamund C.G.

----Appellants**Versus**

1. Minketan Das S/o Anand Das Aged About 50 Years
 2. Smt. Basanto Bai W/o Minketan Aged About 45 Years
- Both are R/o Belmundi, Chowki- Baloda, P.S. Saraipali, Distt. Mahasamund C.G.
3. United India Insurance Company Limited, Aman Complex, Jivan Bima Marg, Pandari, Raipur, Distt. Raipur C.G.
 4. Shatrughan Sona S/o Janmo Sona Aged About 32 Years R/o Amaldih, Chowki- Baloda, P.S. Saraipali, Distt. Mahasamund C.G.
 5. Bajaj Allianz General Insurance Company Ltd Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandari, Raipur, District Raipur C.G.

---- Respondents

For Appellants	Shri Shikhar Sharma, Advocate.
For Respondent Nos. 1 & 2	Shri Sumit Shrivastava, Advocate.
For Respondent No.3	Shri Dashrath Gupta, Advocate.
For Respondent No.4	None.
For Respondent No.5	Shri N.K. Thakur, Advocate with Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

21/01/2019

1. Heard on I.A. No.2, application under Order 41 Rule 27 of CPC as well as on appeal.
2. Despite sufficient opportunity being given to the counsel for the respondents, reply to the aforesaid application has not yet been filed.
3. Learned counsel for the appellants submits that issue regarding contributory negligence was framed by the Tribunal which were subsequently answered in the negative. As per documents Annexure A-3 i.e. charge sheet, FIR and seizure memo obtained by the appellants under Right to Information Act, it is evident that offence under Sections 279 and 337 of IPC was registered against the deceased Rajesh and due to death of Rajesh closure report was filed by the police which was accepted by the Magistrate. The aforesaid documents have not been challenged by the respondents. The Tribunal while considering the issue regarding contributory negligence in paras 2, 13 to 16 of the award has also mentioned this fact that due to death of Rajesh, closure report was filed by the police.
4. Considering the submission of counsel for the appellants, non-challenged to the aforesaid documents by the respondents, the admitted position that there was head on collision between both the vehicle and the findings of the Tribunal concerning the issue of contributory negligence wherein also these documents have been mentioned, the application under Order 41 Rule 27 is allowed and the documents of Annexure A-3 filed along with the said application are taken on record as true documents accepted

and proved by the appellants.

5. This appeal is filed by the appellants/Driver and Owner under Section 173 of the Motor Vehicles Act against the award dated 30.01.2014 passed by Motor Accident Claims Tribunal, District Mahasamund, C.G. in Claim Case No. 25/12 awarded total compensation of Rs.6,65,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicants no. 1 & 2 jointly and severally while exonerating non-applicants no. 3 to 5.
6. As per averments in the claim petition on 06.11.2011 at around 8:00 am Rajesh was riding motorcycle bearing no. CG04-DY-2584 with a moderate speed in which his brother-in-law Shatrughan was sitting as a pillion rider. However, on the way non-applicant no.1 by riding motorcycle bearing no. CG06-P-3352 in a rash and negligent manner came from opposite direction and hit the motorcycle of Rajesh, as a result of which Rajesh suffered grievous injuries and died on the spot itself.
7. On claim petition being filed by the claimants i.e. parents of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.22,50,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
8. Learned counsel for the appellants submits that the Tribunal has wrongly exonerated the Insurance Company/non-applicant no.3 of its liability. He further submits that considering the manner in

which the accident occurred, the admitted fact that counter report was also registered against the deceased and charge sheet was filed against him but due to his death closure report was subsequently filed which was accepted by the Magistrate, the fact that deceased Rajesh was not having a valid and effective licence, the Tribunal was not justified in holding that non-applicant no.1 is wholly responsible for the unfortunate accident and there was no contributory negligence on the part of the deceased.

9. Learned counsel for the respondents/claimants and Insurance Company supporting the impugned award and submit that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.
10. Learned counsel for the respondent no.5 has duly assisted the Court.
11. No counter appeal has been filed by the respondents as submitted by the parties.
12. Heard both the parties and perused the material available on record.
13. So far as exoneration of the Insurance Company- United India Insurance Company Limited / non-applicant no.3 is concerned, from perusal of the record, it is seen that non-applicant no.1 Sanjay Yadav was charge sheeted under Sections 304A, 279, 337, 338 of IPC and Sections 3/181 and 5/180 of the Motor Vehicles Act. Though, non-applicant no.1 has claimed that he was having a valid and effective licence for ridding the motorcycle

but no such licence was produced by him whereas it was specific plea of the non-applicant no.3/Insurance Company that he was not having a valid and effective licence on the date of accident to ride the motorcycle. Non-applicant no.1 had taken defence that his licence was lost and, therefore, he could not produce the same. However, despite sufficient opportunity being given to non-applicant no.1 he could not produce duplicate licence before the Tribunal. The Tribunal considering all these things has recorded a finding that on the date of accident motorcycle bearing no. CG06-P-3352 was being ridden by non-applicant no.1 without having a valid and effective driving licence which is peculiar breach of conditions of the Insurance Company. Thus, the Tribunal rightly exonerated non-applicant no.3 and fastened the liability upon non-applicant nos. 1 & 2 / rider and owner of the offending motorcycle.

14. As regards the contributory negligence, Appellant Sanjay in paras 1 & 2 of his statement has stated that deceased was riding motorcycle along with two other pillion rider in a rash and negligent manner and dashed the vehicle of appellant Sanjay Yadav and that statement is uncontroverted in cross examination. As per statement of Shatrughan, it is admitted fact that it is a case of head on collision of two motorcycles, one driven by Rajesh and one driven by the appellant Sanjay. It is also admitted fact that both Rajesh and Sanjay lodged FIR against each other. Therefore, looking to the evidence of Sanjay appellant, head on collision of two motorcycles, as per documents taken on record, it is admitted fact mentioned in award para 2 that counter FIR was

lodged against the deceased and closure report was accepted by the concerned Magistrate, this Court is of the opinion that the Tribunal was not justified in holding that non-applicant no.1 is fully responsible for the accident and there is no contributory negligence on the part of the deceased. The said finding of the Tribunal is liable to be set aside and is, accordingly, set aside. Instead, it is held that deceased Rajesh was equally responsible for the unfortunate accident.

15. In the result, the appeal is allowed in part with modification in the impugned award to the above extent that there was 50% contributory negligence on the part of the deceased Rajesh in causing the accident. Being so, the claimants are entitled for half of the amount of Rs.6,65,000/- awarded by the Tribunal. In other words, the appellants are liable to pay Rs.3,32,500/- with interest as awarded by the Tribunal to the claimants. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh