

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1427/2018**

1. Dukalha Gond S/o Late Dhirju Gond aged about 55 years.
2. Smt. Kumari Gond, W/o Dukalha Gond aged about 50 years.
3. Ku. Santoshi D/o Dukalha Gond aged about 16 years.
4. Kiran Singh Maravi D/o Dukalha Gond aged about 13 years.
Appellant No.3 to 4 are Minor through legal guardian father.

Appellant No.1 Father Dukalha Gond, all are R/o Village Ameri Akbari (Dagori) Thana and Tahsil Bilha District Bilaspur, Chhattisgarh.

---- Appellants**Versus**

1. Govind Prasad Dhruv S/o Bholai Ram Dhruv about 30 years, R/o Lukaukapa Thana and Tahsil Pathariay District Mungeli Chhattisgarh. (Driver of the offending Vehicle Tractor No. CG15/AC/4139) Note; (tractor is wrongly mentioned instead of trailier in view of judgment order dated 30.07.2018.
2. Vijay Kumar Soni S/o Late Indra Dev Soni about 45 years. R/o Shashtri Ward No. 27 Mayapur Ambikapur Thana and Tashil Ambikapur District Sarguja Chhattisgarh. (Registered Owner of the offending Vehicle Tractor No. CG15/AC/4139) Note; (tractor is wrongly mentioned instead of trailer in view of judgment order dated 30.07.2018.)
3. Branch Manager, Chola Mandalam M.S. General Insurance Company Limited, Branch Office, Byapar Vihar Road Behind of Renault Duster Show Room Thana Civil Line Tahsil and District Bilaspur (Chhattisgarh). (Insurer of the offending Vehicle Tractor No. CG15/AC/4139) Note; (tractor is wrongly mentioned instead of trailer in view of judgment order dated 30.07.2018.)

---- Respondents

For Appellants

Shri A.L. Singroul, Advocate.

For Respondent No.3

Shri D.L. Dewangan, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board**

10.01.2019

1. This is claimants' appeal against the award dated 30.07.2018 passed by 3rd Additional Motor Accidents Claims Tribunal, Bilaspur, C.G. (for short 'the Tribunal') in claim case No. 232/2017, whereby the claim petition has been dismissed.
2. As per averments in the claim petition on 10.01.2017 at around 10 pm, while deceased Punaram Gond aged about 22 years, earning Rs.15,000/- per month as Mason, was going on his motorcycle bearing no. CG10/EE/1866, non-applicant No.1 Govind Prasad Dhruv by driving Tractor/Trailer bearing no. CG15/AC/4139 in a rash and negligent manner came from wrong side and dashed the motorcycle of the deceased. As a result of which, he suffered grievous injuries on various parts of his body and died on the spot itself. On report being made, the offence under Section 304 A of IPC was registered against non-applicant no.1 and charge sheet was filed before the competent Court against him.
3. As against the compensation of Rs.35,00,000/- claimed by the appellants/claimants parents and two sister of the deceased, by filing application under Section 166 of the Motor Vehicle Act, 1988 (for short 'the act') for the death of deceased Punaram Gond in the motor accident on 10.01.2017, the Tribunal considering the pleadings of the respective parties and the evidence adduced by them, vide impugned award dated 30th July, 2018 dismissed the claim petition.
4. Learned counsel for the appellants submits that as per the evidence adduced by the claimant himself and the supporting

witnesses, it is evident that on the date of accident non-applicant No.1 was driving the offending vehicle rashly and negligently as a result of which the accident occurred in which the deceased suffered grievous injuries and died. Non-applicant No.1 was also charge sheeted by the police under crime no. 8/17 for the offence punishable under Sections 283 and 304A of IPC, wherein it has been mentioned that non-applicant No.1 had parked the offending vehicle without indicator or parking light and therefore the motorcycle of the deceased was dashed against the offending vehicle, he suffered injuries on various parts of the body. In these circumstances, the Tribunal ought to have considered at least contributory negligence on the part of the driver of the offending vehicle but the Tribunal has straight way dismiss the claim petition without proper appreciation of the evidence available on record.

5. On the other hand, learned counsel appearing for the respondent No. 3/Insurance Company Ltd. supports the award impugned.
6. I have heard learned counsel appearing for the parties and perused the record of the Tribunal as well as award impugned.
7. From perusal of the charge sheet filed against non-applicant No.1/Driver (Ex.P-1) it is seen that the Investigating Officer after due investigation found that the offending vehicle was parked on the wrong side by non-applicant No.1 without indicator or parking light, which led to the unfortunate accident. Thus, considering the facts and circumstances of the case, the undisputed fact that the deceased died in a motor vehicular accident occurred on 10.01.2017, on the date of accident non-applicant No.1 was

driver of the offending vehicle, which was owned by non-applicant No.1 and duly insured with non-applicant no.3 and the facts mentioned in the final report Ex.P-1, this Court is of the opinion that the Tribunal was not justified in dismissing the claim petition, on the ground that the claimants have failed to prove that the accident occurred due to negligence on the part of non-applicant no.1, therefore, the present matter requires to be remanded to the Tribunal for deciding the claim petition afresh on merits.

8. In the result, the appeal is allowed, the award impugned is set aside and the matter is remitted back 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 6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on 07.02.2019.
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.
11. With the aforesaid observations, the appeal stands disposed of.
12. No order as to costs.

Sd/-
Gautam Chourdiya
Judge