

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 544 of 2014

- Pawan Kumar Rathore, S/o Devnarayan Rathore, Aged About 31 Years
R/o Dongiya, P.S. And Tah. Sakti, Distt. Janjgir-Champa Chhattisgarh

---- Appellant

Versus

1. Smt. Durga Bai, W/o Late Ram Prasad Patel Aged About 38 Years
2. Dhananjay S/o Late Ram Prasad Patel Aged About 21 Years
3. Ku. Bhawna D/o Late Ram Prasad Patel Aged About 18 Years
4. Gourav Patel S/o Late Ram Prasad Patel Aged About 16 Years Minor,
Thru- Mother Smt. Durga Bai

All R/o Pasid, P.S. And Tah. Sakti, District : Janjgir-Champa, Chhattisgarh

---- Respondents

For Appellant : Shri GVK Rao, Advocate
For Respondents : Shri Basant Dewangan, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

31.01.2020

1. Challenge in this appeal is to the award dated 03.02.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Janjgir-Champa (for short, 'Claims Tribunal'), in Claim Case- 25 of 2013, wherein learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.9,87,752/- as compensation along with interest @ 6% per annum from the date of filing of claim application till its realisation, in a death case.

2. Facts of the case, in a nutshell, are that on 09.05.2013 at about 8.40 pm Ram Prasad Patel (since deceased) was going on Motorcycle bearing No. CG 11-BC 2479 and returning to his village Pasid from Sakti. When he reached near cremation ground of Sakti, at that relevant time,

appellant who was coming on his Motorcycle bearing No.CG 12- N 0811 (for short, 'offending vehicle') from Baradwar dashed Motorcycle of Ram Prasad Patel. In the aforementioned accident Ram Prasad Patel received grievous injuries on his person. He was taken to the District Hospital, Sakti for treatment and during the course of treatment, Ram Prasad Patel succumbed to the injuries. Accident was reported to the Police Station Sakti and crime was registered against driver of offending vehicle, appellant/non-applicant.

3. Claimants, who are widow and children of deceased- Ram Prasad Patel filed claim application before competent Claims Tribunal, claiming Rs.29,13,040/- as compensation on the grounds mentioned therein.

4. Appellant/Non-applicant filed reply to claim application and denied all the adverse pleadings made against him and pleaded that accident took place due to negligence on the part of deceased himself; false report has been lodged against him; there was no driving license with deceased to drive Motorcycle. On account of aforementioned pleadings, he prayed for dismissal of claim application.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, arrived at a finding that the accident took place due to rash and negligent driving of offending vehicle by appellant and there was no negligence on the part of deceased. It awarded a total sum of Rs.9,87,752/- as compensation along with interest @ 6% per annum from the date of filing of Claim Application till its realisation.

6. Shri GVK Rao, learned counsel for the appellant raised only one ground that learned Claims Tribunal committed error in not considering that deceased himself was contributory negligent in the accident and held the appellant to be composite negligent in the accident. He also submitted that as per the evidence of Om Prakash, AW2, it is clear that deceased was behind the tractor and therefore, there was no occasion for head on collision, or, that the deceased was trying to overtake the tractor and met with accident, which shows that there is negligence on the part of deceased also.

7. Per contra, Shri Basant Dewangan, learned counsel for respondents/Claimants submits that Om Prakash, AW2, in his evidence before learned Claims Tribunal stated that deceased was coming on his Motorcycle behind the tractor. He also submits that the suggestion given to the said witness, that deceased was trying to overtake the tractor has been denied by him. He further submits that there is no evidence and material placed on record by the appellant to prove the fact of negligence on the part of the deceased. Learned counsel submits that learned Claims Tribunal on appreciation of the evidence placed on record by the parties, rightly arrived at a finding that there is composite negligence, which does not call for any interference.

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

9. Perusal of FIR Ex.P2 would show that accident took place at 8.40 pm on 09.05.2013 and FIR has been lodged on the same day against the appellant. Copy of FIR has been filed as Ex.P2 wherein it is clearly stated

that Motorcycle of the deceased was dashed by appellant's Motorcycle. Criminal Case was registered against the appellant but he has not made any complaint to higher authorities or has filed any application before the competent Court that he has been falsely implicated in the case.

10. Om Prakash, AW2 was examined as eyewitness to the accident and he in his evidence before the Tribunal stated that on the date of accident he was returning on a tractor from Sakti to Pasid. At that relevant time, deceased was coming on his Motorcycle behind the tractor. Near cremation ground Sakti, appellant dashed the Motorcycle of deceased from front side and in the said accident, deceased suffered grievous head injury. In his cross-examination, he was suggested that the accident took place when deceased was trying to overtake the tractor, but this was denied by him. Except this, no other question has been put to the said witness.

11. The appellant examined himself as NAW and in his cross-examination he admitted that he has not made any complaint to the Higher Police Officers with regard to his false implication in Criminal Case registered against him due to the accident. No spot map (Nazri Naksha) is placed on record, there is no evidence brought on record showing width of the road, or to show the place of accident.

12. From the aforementioned facts and material evidence available on record, particularly looking to the evidence of Om Prakash, AW2, eyewitness to the accident, who in clear terms stated that the appellant dashed Motorcycle of deceased from front side when he was coming on

his motorcycle behind the tractor. Learned Claims Tribunal has taken note of this evidence and held that appellant/non-applicant is solely negligent for causing accident. This finding recorded by learned Claims Tribunal is on the basis of evidence and material available on record and I do not find any error on the part of the Tribunal in recording such finding.

13. In view of above, the submission made by learned counsel for the appellant that deceased was also contributory negligent for causing accident is not sustainable.

14. For the aforementioned reasons, I do not find any tenable ground to interfere with the impugned award.

15. The appeal being devoid of merit, it is liable to be and it is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
JUDGE