

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1180 of 2018

- Branch Manager, National Insurance Company Limited Division No. X Hero Motokaparvatical 101-106 BMC House Cannout Place New Delhi - 110001. (Non Applicant No. 2),

---- Appellant

Versus

1. Smt. Sundarmukhi Wd/o Late Kanhaiyalal Aged About 40 Years Caste Basor,
2. Gopal S/o Late Shital, Aged About 70 Years Caste Basor,
3. Devchand S/o Late Kanhaiyalal, Aged About 22 Years Caste Basor,
4. Surendra S/o Late Kanhaiyalal Aged About 11 Years, caste Basor
5. Ku. Nandini D/o Late Kanhaiyalal, Aged About 7 Years, caste Basor
6. Ku. Chandni D/o Late Kanhaiyalal Aged About 4 Years, Caste Basor

No. 4 to 6 are minor through natural guardian mother R/o Village Salka, Police Station and Tahsil Baikunthpur, Dist. Korea (CG) - **claimants**

7. Smt. Itwari Bai Wd/o Late Rambhola, Aged About 52 Years R/o Village Kapor Singh Dafai, Ward No. 23, Chhoti Bazar Chirmiri, Police Station Chirmiri, Tahsil Khadgawa, District Korea Chhattisgarh. (Non Applicant No. 1),

---- Respondents

For Appellant	:	Shri Qamrul Aziz, Advocate.
For Respondent No.1 to 6	:	Shri DA Biswas, Advocate.
For Respondent No.7	:	Smt. Ranjana Jaiswal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

16/04/2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 12.4.2018 passed by Additional Motor Accident Claims Tribunal (FTC), Koriya (Baikunthpur) in Claim Case No.02/2016 awarding total compensation of Rs.8.65 lacs with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

02. As per claim petition, on 1.4.2016 at 5.30 pm Kanhaiyalal along

with his wife Smt. Sundermukhi (claimant No.1) was going to Village-Cher. However, when they reached near Jhumka Nala, husband of non-applicant No.1 namely Ram Bhola by riding motorcycle Hero Honda Splendor Pro-Gold bearing No. CG 16 CF 5206 in a rash and negligent manner, dashed Kanhaiyalal and his wife, as a result of which Kanhaiyalal suffered grievous injuries and during treatment died in hospital. Deceased Kanhaiyalal was 40 years of age and earning Rs.10,000/- per month as a mason. At the time of accident, the offending vehicle was owned by husband of non-applicant No.1 Ram Bhola and insured with non-applicant No.2.

03. On claim petition being filed by the claimants, wife, children and father 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 above.

04. Learned counsel for the appellant/insurance company submits that in this case no driving licence of Ram Bhola, registered owner & rider of the offending vehicle, was produced before the Tribunal. After investigation, the investigator of insurance company namely Laxminarayan submitted report Ex.D/10, according to which also rider of the offending vehicle Ram Bhola was not having a valid and effective driving licence. As per evidence of Apurvachand Diwan (NAW-1), administrative officer of the insurance company, the deceased Ram Bhola was not having a valid and effective driving licence. Therefore, the Tribunal has wrongly fastened liability on the insurance company.

05. On the other hand, learned counsel for the respondents/claimants and counsel for respondent No.7/non-applicant No.1 support the impugned award and submit that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation and fastened liability on the insurance company which needs no interference by this Court.

06. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

07. Heard learned counsel for the parties and perused the material

available on record.

08. It is not disputed by the parties that the deceased Kanhaiyalal died due to injuries suffered by him in the accident caused by rash and negligent driving of offending vehicle i.e. Hero Honda Splendor Pro-Gold bearing No. CG 16 CF 5206 by Ram Bhola, who was also registered owner of the said vehicle and subsequently died. This finding is not challenged by any party. Due to death of Ram Bhola, his driving licence could not be produced before the Tribunal. Laxminarayan is the investigator of the insurance company, he submitted investigation report of Ex.D/10 but neither any document is there to show as to on what basis the said report was prepared nor Laxminarayan was examined before the Tribunal. Further no person from the concerned Regional Transport Authority has been examined before the Tribunal. The Tribunal considering the facts and circumstances of the case, the fact that rider of the offending vehicle Ram Bhola has died and no evidence on the issue of driving licence of Ram Bhola was adduced by the insurance company, fastened liability on the insurance company of satisfying the award. In the given facts and circumstances of the case, the said finding recorded by the Tribunal cannot be faulted with.

09. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/

(Gautam Chourdiya)

Judge