

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1146 of 2014

- Narsingh Bareth S/o Nankidau Aged About 45 Years R/o Churtela, P.S. And Tah. Dabhra, Distt. Janjgir-Champa C.G., Chhattisgarh

---- Appellant/NA

Versus

1. Smt. Parvati Devi, W/o Late Dilip Kumar Aged About 28 Years
2. Minor Amarjeet S/o Late Dilip Kumar Aged About 9 Years
3. Minor Laxmi D/o Late Dilip Kumar Aged About 6 Years
4. Minor Kiran D/o Late Dilip Kumar Aged About 2 Years

Respondents 2 to 4 are minors through natural guardian mother Smt. Parvati Devi, wd/o Dilip Kumar, All R/o Village- Balhadih Balda, P.O. Gadiya, P.S. Bangaon, Tah. And Vikas Khand- Kahra, District : Saharsa, Bihar

----Respondents

For Appellant	: None appears
For Respondents	: Shri Dharmesh Shrivastava, Advocate

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**

Per Parth Prateem Sahu, J.
30.09.2020

1. Owner-cum-Driver of offending vehicle (Motorcycle) has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 02.08.2014 passed by the Second Additional Motor Accidents Claims Tribunal, Sakti, District Janjgir-Champa (for short, 'Claims Tribunal') in Claim Case-24 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded Rs.4,30,000/- as compensation in a death case.
2. Facts relevant for disposal of this appeal are that on 03.05.2013 at about 9 am, when Dileep was travelling on Motorcycle and reached near

village Thoothi, appellant/NA while driving his Motorcycle rashly and negligently with high speed, came from the opposite direction and dashed Motorcycle driven by Dileep. In the said accident, Dileep suffered grievous injuries, he was taken to the hospital at Jaijaipur, from where, he was referred to District Hospital, Janjgir-Champa. During the course of treatment, Dileep succumbed to the injuries. The accident was reported to concerned Police Station, based upon which, Crime No.118 of 2013 was registered against the appellant/NA for offence punishable under Section 304 A of IPC.

3. Respondents/Claimants, who are widow and children of deceased-Dileep filed an application under Section 166 of Motor Vehicle Act, 1988 seeking compensation of Rs.70,40,000/- pleading therein that on the date of accident, deceased was aged about 32 years, earning Rs.15,000/- per month from the work of Mason and they were dependant upon income of the deceased.

4. Non-Applicant/Appellant submitted reply to claim application and denied all the pleadings made therein. He pleaded that the accident was on account of self negligence of Dileep. Owner and insurer of other Motorcycle involved in the accident were not made party respondents. There was no accident from his Motorcycle, no mention of number of vehicle and name of Non-Applicant in FIR.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record, held that Non-Applicant while driving his Motorcycle

bearing No.CG11 BC-4921, dashed the Motorcycle driven by Dileep, caused accident and awarded Rs.4,30,000/- as compensation.

6. This case was listed for hearing before this Court on 24.09.2020. On the said date, no one appeared for the appellant. We have adjourned the case for next week.

7. When today, the case is listed for hearing, again no one appeared for the appellant. In absence of any representation continuously on two dates, we find it appropriate to decide the case on the basis of grounds raised in appeal, pleadings and evidence available on record.

8. The appellant has filed this appeal on the following grounds:

- 1) Because, the award passed by the learned Claims Tribunal is bad in eyes of law.
- 2) Because, the learned Claims Tribunal has failed to appreciate the evidence of witnesses and record available on record.
- 3) Because, the learned Claims Tribunal has not consider the fact that the deceased Dilip has not having valid driving license at the time of accident.
- 4) Because, the learned Claims Tribunal has not framed issues about misjoinder of party.
- 5) Because, at the time of accident both the vehicles were in a running condition and both the parties are liable to negligence.
- 6) Because, at the time of lodging first information report, the name of driver of vehicle not mentioned, it shows case is forged.

9. So far as the ground of contributory negligence pleaded in memo of appeal, we have perused the reply submitted by the appellant before the

Claims Tribunal. Upon going through the reply, we do not find any plea of contributory negligence taken by the appellant but for the pleading with regard to the denial of involvement of the appellant in accident, in reply, it is pleaded that in the FIR, there is no mention of name of appellant as well as number of vehicle. The deceased was not possessing valid and effective driving license to drive the vehicle and he met with an accident of his own negligence. That he and his vehicle have been falsely implicated in the accident. In the evidence of appellant, he stated that he has been falsely implicated in the case and denied the suggestion that no action was taken against the Police officials for his false implication. But he admitted that he has not placed on record any document in this regard.

10. Appellant has examined Gourishankar Dhobi as NAW2 and one Hemlal as NAW3. NAW2 is having a Garage near the place of accident. In his Affidavit, it is stated that Dileep while driving his vehicle rashly and negligently, lost his balance and fell down. The pillion rider of Motorcycle has stated that Dileep was resident of Bihar and he came to Chhattisgarh for earning his livelihood. Other witnesses, NAW3 Hemlal was getting his cycle repaired in the Garage of Gourishankar. He also stated similar fact with respect to the accident of Dileep.

11. Claimants have examined wife of Dileep, Parvatibai as AW1, Krishanlal Dewangan as AW2 and Jaikumar Kewart as AW3, in support of their pleadings. AW2, who was examined as eyewitness, has stated that on the date of accident, in the morning, he was travelling on his Motorcycle behind the Motorcycle of deceased Dileep. Appellant/NA came there driving his Motorcycle rashly and negligently (Motorcycle NXG) and

dashed the Motorcycle of Dileep in which he suffered grievous injury on his head and chest. He was cross-examined by the counsel for the appellant at length. The statement given by this witness in chief with regard to the time of accident and the manner in which the accident took place remained unshaken. AW3 was travelling along with KP Dewangan and he was also examined as eyewitness. He stated that he was travelling with KP Dewangan as Driver. This witness has denied the suggestion that Dileep fell down from his Motorcycle on his own.

12. Looking to the pleadings and evidence placed on record by the respective parties and further, the registration of Criminal case against the Non-Applicant, appellant herein, his Motorcycle was seized and also that the appellant has not taken any step to challenge the action of Police regarding his false implication in the criminal case registered against him, we do not find any illegality or infirmity in the finding recorded by learned Claims Tribunal that Dileep died on account of injuries suffered by him in the motor accident due to rash and negligent driving of the Motorcycle by the Non-Applicant, appellant.

13. One of the grounds taken by the appellant in his memo of appeal is with regard to the deceased Dileep was not having valid and effective driving license on the date of accident. Merely not having the license on the date of accident with the deceased in a motor accident and driving the Motorcycle itself does not lead to a finding of his negligence. The issue with regard to not possessing of driving license by the injured/deceased on the date of accident was considered by Hon'ble Supreme Court in case of

Sudhir Kumar Rana Vs Sirinder Singh and others reported in (2008) 12 SCC 436.

“9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.”

14. Recently, Hon'ble Supreme Court in the matter of **Dinesh Kumar J @ Dinesh J Vs National Insurance Company Limited and others** reported in (2018) 1 SCC 750, has also referred the judgment of **Sudhir Kumar** (supra) with approval.

15. If the facts of case in hand are considered in light of above law laid down by Hon'ble Supreme Court, the deceased was travelling on his Motorcycle, two eyewitnesses were examined by the respondents /claimants to prove the manner in which accident took place, wherein they have very categorically stated that it is the appellant/NA who came to the place of accident driving his Motorcycle rashly and negligently and caused accident. Driving Motorcycle without license may be an offence under the Motor Vehicles Act, 1988.

16. For the foregoing reasons, this ground of appellant that the deceased was negligent as he was not having valid and effective driving licence on the date of accident is not sustainable.

17. The last ground which the appellant has taken with regard to his false implication in the criminal case is concerned, by going through the records and evidence in which the appellant himself admitted that he had not produced or placed on record any document showing action taken by him against the Police Officer for his false implication in the case. In absence of specific material and evidence, the pleading made by the appellant in memo of appeal that number of vehicle and name of owner, driver of the vehicle is not mentioned, but he has been implicated falsely is not sustainable. More so, when after completion of investigation final report is submitted against appellant and as per his evidence in Para-10, case is pending against him before the Court of Judicial Magistrate 1st Class, Jaijaipur.

18. In view of aforementioned facts and circumstances of the case and the law laid down by Hon'ble Supreme Court, we do not find any tenable ground in this appeal calling interference of this Court with the impugned award.

19. The appeal being devoid of any substance, it is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge