

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 971 of 2014**

- Bihari Ram Panika @ Bihari Lal Kuldeep S/o Khullur Panika Aged About 40 Years R/o Pachari, P.S. Surajpur, District Surguja C.G.

---- Appellant**Versus**

1. Kamla Bai, W/o Late Gangaram Rajwade Aged About 22 Years
2. Dhaneshwar S/o Gangaram Rajwade Aged About 7 Years
3. Bintu @ Bittu S/o Gangaram Rajwade Aged About 5 Years

Respondent No.2 & 3 since minor through mother Kamla Bai (Respondent No.1)

4. Hariram S/o Munshiram Rajwade Aged About 50 Years

All respondent No.1 to 4 resident of village Bardia, Police Station Patna, Distt. Korla (CG).

5. Branch Manager, IFFCO TOKIO General Insurance Private Limited , Chamoha Naka, Jabalpur (M.P.)

---- Respondents

For Appellant	:	Shri Upendra Bharat, Advocate
For Respondent No.1 to 4	:	Shri Anil Gulati, Advocate
For Respondent No.5	:	Shri Amrito Das, Advocate.

Order On Board By Hon. Shri Justice Parth Prateem Sahu**27/06/2019**

1. Appellant-owner of motorcycle bearing No.CG15-C-0421 (for short 'offending vehicle'), has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act of 1988') challenging award dated 4.8.2014 passed by learned Motor Accident Claims Tribunal, Koriya (Baikunthpur) (for short 'the Claims Tribunal') in Claim Case No.11/11 whereby the Claims Tribunal allowed claim application in part and awarded total compensation of Rs.2,65,919/- along with interest at the rate of 6% p.a., in a death case.

2. Brief facts relevant for disposal of this appeal are that on 29.6.2010 at about 8.00 p.m. Gangaram along with his wife & sister was returning on his motorcycle bearing No.CG16-D-9940 to village Bardiya from village Shyamnagar, Police Outpost Bhatgaon, District Surguja and when he reached near village Pachira, one motorcycle bearing registration No.CG15-C-0421, driven by non-applicant No.1, dashed motorcycle of Gangaram as a result Gangaram sustained grievous injuries on his head, chest, face and other parts of body. Gangaram was admitted in Apollo Hospital, Bilaspur for treatment where he succumbed to his injuries during the course of treatment. Matter was reported to Police Station Surajpur based on which crime bearing No.270/10 was registered under Sections 279, 337, 338, 304(A) of the Indian Penal Code and after completion of investigation, charge sheet was filed before competent court.
3. Claimants, who are widow & children of deceased Gangaram, filed claim application before competent Claims Tribunal claiming compensation of Rs.17,50,000/-, on account of death of deceased Gangaram.
4. Non-applicant No.1, owner & driver of one of the offending motorcycles, filed reply to claim application and denied all adverse pleadings made therein. He pleaded that at the time of accident three persons were travelling on motorcycle driven by deceased. The deceased drove motorcycle with excessive speed and dashed motorcycle of non-applicant No.1 from behind. It was also pleaded that claimants, out of greed, had filed claim application on false grounds. At the time of accident deceased driver of motorcycle was not having valid and effective driving license. Amount claimed in claim application is also on higher side.
5. Non-applicant No.2 Insurance Company also filed its reply and denied pleadings made in claim application. It was pleaded by non-applicant No.2 that offending vehicle was not insured with it; at the time of accident three persons were travelling on motorcycle, which amounts to violation of conditions of insurance policy, deceased driver of motorcycle was not having valid and effective driving license

and owner of motorcycle bearing No.CG16-D-9940 has not been made party to claim application and therefore claim application is not maintainable.

6. On appreciation of pleadings and evidence placed on record (oral & documentary both) by respective parties, the Claims Tribunal allowed claim application in part. While partly allowing claim application, the Claims Tribunal recorded a finding that non-applicant No.1 drove his motorcycle in excessive speed, rash & negligent manner and caused accident by hitting motorcycle of deceased Gangaram.
7. Learned counsel for appellant-owner submits that accident took place due to rash and negligent driving by deceased driver as on the date of accident brakes of his motorcycle was not working, which is evident from vehicle inspection report (Ex.D-1). He further submits that deceased driver alone is responsible for accident as he dashed offending motorcycle from its backside and in such a situation, Claims Tribunal ought not to have held appellant liable for causing accident. He further submits that appellant also filed claim application bearing No.128/13 before the Claims Tribunal at Surajpur which was allowed in part vide award dated 31.8.2015 and an amount of Rs.7,504/- with interest @ 8% p.a. holding deceased Gangaram to be negligent in the accident. He further submitted that copy of aforesaid award has been placed on record along with an application under Order 41 Rule 27 of Code of Civil Procedure, 1908.
8. On the other hand, learned counsel for claimants/respondent Nos.1 to 4 opposed the submissions made by learned counsel for appellant and supported the impugned award passed by Claims Tribunal. He submitted that accident took place due to rash and negligent driving by driver of offending motorcycle. Claimants lodged report prior to report of appellant herein. Mechanical defect in brakes of motorcycle found during inspection may have occurred due to accident. He further submits that the Claims Tribunal after considering overall facts, circumstances and evidence available on record, has rightly

assessed compensation and fastened liability on appellant herein, which does not call for any interference.

9. Learned counsel for non-applicant No.2/respondent No.5 supported the impugned award passed by Claims Tribunal.
10. I have heard learned counsel for the parties and perused the record.
11. Application filed under Order 41 Rule 27 of CPC for taking copy of award dated 31.8.2015 passed by Claims Tribunal, Surajpur in Claim Case No.128/13 on record as additional evidence is allowed and the same is taken on record.
12. Perusal of record would show that accident took place on 29.6.2010 at about 10.00 p.m. and report was lodged by Sumitra, widow of deceased, within half-an hour of accident mentioning specifically therein that non-applicant No.1 drove offending vehicle in a rash and negligent manner and dashed their motorcycle bearing No.CG16-D-9940 as a result her husband suffered grievous injuries on various parts of his body. After completion of investigation, the police filed final report (Ex.P-1) against non-applicant No.1/appellant herein. Death certificate (Ex.P-17) of deceased Gangaram has also been filed and according to which, deceased Gangaram suffered head injury & multiple contusions and date of death is mentioned as 1.7.2010 at Apollo Hospital, Bilaspur i.e. after two days of accident. In support of their case, claimants had examined Kamla Bai (AW-1) & Sumitra (AW-2), sister & wife of deceased respectively. Both these witnesses have stated in their statements that deceased Gangaram suffered grievous injuries on his head in a road accident between two motorcycles and later on, succumbed to those injuries in hospital. They have also stated that accident took place due to rash and negligent driving of motorcycle by non-applicant No.1/appellant herein.
13. Non-applicant No.1/appellant herein in support of his case filed a copy of FIR (Ex.D-4) lodged by him against deceased Gangaram. Though this FIR was lodged in the same police station but it is

subsequent to FIR lodged by claimants. Perusal of Ex.D-1, which is a copy of FIR, would show that deceased Gangaram while driving his motorcycle dashed offending motorcycle of non-applicant No.1/appellant herein. Even in final report (Ex.D-3), which is in the form of closure report, it is mentioned that Gangaram, driver of motorcycle, dashed motorcycle of appellant which was running in front. Appellant examined himself as NAW-1, Sangram Rajwade as NAW-2 and Premsai Rajwade as NAW-3. Sangram Rajwade (NAW-2) is not an eyewitness of accident which is also evident from perusal of Para-4 of his evidence wherein he has stated that he reached the spot after hearing sound of accident. Premsai (NAW-3) is also not an eyewitness as he has specifically stated in his statement that he reached spot after hearing sound of accident. Rameshwar Sharma, who at the time of accident was travelling with appellant as pillion driver, could be the best person to prove fact that deceased Gangaram dashed offending motorcycle from behind, but for the reasons best known to appellant, he has not examined said Rameshwar Sharma before the Claims Tribunal. Appellant has also brought on record vehicle inspection report (Ex.D-11) of motorcycle of deceased Gangaram and as per inspection report, leg-guard was band, scratches were found on headlight, brakes were not working and assembly wire connection was broken.

14. The Claims Tribunal after appreciating above evidence available on record, in particular vehicle inspection report opining that brakes of motorcycle were not working and there was damage to assembly wiring, recorded a finding that it appears that accident occurred due to some mechanical fault in motorcycle of deceased Gangaram, but despite that fact it cannot be held that accident in question took place due to negligence on the part of deceased driver Gangaram.
15. Learned counsel appearing for claimants/respondents argues that Claims Tribunal ought not to have relied upon vehicle inspection report (Ex.D-11) for arriving at a conclusion that there was mechanical fault in vehicle, because the author of this report (Ex.D-11) has not been examined before the Claims Tribunal and in

absence thereof, report of Ex.D-11 cannot be said to be proved in accordance with law. He further submits that admittedly defects have been pointed in inspection report (Ex.D-11), but this does not mean that accident occurred due to these defects because mechanical fault could be post accidental fault.

16. Non-applicant No.1/appellant has not examined Rameshwar Sharma, who at the time of accident was travelling with him as pillion ride. A specific question was put to him with regard to non-examination of Rameshwar Sharma but he failed to offer any explanation in this regard. Thus, the appellant failed to produce best witness and evidence in support of his case.
17. Apart from inspection report (Ex.D-11), learned counsel for appellant also relied upon records of criminal case i.e. Ex.D-1, which is final report prepared by concerned police after investigation. Along with documents filed in support of his case, the appellant has placed on record his statement and also statements of other witnesses namely Keshav Sharma, Prem Sai Rajwade, Jhunnuram recorded under Section 161 of CrPC.
18. Indisputably, above statements were recorded only on 10.8.2010 i.e. after about one month from the date of accident and registration of FIR. Furthermore, FIR (Ex.D-4) does not bear name of any witness to accident. Statement of Keshav Sharma recorded under Section 161 CrPC mentions that when non-applicant No.1 was travelling on his motorcycle along with Rameshwar Sharma, deceased driver Gangaram dashed motorcycle of non-applicant No.1 from behind. He also specifies name and village of deceased Gangaram which appears to be a little suspicious as to how he came to know about place of residence of deceased Gangaram. Prem Sai Rajwade stated in his statement recorded under Section 161 CrPC that motorcycle of non-applicant No.1 was dashed by deceased Gangaram on main road. However, in the Court evidence, this witness has stated that on hearing sound of accident, he reached the spot. Jhunnuram also stated in his statement recorded under Section 161 CrPC that Gangaram while driving his motorcycle in a

rash and negligent manner dashed motorcycle of non-applicant No.1.

19. To prove above documents relied upon by appellant herein i.e. Ex.D-1 to D-6 & D-8, neither investigating officer nor Keshav Sharma & Jhunuram has been examined by appellant as one of his witnesses before Claims Tribunal. Even in the statement recorded under Section 161 of CrPC none of the witnesses has stated specifically that accident was caused by deceased Gangaram by dashing motorcycle of appellant from behind. Thus, documents relied upon by appellant herein i.e. documents of criminal case (Ex.D-1 & D-2), appear to be doubtful and suspicious as it is mentioned in Ex.D-1 & Ex.D-2 (final report) that non-applicant No.1 was driving his motorcycle ahead of motorcycle of deceased Gangaram, who dashed motorcycle of appellant from backside, whereas in FIR (Ex.D-4) no such specific act was reported though FIR was lodged by non-applicant No.1/appellant herein. No material has been placed on record by non-applicant No.1 as to how investigating officer reached to said conclusion.
20. In view of above discussions, main ground raised by learned counsel for appellant does not stand because neither Ex.D-11 wherein it has been mentioned that brakes were not working, nor the fact that accident was caused by deceased Gangaram by dashing motorcycle of non-applicant No.1 from behind has been proved. FIR, which was recorded within one hour of accident, only mentions that accident took place between two motorcycles.
21. Considering the entire material and evidence available on record, particularly the fact that non-applicant No.1 failed to prove Ex.D-11 i.e. vehicle inspection report, in accordance with law, I am not convinced with the finding recorded by Claims Tribunal that there was some mechanical fault in motorcycle as its brakes were not working. As the said finding is not based on legally admissible piece of evidence, therefore, the same is not sustainable.
22. Coming to last submission made by learned counsel for appellant

that he has filed copy of award passed by the Motor Accident Claims Tribunal at Surajpur in Claim Case No.128/13 in which deceased Gangram was held to be rash and negligent. Cause-title of award (Ex.A-4) would show that said claim application was filed on 3.12.2013 whereas claimants/respondents No.1 to 4 herein have filed claim application on 13.11.2011 i.e. two years prior to filing of claim application by non-applicant No.1. Impugned award was passed by Claims Tribunal, Baikunthpur on 4.8.2014 i.e. much prior to passing of award by Claims Tribunal, Surajpur on 31.8.2015. Claims Tribunal, Surajpur has not taken into consideration finding recorded by Claims Tribunal, Baikunthpur in earlier claim case in which non-applicant No.1 was also a party and therefore argument raised by learned counsel for appellant that Claims Tribunal, Surajpur while deciding claim application filed by him has held deceased Gangaram to be negligent is not sustainable.

23. Fact of filing of claim application was also specifically brought to the notice of Claims Tribunal Surajpur by claimant Kamla in her statement but the same has not been taken into consideration and no specific finding in that regard was given. Therefore, non-applicant No.1/appellant cannot get any help from the award passed by Claims Tribunal, Surajpur in Claim Case No.128/13.
24. In view of above discussions, I do not find any illegality or infirmity in the award passed by Claims Tribunal. The appeal being sans merit is liable to be dismissed and is hereby dismissed.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-