

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1749 of 2018**

- State of Chhattisgarh, Through The Collector Durg, District Durg, Chhattisgarh.

----Appellant**Versus**

1. Saurabh Shiware S/o Harish Shiware Aged About 19 Years R/o Government District Hospital Campus, House No. R/3, Durg, Police Station Durg, Tehsil And District Durg, Chhattisgarh.
2. Suresh Kumar Kundu S/o Arun Kumar Kundu Aged About 38 Years R/o Anjora Dairy Farm, Government Quarter H-5, Police Station Pulgaon, Tehsil And District Durg, Chhattisgarh.
3. Dr. Sanjeev Sahastra Buddhe S/o Late Anand Sahast Buddhe R/o H/3/24 Chouhan Town Junwani, Presently Residing At Incharge Officer, Veterinary College Assistant Surgeon, Incharge, Central Siman, Anjora, Durg, Police Station Pulgaon, Tehsil And District Durg, Chhattisgarh.

---- Respondents

For Appellant
For Respondent No.1

Shri Rajesh Singh, Dy. A.G.
Shri A.C. Sahu, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

07/03/2019

1. At the outset, learned counsel for the appellant wants to withdraw I.A. No.2, application for condonation of delay as same has wrongly been filed whereas this appeal has been filed well within limitation.
2. On due consideration, the appellant is permitted to withdraw the application I.A. No.2, application for condonation of delay, consequently, I.A. No.2 is dismissed as withdrawn.
3. This appeal is by the non-applicant no.3/State against the award dated 20.08.2018 passed by 1st Additional Judge to the Court of 1st Additional Motor Accident Claims Tribunal, Durg, District Durg, C.G.

in Claim Case No.182/16 awarding total compensation of Rs.1,34,000/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicants no. 1 to 3 jointly and severally.

4. As per claim petition, on 11.09.2015 deceased Saurabh Shiware, aged about 19 years, earning Rs.8,000/- per month as Part-Time Computer Operator in Medical Store, sustained grievous injuries in the motor vehicular accident caused due to rash and negligent driving of Bolero bearing no. CG02-3851 by non-applicant No.1. At the time of accident, offending vehicle was in the possession of non-applicant no.2, a Government Department under non-applicant no.3.
5. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.45,21,561, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
6. Learned counsel for the appellant submits that claimant himself was liable for the accident because at the time of accident claimant was riding the motorcycle in a rash and negligent manner without any care and precaution. Therefore, appellant is not liable to pay the compensation, Tribunal has wrongly fastened the liability upon non-applicant no.3/appellant herein and award passed by the Tribunal is on higher side and needs to be reduced suitably.
7. On the other hand, learned counsel for the respondent no.1 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.
8. No counter appeal has been filed by the respondents as submitted

by both the parties.

9. Heard learned counsel for the parties and perused the material available on record.
10. As per evidence adduced by the claimant himself he admits in para 9 that his vehicle was being ridden at the speed of 60 km per hour but he denied any negligence on his part. As per statement of non-applicant witness no.1 Suresh Kumar Kundu, he stated in his paras 1 & 2 of his evidence that his vehicle Bolero was in stationary condition, claimant/injured himself dashed the Bolero but no any counter FIR lodged against the claimant regarding rash and negligent riding of motorcycle. As per the document produced by the claimant, charge sheet Ex.P-1 was filed against the non-applicant no.1 under Sections 279, 337 and 338 of IPC.
11. As per prompt FIR Ex.P-2, it is mentioned that driver of the offending vehicle was driving the vehicle in a rash and negligent manner. No evidence was adduced by the non-applicants regarding rash and negligent riding of motorcycle. Thus, considering the oral and documentary evidence available on record, the manner in which the accident occurred, it is clear that there was no contributory negligence on the part of the claimant and the accident occurred solely on account of rash and negligent driving of the vehicle by non-applicant no.1. Further, the Tribunal considering the admitted fact that on the date of accident the vehicle in question was in the possession of non-applicant no.2 which is a Government Department under non-applicant no.3, has rightly fastened jointly and severally upon non-applicant nos. 1 to 3 of satisfying the impugned award. Therefore, the findings recorded by the Tribunal do not call for any interference by

this Court.

12. So far as quantum of compensation is concerned, the Tribunal considering the nature and extent of injuries suffered by the claimant, considering his notional income @ of Rs.4,500/- per month, his age as 20 years on the basis of Aadhar Card of the claimant, the medical bills, assessed the loss of earning for two months @ of Rs.9,000/- and granted medical expenses of Rs.1,13,915. This apart the Tribunal also awarded Rs.10,000/- towards loss of amenities, pain and suffering and special diet and Rs.1,400/- towards attendant. Considering the pleadings and the evidence adduced by the claimant, the amount of Rs.1,34,000/- awarded by the Tribunal cannot be said to be on higher side or excessive rather it appears to be just and proper warranting no interference by this Court.
13. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge