

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 361 of 2014

1. Smt. Pushpa Bai W/o Late Amlu Sonwani Aged About 35 Years
2. Om Narayan, Aged About 10 Years
3. Kumari Soniya Sonwani, Aged About 8 Years

Appellants No. 2 & 3 are minor, hence impleaded through their natural guardian mother appellant No.1 Smt. Pushpa Bai.

All R/o Near Hanuman Temple, Mowa Thana, Pandari, Raipur, Distt. Raipur (CG)

---- Appellants/claimants

Versus

1. Kunjlal S/o Dhanwa Yadav Aged About 45 Years R/o Village Dhamni, Post- Kirwai, Thana- Rajim, Distt. Raipur C.G. (Owner of Vehicle No. CG 04 DZ/0973)
2. Manoj S/o Jodhan Ram Jangde Aged About 35 Years R/o Village Dhamni, Tah. Rajim, Distt. Raipur C.G., (Driver of Vehicle No. CG 04 DZ/0973)
3. The Oriental Insurance Co. Ltd. Through Divisional Manager, Division No. 1, Kachhari Chowk, Jail Road, Raipur, Distt. Raipur C.G. (Insurer of Vehicle No. CG 04 DZ/0973)
4. Sushil Chelak S/o Mahesh Chelak R/o Khorpa, Thana- Abhanpur, Distt. Raipur C.G. (Driver of Vehicle No. CG 04 CQ 8905)
5. Lekhchand Malhotra S/o Late Mehtru Malhotra R/o Village Arand, Thana- Rajim, Distt. Raipur C.G. (Owner of Vehicle No. CG 04 CQ 8905)

---- Respondents

For Appellants	:	Shri Amiyakant Tiwari, Advocate.
For Respondent Nos 1 & 2	:	Shri DN Prajapati, Advocate.
For Respondent No.3	:	Shri HP Agrawal, Advocate.
For Respondent No.4	:	None though served.
For Respondent No.5	:	Shri Shivendu Pandya, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

09/04/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 7.12.2013 passed by II Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No.224/2012 awarding total compensation of Rs.11,74,360/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No.4, after deducting 50% towards contributory negligence on the part of the deceased.

02. As per claim petition, on 14.9.2011 Amlu Sonwani was travelling in Hero Honda motorcycle bearing No. CG 04 DZ 0973 as a pillion rider, which was being ridden by non-applicant No.2 Manoj Jangde. However, on the way, non-applicant No.4 came from opposite direction riding TVS motorcycle bearing No.CG 04 CQ 8905 and hit the motorcycle in which the deceased was pillion rider. As a result of this accident, Amlu Sonwani suffered grievous injuries and died on the spot. At the time of accident, non-applicant No.1 Kunjlal was owner of Hero Honda motorcycle and non-applicant No.3 Oriental Insurance Company Ltd. was its insurer.

03. On claim petition being filed by the claimants, wife and children of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned in para-1 of this judgment.

04. Learned counsel for the appellants/claimants submits that the Tribunal has wrongly held that there was 50% contributory negligence of the deceased in causing the accident whereas from the evidence adduced by the claimants, which is not controverted by the non-applicants, and further admission on the part of non-applicants No. 2 & 4, riders of the motorcycles, it stands proved that the deceased was sitting on the vehicle as a pillion rider and it was being ridden by non-applicant No.2 Manoj Jangde. He submits that the Tribunal was not

justified in exonerating the insurance company of its liability and in fact, present being a case of composite negligence on the part of riders of both the motorcycles i.e. non-applicants No. 2 & 4, the finding of the Tribunal regarding 50% contributory negligence on the part of the deceased is liable to be set aside and non-applicants No. 1 to 4 are liable for paying the entire amount of compensation assessed by the Tribunal to the claimants.

Reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***T.O. Antony Vs. Karvarnan and others, 2008 AIR SCW 2045.***

05. Learned counsel for respondents No. 1 & 2 submits that the deceased was sitting in the Hero Honda motorcycle as a pillion rider and it was being ridden by non-applicant No.2 Manoj Jangde and since the vehicle was duly insured at the relevant time with non-applicant No.3, the liability, if any, is of non-applicant No.3 to pay compensation to the claimants.

06. Learned counsel for respondent No.5 submits that the vehicle TVS bearing No. CG 04 CQ 8905 was sold to non-applicant No.4 Sushil Chelak long back and all the relevant documents of the said vehicle were duly handed over to non-applicant No.4. Therefore, the Tribunal considering all the relevant aspects of the matter has rightly exonerated non-applicant No.5 of its liability and fastened the same on non-applicant No.4.

07. Learned counsel for respondent No.3/insurance company vehemently argues that in the FIR (Ex.A/2) lodged by Basant Sonwani, brother of the deceased, it is mentioned that the deceased was riding the motorcycle and Manoj Jangde (non-applicant No.2) was the pillion rider. Thus, the claimants have themselves proved this fact by their documentary evidence of FIR that the deceased was the rider of the motorcycle in question and as such, they cannot escape from the said factual position. He submits that no driving licence of non-applicant No.2 Manoj Jangde or the deceased has been produced before the Tribunal. He further submits that as per insurance policy (Ex.D/2), it is

evident that no premium was taken by the insurance company for covering the risk of pillion rider, NAW-3 Rajiv Singh, Administrative Officer of the Insurance Company, has also stated in para-5 of his cross-examination that risk of pillion rider is not covered under the policy of Ex.D/2 and therefore, the insurance company is not liable to pay any compensation to the claimants.

08. Heard learned counsel for the parties and perused the material available on record.

09. It is not disputed by the parties that FIR (Ex.A/2) was lodged by Basant Sonwani, brother of the deceased. But Basant Sonwani is not an eyewitness to the accident and he lodged report on being telephonically informed about the accident. In their claim petition, the claimants have specifically pleaded in para-3 that the deceased was pillion rider and the motorcycle was being ridden by non-applicant No.2 Manoj Jangde and that the accident occurred due to negligence on the part of both the riders of motorcycle i.e. non-applicant No. 2 Manoj Jangde and non-applicant No.4 Sushil Chelak. Non-applicant No.2 in his written statement in para-3 has also admitted that he was riding the motorcycle Hero Honda Passion bearing No. CG 04 DZ 0973. Even non-applicant No.4 Sushil Chelak in his written statement in para-3 has also admitted the fact that non-applicant No.2 Manoj Jangde was riding the motorcycle and the deceased was the pillion rider in the said vehicle. AW-1 Smt. Pushpa Bai, wife of the deceased, in her affidavit under Order 18 Rule 4 of CPC has stated that on the date of accident i.e. 14.9.2011 her husband/deceased was travelling in the motorcycle with Manoj Jangde (non-applicant No.2) and in cross-examination she has admitted the suggestion on behalf of non-applicant No.4 that the deceased was the pillion rider and the vehicle was being ridden by Manoj Jangde. In further cross-examination by non-applicants No. 1 & 2 she has stated in para-13 that the deceased was riding the motorcycle and therefore, Manoj Jangde has been cited as a witness and soon thereafter she states that the deceased was not riding the motorcycle.

10. Thus, considering the specific pleadings of the claimants in

relation to the deceased being pillion rider and non-applicant No.2 Manoj Jangde being rider of the motorcycle in question, which have been admitted by non-applicants No. 2 & 4 in their written statements (though not examined before the Tribunal), the fact that Basant Sonwani, lodger of FIR (Ex.A/2) is not an eyewitness to the accident, he lodged the report on telephonic information being received by him about the accident; the un rebutted evidence of AW-1 Smt. Pushpa Bai on this issue and further considering the fact that no contrary evidence has been adduced by the non-applicants, it stands proved that on the date of accident the motorcycle i.e. Hero Honda bearing No. CG 04 DZ 0973 was being ridden by non-applicant No.2 Manoj Jangde and the deceased was pillion rider.

11. In the matter of *T.O. Antony* (supra), the Hon'ble Supreme Court while explaining the concept of composite negligence and contributory negligence, observed as under:

6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the

injuries stands reduced in proportion to his contributory negligence.

12. Considering the facts and circumstances of the case, the manner in which the accident occurred, the fact that the deceased was pillion rider, there was head-on collision between two motorcycles ridden by non-applicant No.2 and non-applicant No.4, it is a case of composite negligence of non-applicants No. 2 & 4 and the deceased being pillion rider, by no stretch of imagination, can be said to be negligent in any manner which contributed to the accident. Therefore, the finding of the Tribunal holding 50% contributory negligence on the part of the deceased is liable to be and is hereby set aside.

13. True it is that as per insurance policy Ex.D/2, no premium was taken by the insurance company for covering the risk of pillion rider. However, as per evidence of NAW-3 Rajiv Singh, Administrative Officer of the insurance company, the policy is package policy. As per circular issued by IRDA, package policy covers the risk of pillion riders also. There is no substance in the arguments of counsel for the insurance company that since non-applicant No.2 Manoj Jangde and non-applicant No.4 Sushil Chelak have not entered into the witness box, it could not prove the fact that they were not having valid and effective driving licence on the date of accident because the insurance company was well aware of the pleadings of these non-applicants in their written statements and the relevant particulars and as such, the insurance company could have verified the factum of their driving licence by conducting enquiry in this regard through its investigator. However, no such effort was made by the insurance company.

14. On the basis of aforesaid discussions, this Court is of the opinion that the Tribunal was not justified in holding 50% contributory negligence on the part of the deceased, the said finding is hereby set aside and the claimants are held entitled for the entire amount of compensation of Rs.23,48,719/- as assessed by the Tribunal, with interest @ 6% per annum from the date of claim petition till realization. As already observed above that present is a case of composite negligence on the part of non-applicants No. 2 & 4, therefore, non-

applicants No. 1 to 4 are held jointly and severally liable for paying the above compensation to the claimants. Accordingly, the appeal is allowed with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)

Judge