

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 28 of 2015**

1. Kishan Kumbhkar And Ors. S/o Manrakhan Kumbhkar Aged About 45 Years,
2. Smt. Rameshwari W/o Kishan Kumbhkar Aged About 42 Years,
3. Ku. Geetanjali D/o Kishan Kumbhkar Aged About 16 Years (Minor),
4. Gulshan Kumbhkar S/o Kishan Kumbhkar Aged About 14 Years,

Appellant No. 3 & 4 are Minor, Thru- Natural Guardian Father Kishan Kumbhkar, S/o Manrakhan Kumbhkar,

All are R/o Village- Aamdi, P.S. Arjuni, Tah. And Distt. Dhamtari (C.G.)

---- Appellants/Claimants

Versus

1. Vijay Kumar Singh And Anr. S/o Partner Yogendra Singh, R/o Sihawa Road, Dhamtari, Tah. And Distt. Dhamtari (C.G.).
2. Branch Manager The Oriental Insu. Co. Ltd., M.B. Trade Center, 2nd Floor, Ghadi Chowk, Dhamtari, Tah. And Distt. Dhamtari (C.G.).

---- Respondents

For Appellants	:	Shri R.K. Pali, Advocate on behalf of Shri S.P. Sahu, Advocate.
For Respondent No. 2	:	Shri R.N. Pusty, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08/05/2019

- 1) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 13/12/2014 passed by Chief Motor Accident Claims Tribunal Dhamtari (C.G.) in Claim Case No. 83/2014. After considering the evidence of the parties learned Tribunal dismissed the claim petition filed by the claimants.

- 2) As per averments of claim petition, on 14/04/2014 at around 11:00 P.M. deceased Lucky Kumbhkar, 22 years of age, earning Rs. 7,000/- per month as Photographer, was riding motorcycle alongwith his friends with a moderate speed. However, when he was returning from village Sanoud near village Bohra at Kabir Hotel motorcycle dashed with one Truck bearing No. CG04 J 1656 which was parked in middle of the road without any parking light or any indicator or any marking. Due to negligence and dangerous manner in which the said Truck was parked by non-applicant No. 1/Bali Ram (Now dead), motorcycle of deceased dashed the said stationary Truck. As a result of this accident, deceased Lucky Kumbhkar sustained grievous injury and died during treatment. At the time of accident the offending vehicle was owned by non-applicant No. 2/respondent No.1 and insured with Non-applicant No. 3/respondent No. 2.
- 3) On claim petition being filed by the claimant' parents, borther and sister of deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties, dismissed the claim petition filed by the claimants.
- 4) Learned counsel for the appellants/claimants submits as under:
 - i. As per Ex. A-1, A-2 and A-3 and charge sheet filed against the non-applicant No.1/Bali Ram under section 283, 337, 338 and 304A of IPC. It is proved by the claimants that the vehicle driven by Bali Ram, offending Truck was parked in middle of the road without any indicator and in dangerous manner, therefore, the FIR filed as per Ex. A-1, and charge sheet filed against the non-applicant No. 1 as per Ex. A-7 the driver of the Truck namely Bali Ram, was negligent but learned Tribunal without considering the entire fact, dismissed the claim petition holding that the deceased was in fact liable for accident.
 - ii. Eye witness of the case Upendra Kumar also mentioned this in para-1 that the Truck was parked without any indicator in middle of the road and due that parking lights and indicator were not on, motorcycle dashed with stationary Truck. Looking to the

evidence of Upendra Kumar, who is the eye witness of the case and charge sheet was filed against the Non-applicant No. 1 as per Ex. A-7 and FIR and other documents produced by the claimant, the said fact is established on record.

- iii. Learned Tribunal without considering the contributory negligence on the part of driver of offending stationary Truck, dismissed the entire claim of claimant. Looking to the documentary and oral evidence adduced by the claimants, the finding recorded by Tribunal is against the evidence available on record. Therefore, the learned Tribunal wrongly dismissed the entire claim petition without properly appreciating the evidence available on record in view of the above circumstances he sought to set aside the award Remit Back to decide on fresh on merits of the case.
- 5) On the other hand, learned counsel for respondent/Insurance Company vehemently opposed the contention made by the learned counsel for the appellants and supported the impugned award. He further submits that the Tribunal rightly dismissed the claim petition looking to the entire liability due to negligence on part of deceased. Therefore, learned Tribunal considering all the relevant aspects of the matter has rightly dismissed the petition which needs no interference by this Court.
- 6) Heard learned counsel for the parties and perused the material available on record.
- 7) On perusal of the evidence available on record including the charge sheet Ex. A-7 and other documents such as FIR Ex. A-1, Ex. A-2 & Ex. A-3 documents relating to investigation in crime No. 77/2014 done by the Police, it is established that charge sheet having been filed against the driver of the Truck for rash and negligent Parking of vehicle in negligent and dangerous manner Truck bearing No. CG04 J 1656 Prima facie it may be a case of contributory negligence as the deceased motorcyclist had dashed the parked Truck which he could have seen from a distance had he been diligent in driving his motorcycle. In view of the above, the claims Tribunal have committed an illegality in

dismissing the claim by holding that it was the deceased who was solely responsible for the accident. Hence, the award passed by the learned Tribunal is set aside and the matter is remanded. Claims Tribunal to decide the matter afresh.

- 8) In the result, the appeal is allowed, the impugned order is set aside and the matter is remanded to the concerned Tribunal to decide the claim petition afresh on its own merits after affording full opportunity of hearing to the parties, as expeditiously as possible preferably within a period of six months from the date of first appearance of the parties in accordance with law. Parties are directed to appear before the concerned Tribunal on 25/06/2019.
- 9) 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.
- 10) Record of the Tribunal be sent back forthwith.

-Sd/-
(Gautam Chourdiya)
Judge