

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (Civil) No. 1319 of 2018**

- Vikram Singh, aged about 22 years, S/o Vishram Singh, Residence of Chandani Chowk Kududand, Thana Civil Line Tahsil and District Bilaspur (Chhattisgarh)

---- Appellant/Claimant**Versus**

1. Ishwar Soni @ Ishwar Prasad Soni, aged about 35 years, S/o Bhatu Sonar R/o Village Chandawara, District Koriya, Thana Chandawara (Jharkhand), Present Address T.P. Nagar Hathkhoj H.I.G. 2194 M.P. Housing Board Bhilai, District Durg (C.G.) (Driver of the offending vehicle Trailer No. C.G.07/A.V./9977)

(Driver)/Non-applicant No.1

2. Through Owner/Director, Jagjeet Saini, aged about 50 years, R/o T.P. Nagar Hathkhoj H.I.G. 2194 M.P. Housing Board Bhilai, District Durg (C.G.) (Registered Owner of the offending vehicle Trailer No. C.G.07/A.V./9977)

(Owner)/Non-applicant No.2

3. National Insurance Company Limited Through Branch Manager Branch Office, Taha Complex Byapar Vihar Road Bilaspur, Tahsil and District-Bilaspur (C.G.) (Insurer of the offending vehicle Trailer No. C.G.07/A.V./9977)

(Insurer)/Non-applicant No.3**---- Respondents****And****Miscellaneous Appeal (Civil) No. 1339 of 2018**

1. Smt. Chandrakanta Verma, aged about 24 years W/o Late Lekhan Verma (Rajput)
2. Ku. Priya Verma, aged about 07 years, D/o Late Lekhan Verma (Rajput)
3. Gitanjali Verma, aged about 04 years, D/o Late Lekhan Verma (Rajput)
4. Priyanshu Verma, aged about 02 years S/o Late Lekhan Verma (Rajput)
5. Udarika Verma, aged about 41 years, W/o Late Ramnihora Verma (Rajput)
6. Ramnihora Verma, aged about 46 years S/o Late Udal Verma (Rajput)
(Appellant No. 2 to 4 are minor through legal guardian Mother Smt. Chandrakanta Verma) All R/o Near Brihaspati Bazaar, Thana Civil Line, Tahsil & District Bilaspur (Chhattisgarh)

---- Appellants/Claimants**Versus**

1. Ishwar Soni @ Ishwar Prasad Soni, aged about 35 years, S/o Bhatu Sonar R/o Village Chandawara, District Koriya, Thana Chandawara (Jharkhand), Present Address T.P. Nagar Hathkhoj H.I.G. 2194 M.P. Housing Board Bhilai, District Durg (C.G.) (Driver of the offending vehicle Trailer No. C.G.07/A.V./9977)

Driver)/Non-applicant No.1

2. Through Owner/Director, Jagjeet Saini, aged about 50 years, R/o T.P. Nagar Hathkhoj H.I.G. 2194 M.P. Housing Board Bhilai, District Durg (C.G.) (Registered Owner of the offending vehicle Trailer No. C.G.07/A.V./9977

(Owner)/Non-applicant No.2

3. National Insurance Company Limited Through Branch Manager Branch Office, Taha Complex Byapar Vihar Road Bilaspur, Tahsil and District-Bilaspur (C.G.) (Insurer of the offending vehicle Trailer No. C.G.07/A.V./9977)

(Insurer)/Non-applicant No.3

---- Respondents

For Appellants/Claimants	:	Shri A.L. Singroul, Advocate
For Respondent 1	:	None
For Respondent No.2/Owner	:	Shri Rajkumar Pali, Advocate
For Respondent No.3/ Insurance Company	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

13.03.2019

1. Both above appeals- M.A.(C) No. 1319 of 2018 and M.A.(C) No. 1339 of 2018 arise out of the same accident occurred on 18.08.2016 involving the same vehicle- Trailer bearing registration No. CG-07/AV/9977 (hereinafter referred to as 'offending vehicle'), they are being disposed of by this common judgment.

2. M.A.(C) No. 1319 of 2018 is directed against the dismissal of Appellant's/Claimant's claim petition vide award dated 10.07.2018 by the Sixth Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in MACT No. 64 of 2017. The Claimant/injured claimed compensation of Rs.7,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the injuries sustained in the motor accident.

3. M.A.(C) No. 1339 of 2018 is directed against the dismissal of the Appellants'/Claimants' claim petition vide award dated 10.07.2018 by the Sixth Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in MACT No. 622 of 2016. The Claimants/Appellants, unfortunate wife, minor children, father and

mother of deceased- Lekhan Verma, claimed compensation of Rs.33,17,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of deceased- Lekhan Verma in the motor accident.

4. Facts of the case, in brief, are that on 18.08.2016 deceased- Lekhan Verma along with Vikram Singh- injured and one Ashish Thakur was going by motorcycle bearing No. CG-10/EP/7351 from Bilaspur to Pendri. Motorcycle was being ridden by injured- Vikram Singh and deceased- Lekhan Verman & Ashish Thakur were the pillion riders of the said motorcycle. When they reached near Bus-stand Sargaon, Respondent No.1/non-applicant No.1- driver of the offending Trailer bearing registration No. CG-07/AV/9977, owned by Respondent No.2/non-applicant No.2 and insured with Respondent No.3/non-applicant No.3, driving the offending vehicle in a rash and negligent manner, dashed the motorcycle, as a result thereof, Lekhan came under the rear wheel of offending vehicle and he died. Injured- Vikram Singh fell down on the road due to which he sustained injuries on his head, leg, chest and other parts of the body.

5. Learned counsel for the Appellants submits that both claim petitions have been dismissed on the ground of discrepancies in the statement of injured- Vikram Singh who is eye-witness of the accident and F.I.R. (Ex.-A-1) lodged by Ashish Thakur in relation to the manner in which the accident occurred.

6. Learned counsel for the Owner and Insurance Company supported the awarded and both counsel submitted that the eye-witness of the accident Vikram Singh has failed to prove the negligent part of the offending vehicle and particulars given regarding the accident in the statement of Vikram Singh and F.I.R. are at variance.

7. In this case, it is not in dispute that the death and injury caused in both cases from offending vehicle and on spot Lekhan Verma died. As per F.I.R. (Ex.-A-1) it was lodged by Ashish Thakur, who is not examined before the Tribunal in both claim petitions. Looking to the statement of Claimant- Vikram Singh who is injured

in the said accident, he was riding the motorcycle at the time of accident, deceased- Lekhan Verma and Ashish Thakur were the pillion riders of the said motorcycle. But, Vikram Singh, in para-2 of his statement, states that the offending vehicle which was being driven by non-applicant No.1 in a rash and negligent manner dashed the motorcycle, as a result thereof, they fell down on the road and sustained grievous injuries. In F.I.R. lodged by Ashish Thakur, it was mentioned that the motorcycle was being ridden by Vikram Singh, he (Ashish Thakur) and Lekhan Verma were the pillion riders of the said motorcycle. When they reached Sargaon bus-stand, the offending vehicle- Trailer No. CG-07/AV/9977 was going towards Raipur and they wanted to go ahead from the offending vehicle by using upper-dipper light, however, they got hit by rear wheel of the offending vehicle due to rash and negligent driving by non-applicant No.1 and they fell down on the road. F.I.R. was lodged by Ashish Thakur and he is not examined before the Tribunal and there are many discrepancies in the statement of Vikram Singh and the F.I.R. lodged by Ashish Thakur, the Tribunal has given the finding that it is not clear as to how the accident happened, however, the Tribunal has only given the finding on issue No.1 and has not decided issues No. 2 to 6 and dismissed both the claim petitions.

8. In the matter of ***Vimla Devi & Ors. Vs. National Insurance Company Limited & Anr., Civil Appeal No. 11042 of 2018 arising out of S.L.P.(C) No. 17321 of 2016***, against the dismissal of the claim petition by the Tribunal on the ground that the claimants could not prove the accident including the involvement of offending vehicle and subsequent affirmation of the same by the High Court, the claimants approach the Hon'ble Supreme Court. The Hon'ble Supreme Court considering the fact that the claimants adduced sufficient evidence to prove the accident, rashly and negligently driving of the offending vehicle by its driver, which caused death of Rajendra Prasad, the fact that the driver and owner remained *ex parte*, they did not enter into witness box to rebut the allegations of the appellants/claimants, the claimants examined witnesses to buttress their contention

and also the fact that at the time of accident the offending vehicle was duly insured with the Insurance Company/Respondent No.1, allowed the claim petition and granted compensation to the tune of Rs.11,27,920/- with interest @ 6% per annum from the date of claim petition till realization.

9. In the matter of **Anima Saha and Another Vs. Bhagat Ram Mandhyan and Another, 2009 (III) D.M.P. 520 (Jhar.)**, where the claim petition was dismissed by the Tribunal on the ground that factum of accident and identity of the offending vehicle were not proved by the claimants, the High Court considering the facts that the Tribunal decide only one issue with regard to the identity of the vehicle and did not decide other issues as to liability of Insurance Company and the quantum of compensation whereas the claimants adduced sufficient evidence, in the charge-sheet submitted by the police the number of the vehicle clearly mentioned, criminal case was instituted against the driver of the offending vehicle, remanded the matter to the Tribunal for deciding all the issues and for passing fresh judgment.

10. F.I.R. (Ex.-A-1) was lodged against Ishwar Soni/non-applicant No.1 who was the driver of the offending vehicle and driving the said vehicle in a rash and negligent manner and as per seizure memo (Ex.-A-7), the offending vehicle was seized from possession of non-applicant No.1. Non-applicants No. 1 and 2/driver and owner remained *ex parte* before the Tribunal. No any contradictory evidence is given by the driver of the offending vehicle. Looking to the facts and circumstances of the cases, the fact that while deciding the claim petition strict rule of evidence is not to be insisted upon and it has to be decided on the basis of preponderance of probability, the evidence of eye-witness- Vikram Singh and other related documents produced before the Tribunal and also keeping in view of the judgments referred to above, this Court is of the opinion that the Tribunal was not justified in dismissing the claim petitions merely on the ground of there being some discrepancies of eye-witness- Vikram Singh and F.I.R. and the claim petition ought to have been decided keeping in view of the benevolent provisions of the Motor Vehicles Act by proper

appreciation of overall material available on record. Therefore, the matters need to be remanded to the Tribunal for deciding both claim petitions afresh on merits in accordance with law.

11. Accordingly, the appeals are allowed, the awards impugned are set aside and the matters are remitted back to the concerned Tribunal to decide the claim petitions afresh on its own merits, in the light of observations made hereinabove, after affording full opportunity of hearing to the parties.

12. Needless to mention the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.

13. Records of the Tribunal be sent back forthwith. Parties are directed to appear before the concerned Claims Tribunal on 05th April, 2019.

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge