

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 665 of 2014**

1. Komal Singh. S/o Late Bannu Ram Kashyap, Aged About 72 Years R/o Farsiyan, Tah. and P.S. Nagri, Distt. Dhamtari, Chhattisgarh
2. Kamta Prasad, S/o Bisen, Aged About 71 Years, R/o Sambalpur, Post-Amali, Tah. And P.S. Nagri, District : Dhamtari, Chhattisgarh

**---- Appellants**

**Versus**

1. Smt. Dashmat Bai, W/o Late Jeevan Lal Dhruw Aged About 50 Years
2. Pikeswar Dhruw S/o Late Jeevan Lal Dhruw Aged About 32 Years  
Both are R/o Malhari, Tah. And P.S. Nagri, District : Dhamtari, Chhattisgarh
3. Lokesh Kumar @ Santosh Pujari S/o Neelkanth Pujari Aged About 22 Years R/o Sambalpur, Tah. And P.S. Nagri, District : Dhamtari, Chhattisgarh
4. The New India Insu. Co.Ltd. S/o Thru- The Branch Manager, Branch Office- First Floor, Madina Building, Kachahari Chowk, Raipur, Tah. And District : Raipur, Chhattisgarh

**---- Respondents**

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For Appellants : Shri DN Prajapati, Advocate  
For Respondent/Insurance Company : Shri Anil Gulati, Advocate  
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**Hon'ble Shri Justice Parth Prateem Sahu**

**Order on Board**

**29.01.2020**

1. Challenge in this appeal is to the award dated 07.05.2014 passed by the Chief Motor Accident Claims Tribunal, Dhamtari (for short, 'Claims Tribunal'), in Claim Case-83 of 2011, wherein learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.2,84,000/- as compensation along with interest @ 6% per annum from the date of filing of claim application till its realisation.
2. Appellants, who are owners of offending vehicle (tractor and trolley respectively) have filed this appeal on the ground that appellant-1 Driver has not been found negligent causing accident and was acquitted from

Criminal charges levelled against him, Insurance Company was erroneously exonerated and the compensation is on higher side.

3. Facts of the case, in a nutshell, are that on 31.10.2010, at about 8 pm, Jeevan Lal Dhruv (since deceased) was going on his bicycle and while returning to his village Malhar, he stopped near a grocery shop of one Banshilal Yadav at Anjanipara; at that relevant time, Tractor bearing No.CG05- G 0194 attached with Trolley bearing No.CG 05- ZD 2973 (for short, 'offending vehicle') driven by non-applicant 1/respondent-3 Lokesh Kumar @ Santosh Pujari dashed Jeevan Lal Dhruv, due to which he suffered grievous injuries on his person and succumbed to those injuries on the spot. The accident was reported to concerned Police Station, based upon which crime was registered against the driver of offending vehicle. Claimants, who are widow and son of deceased-Jeevan Lal Dhruv filed claim application before competent Claims Tribunal, claiming Rs.21,00,000/- as compensation on the grounds mentioned therein.

4. Non-applicant 1, driver of offending vehicle replied to claim application and denied all the adverse pleadings made against him and pleaded that no accident took place with the vehicle driven by him; amount of compensation is exaggerated; offending vehicle is insured with non-applicant 3, as such, liability if at all any, it is on the Insurance Company.

5. Non-applicants 2 and 3, who are owners of Tractor and Trolley respectively, submitted separate reply to claim application and have denied all the adverse pleadings made against them and further pleaded

that offending vehicle was insured with Insurance Company and therefore, claim against them is to be dismissed.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, arrived at a conclusion that accident took place due to rash and negligent driving of the offending vehicle by non-applicant No. 1, due to which deceased died. The learned Claims Tribunal while exonerating the Insurance Company held that non-applicants No. 1 to 3 are liable for payment of amount of compensation; awarded a total sum of Rs. 2,84,000/-.

7. Learned counsel for the appellants submits that learned Claims Tribunal committed an error in not considering pleadings of non-applicant 1, driver of offending vehicle, where he pleaded that no accident took place from the offending vehicle. He further submits that in Criminal Case registered against non-applicant 1, he has been acquitted, which shows that there is no involvement of the offending vehicle or there is no negligence on the part of driver of offending vehicle, but it was not considered by learned Claims Tribunal properly while passing of impugned award. Learned counsel further submits that learned Claims Tribunal committed error in assessing age of deceased as 55 years, ignoring the evidence of AW-2, namely, Nutan Kumar, who in his evidence stated age of the deceased as 60 years. Therefore, in these circumstances, appropriate multiplier applicable is of 8 and not 11, as applied by learned Claims Tribunal while calculating the compensation.

8. Per contra, learned counsel appearing for Insurance Company submits that learned Claims Tribunal taking into consideration overall facts and circumstances of the case, as well as pleadings and evidence placed on record by respective parties, rightly came to a conclusion that there is violation of conditions of Insurance Policy, as on the date of accident, non-applicant 1, driver of offending vehicle was not possessing driving license to drive offending vehicle. He also submits that amount awarded by learned Claims Tribunal is just and proper which does not call for any interference.

9. I have heard learned counsel for the parties and also perused the record.

10. So far as 1<sup>st</sup> submission of learned counsel for the appellant that driver of offending vehicle was acquitted from Criminal Case registered against him pursuant to the accident is concerned, judgment passed by the Judicial Magistrate First Class in Criminal Case- 367 of 2010 is referred to, which is placed on record as Ex.A2. Learned Judicial Magistrate acquitted non-applicant 1, driver of offending vehicle only on the ground that prosecution failed to prove that it was the accused therein who was driving the offending vehicle on the date of accident and not the ground of non-involvement of offending vehicle in the accident. In view of aforementioned facts, learned counsel's submission that there is a finding recorded by learned Judicial Magistrate that offending vehicle itself is not involved in the accident is not sustainable and it is hereby repelled.

11. So far as the 2<sup>nd</sup> submission made by learned counsel for the appellants that learned Claims Tribunal committed error in assessing age of deceased as 55 years is concerned, perusal of claim application would show that claimants pleaded age of deceased as 54 years. Post-mortem report which is placed on record as Ex.A8 reveals age of deceased as 55 years. Apart from the above, other evidence which is placed before the Claims Tribunal is statement of one Nutan Kumar, who was examined as AW2 and he stated age of deceased as 60 years. AW2 is neither close relative of deceased nor a family member, but he is 3<sup>rd</sup> person and resident of same village-Malhari. He made only oral statement with respect to age of the deceased and not produced any document in support of his statement. Evidence of AW2 so as to prove age of deceased cannot be said to be an admissible piece of evidence and therefore, in the facts and circumstances of case, when no specific and admissible piece of evidence is placed on record by any of the parties, learned Claims Tribunal took age of deceased as 55 years, as per post-mortem report which cannot be said to be erroneous in any manner. In view of above discussion, 2<sup>nd</sup> submission is also not sustainable and it is repelled.

12. So far as the other ground raised by the learned counsel for the appellant with regard to the quantum of compensation is concerned, in the opinion of this Court is not sustainable as the deduction of 1/3<sup>rd</sup> is in accordance with law laid down by the Hon'ble Supreme Court and the notional income taken considering the date of accident also cannot be said to be on higher side. This submission is also repelled.

13. In view of above, the grounds raised by learned counsel for the appellant are not sustainable. I do not find any merit in the appeal., it is liable to be and is hereby dismissed.

Sd/-  
(Parth Prateem Sahu)  
JUDGE

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