

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 475 of 2015**

Kamod S/o Shri Satrugan Sahu, aged about 30 years, R/o Village Marda, P.S. Kashdol, Tahsil Balodabazar, District Balodabazar-Bhatapara, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Janki Bai Wd/o Late Satrugan Lal Nishad, aged about 32 years,
2. Pushpandra Kumar S/o Late Satrugan Lal Nishad, aged about 09 years,
3. Ku. Tanuja D/o Late Satrugan Lal Nishad, aged about 06 years,
4. Bhawesh S/o Late Satrugan Lal Nishad, aged about 03 years,
5. Bhawendra S/o Late Satrugan Lal Nishad, aged about 03 years,

Respondent No.2 to 5 being minor represented through Mother Smt. Janki Bai/Respondent No.1,

6. Perdashi Ram S/o Late Pachkowd Nishad, aged 62 years,
7. Smt. Nandkuwar W/o Shri Perdashi Ram, aged 58 years,
All R/o village Navagaon, P.O. Tonatar (Arjuni), P.S. Bhatapara Rural, Tahsil Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh.

---- Respondents

For Appellant	: Shri Sourabh Sharma, Advocate
For Respondents	: Shri Ganesh Burman, Advocate on behalf of Shri T.K. Jha, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****27.10.2020**

1. Appellant/non-applicant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 24.02.2015 passed by the Third Additional Motor Accident

Claims Tribunal, Balodabazar, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.71 of 2013 whereby learned Claims Tribunal allowed the claim application filed under Section 166 read with Section 140 of the M.V. Act in part and awarded Rs.2,71,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal, are that, on 02.09.2013, at about 7.00 PM, Satrugan Lal Nishad was returning to his village Nawagaon from Balodabazar on his motorcycle bearing No.CG-04/DG/5023. On the way, when he reached near Kediya Rice Mill, Balodabazar, non-applicant while driving his motorcycle bearing No.CG-04/DS/2754 dashed the motorcycle of Satrugan Lal Nishad. In the aforementioned accident, Satrugan Lal Nishad suffered grievous injuries over his person and died. The accident was reported to concerned Police Station, based on which, Crime No.344 of 2013 was registered against the non-applicant.
3. Claimants have filed an application under Section 166 read with Section 140 of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.85,50,000/- pleading therein that on the date of accident, deceased Satrugan Lal Nishad was earning Rs.30,000/- per month from the business of Clothes/Garments.
4. Non-applicant submitted reply to claim application and

denied the facts pleaded therein. It was pleaded that accident was as a result of negligent driving of motorcycle by deceased Satrugan Lal Nishad himself, which is evident from spot-map. It was further pleaded that on the date of accident, non-applicant was driving his motorcycle on his own side and it is the deceased who came on wrong side and dashed the motorcycle of non-applicant. Deceased was not possessed of driving licence, hence, was not entitled for any amount of compensation. The claimants have not arrayed the Insurance Company of motorcycle driven by deceased as non-applicants, hence, claim itself is not maintainable. Non-applicant has also lodged report of accident against the deceased to the concerned Police Station, based upon which, Crime No.346 of 2013 was registered against the deceased, as the deceased died in the accident, closure report was filed by Investigating Agency before the Court of Judicial Magistrate.

5. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that in the accident, Late Satrugan Lal Nishad was also contributory negligent to the extent of 50%, upon assessing the income of deceased as Rs.3,000/- per month, awarded Rs.2,71,000/- as compensation.
6. Shri Sourabh Sharma, learned counsel for the appellant/non-applicant submits that accident was as a result of sole

negligence of deceased, hence application under Section 166 of the M.V. Act itself is not maintainable. He further submits that learned Claims Tribunal erred in arriving at a finding of contributory negligence of appellant/non-applicant to the extent of 50% without any evidence. It is contended that claimants have failed to prove negligence on the part of non-applicant by placing admissible piece of evidence or any material before learned Claims Tribunal. It is further contended that the claim under Section 166 of the M.V. Act is based on negligence of other party and in absence of prove of negligence on the part of non-applicant, application under Section 166 of the M.V. Act could not have been entertained, hence, impugned award is liable to be set aside. He places reliance on the judgments passed by Hon'ble Supreme Court in case of **Oriental Insurance Company Limited v. Meena Variyal and Others** reported in **2007 ACJ 1284** and **Surinder Kumar Arora and Another v. Dr. Manoj Bisla and Others** reported in **AIR 2012 SC 1918** to buttress his submission.

7. Per contra, Shri Ganesh Burman, learned counsel for the respondents/claimants submits that learned Claims Tribunal while considering the entire material available on record and evidence of respective parties, rightly arrived at a finding that appellant/non-applicant is also negligent in the accident, which does not call for any interference. He further submits

that accident between two motorcycles is on the road, which is not in dispute. First Information Report (Ex.A/2) against the appellant/non-applicant was lodged immediately after the accident i.e. within two hours on the same day by one Kashiram Nishad, whereas First Information Report (Ex.NA/2) lodged by father of non-applicant on the next day i.e. 03.09.2013 at about 5.00 PM.

8. I have heard learned counsel for the respective parties and perused the record carefully.
9. To appreciate the submission made by learned counsel for the appellant with regard to negligence, I have perused the pleadings made in claim application as well as reply. The accident was reported initially by one Kashiram Nishad at about 9.00 PM within two hours of accident. In the merger intimation, it is mentioned that there was head on collision between two motorcycles and on the basis of merger intimation, First Information Report was registered against the non-applicant. Non-applicant also lodged First Information Report of the accident through his father against the deceased on next day i.e. 03.09.2013 stating that one another motorcycle dashed the motorcycle of the appellant. Claimants have examined Janki Bai Nishad, wife of Late Satrugan Lal Nishad as AW-1 and Manoj Verma as AW-2 in support of their case. Non-applicant has examined one Dhanesh Sharma, Assistant Sub Inspector of Police Station

Bhatapara, District Balodabazar as NAW-1 and appellant-Kamod Kumar Sahu himself was examined as NAW-2. Dhamesh Sharma (NAW-1) in his evidence stated that spot-map shows that deceased met with an accident while going to other side, but in cross-examination, he admitted that he has not taken signature of any witness on the spot-map prepared by him. He admitted that he has prepared the spot-map on the basis of information given by Constable Triloki Baghel and non-applicant has not given any information and description about the spot of accident. Appellant-Kamod Kumar Sahu (NAW-2) in his cross-examination has shown his unawareness about the condition of road. None of the parties to claim application have examined any eyewitness to the accident, but from the material placed on record, both the parties have stated that accident took place on the road. Spot-map has not been prepared on the instruction of any person, who was present on the spot at the time of accident nor on the basis of details and instructions given by the appellant, hence, spot-map cannot be accepted as an evidence to arrive at a finding with regard to place of accident.

10. The accident between two motorcycles coming from opposite directions is proved from the pleadings and evidence placed on record by both the sides. In case of head on collision, it is to be seen that whether drivers of

either of the vehicle by taking precautions could have avoided accident or not. In the case at hand, both the vehicles which met with an accident as head on collision are two-wheelers (motorcycles), the road on which accident took place is connecting two towns of the State of Chhattisgarh i.e. Balodabazar and Bhatapara. In these facts and circumstances of the case, both the motorcyclists would have an opportunity to avoid the accident by getting their motorcycles driven towards the left side, but as is apparent unfortunately this is not the position and both the motorcycles met with head on collision.

11. Learned Claims Tribunal taking note of the road on which accident took place, nature of evidence brought on record and the vehicle involved in the accident i.e. two motorcycles, arrived at a finding that both the drivers of motorcycles were contributory negligent to the extent of 50%, which in the facts and circumstances of the case as well as materials available on record, cannot be said to be erroneous.
12. The issue with regard to head on collision of two motor vehicles has been dealt with by the Hon'ble Supreme Court in case of **Bijoy Kumar Dugar v. Bidya Dhar Dutta and Others** reported in **(2006) 3 SCC 242** and held thus :

“12.It was head- on collision in which both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot. MACT, in our

view, has rightly observed that had the knocking been on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident.....”

13. The case law i.e. **Meena Variyal** (supra) relied upon by learned counsel for the appellant is on different facts.
14. So far as the submission made by learned counsel for the appellant that claimants have not proved negligence on the part of appellant/non-applicant is concerned, it is not in dispute that none of the parties have examined any eyewitness to the accident. The claim application is to be decided on touchstone of preponderance of probabilities and it does not require strict proof like beyond reasonable doubt.
15. Upon going through the entire material available on record and taking into consideration that two motorcycles were involved in the accident, there was head on collision on a road connecting two towns, I do not find any error in the finding recorded by learned Claims Tribunal that the appellant/non-applicant to be contributory negligent in the accident to the extent of 50%.
16. For the foregoing reasons, I do not find any infirmity or perversity in the award passed by learned Claims Tribunal.

The appeal is liable to be and is hereby dismissed being devoid of any merit.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh