

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 120 of 2017

- National Company- Magma H.D.I. General Insurance Company, through – Branch Manager, Branch Office, Momdi Complex, Dhimrapur, Raigarh (C.G.) at present- Chawla Complex, Third Floor, Devendra Nagar, Sai Nagar Road, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur (C.G.)
(Insurer of Matador No. CG-13/ZB/0108)

---- Appellant/Non-applicant No.3

Versus

1. Mu. Savtri Patel W/o Late Komal Patel, aged 40 years
2. Gayatri Patel D/o Late Komal Patel, aged 15 years
3. Tekram Patel, S/o Late Komal Patel, aged 13 years
4. Mu. Bodhmati W/o Khageshwar Patel, aged 60 years, Profession- House wife
Respondent no. 2 and 3 is minor hence representing through their mother respondent no.1 Smt. Savitri Patel
All residents of Village Kodkel, Police Station Tamnar, District Raigarh, **at present** – Panchawati Colony, Boirdadar, Chakradharnagar, Tahsil and District Raigarh (C.G.)
(Claimants)
5. Khiraud Kisan S/o Dhanurjai Kisan, aged 35 years, Profession- Vehicle driver, R/o Village- Gaurbahri, Police Station Tamnar, District Raigarh (CG)
(Driver of Matador No. CG-13-ZB-0108)/Non-applicant No. 1
6. Naresh Agrawal S/o Bhagwan Das Agrawal **(legal heir and before then vehicle manager of Late Bhagwan Das Agrawal)/Non-applicant N.2**
Profession- Transport Business, R/o Near Gurunanak School, Gaushankar Mandir Road, Raigarh and Sharma Gali, Sattigudi Chowk, Kotra Road, Raigarh (C.G.)
(Owner of Matador No. CG-13/ZB/0108)

---- Respondents

For Appellant	:	Shri Rohitashava Singh, Advocate
For Respondents No. 1 to 4	:	Shri Abhisek Saraf, Advocate
For Respondents No. 5 & 6	:	Shri Amit Kumar Sahu, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

11.04.2019

1. This appeal is by the Insurance Company/non-applicant No.3/Appellant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 22.10.2016 passed by the Motor Accident Claims Tribunal, Raigarh (C.G.) in Claim Case No. 62 of 2015 awarding total compensation of Rs.20,53,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3/Insurance Company alongwith non-applicants No. 1 & 2 jointly and severally.

2. Facts of the case, in brief, are that on 25.02.2015 deceased Komal Patel was going by his motorcycle from Tamnar to Milupara, when he reached village Bangursiya, non-applicant No. 1 driver of the offending vehicle Metador bearing registration No. CG-13/ZB/0108, owned by non-applicant No.2 and insured with non-applicant No.3/Insurance Company, driving the said Metador in a rash and negligent manner, dashed the motorcycle of Komal Patel. As a result thereof, Komal Patel sustained grievous injuries and died on spot. At the time of accident, the deceased was aged about 47 years and was earning Rs.20,000/- per month by doing the work of Contractor.

3. Learned counsel for the Appellant/Insurance Company submits that the Tribunal has not considered the negligence on the part of the deceased. He further submits that it has not been proved that non-applicant No. 1 was driving the offending vehicle in a rash and negligent manner and no witness has been examined in this regard. He submits that registered owner of the offending vehicle has not been impleaded as party and the Tribunal has wrongly fastened liability on the Appellant/Insurance Company, therefore, the impugned award deserves to be set aside. He also submits that the amount awarded under the conventional heads is also on the higher side.

4. On the other hand, learned counsel for Respondents 1 to 4/Claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

5. Learned counsel for Respondents No. 5 & 6 also supports the impugned award and submits that the Tribunal has rightly fastened liability on the Appellant/Insurance Company.

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

7. It is not disputed by the parties that the offending vehicle was registered in the name of Bhagwan Das Agrawal who was father of non-applicant No.2. After the

death of Bhagwan Das Agrawal, his son Naresh Agrawal has been impleaded as non-applicant No.2 in the claim petition before Tribunal and Naresh Agrawal has submitted the policy alongwith other relevant documents, therefore, the owner of the offending vehicle has rightly been impleaded as non-applicant No.2. Therefore, contention made by counsel for the Appellant that registered owner of the offending vehicle has not impleaded as party, cannot be a ground for setting aside the impugned award.

8. It is also not disputed by the parties that F.I.R. (Ex.-P/2) was registered against the driver of the offending vehicle and the charge-sheet (Ex.-P/1) was filed against non-applicant No.1. Merg intimation (Ex.-P/3, Dehatinalishi (Ex.-P/4), Inquest (Ex.-P/5), were proved by the Claimants. Ex.-P/8 is seizure of offending vehicle which was seized by the police at the instance of non-applicant No.1. Ex.-P/9 is seizure documents of the offending vehicle i.e. insurance policy, RC book, driving licence of non-applicant No.1, fitness certificate, permit etc seized from non-applicant No.2. As per oral and documentary evidence, it was proved by the Claimants that the driver of offending vehicle i.e. non-applicant No.1 was driving the same in a rash and negligent manner which resulted in death of the deceased. Further, no any evidence regarding negligence on the part of the deceased adduced by the Insurance Company in rebuttal.

9. So far as grant of amount under the conventional heads is concerned, considering the principles of law laid down in ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No. 9581/2018 arising out of SLP (Civil) No. 3192/2018***, the amount awarded under the conventional heads also cannot be said to be excessive or exorbitant.

10. In the result, the appeal filed by the Appellant/Insurance Company being without any substance deserves to be dismissed and is, accordingly, dismissed.

Sd/-
(Gautam Chourdiya)
Judge