

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.646 of 2014

1. Santosh Kumar Dewangan S/o Late Fekuram Aged About 23 Years R/o Kudeli, Schoolpara, P.S. Patna, Tah. Baikunthpur, Distt. Korea C.G.
2. Pransay S/o Holsay Aged About 43 Years R/o Village and Post-Dumariya, P.S. Patna, Tah. Baikunthpur, Distt. Korea C.G.

----Appellants

Versus

1. Smt. Fulchi Bai Wd/o Late Sahelal Aged About 50 Years.
2. Manoj Kumar S/o Late Sahelal Aged About 32 Years.
3. Parwati W/o Rameshwar Minj Aged About 30 Years D/o Late Sahelal.
All are R/o Golhasarai, Post- Sarbhoka, Tah. Baikunthpur, Distt. Korea C.G.
4. Branch Manager United India Insu. Co. Ltd., Branch Office, Bramha Road, Ambikapur, Distt. Surguja C.G.

--- Respondents

For Appellants	: Mr. Anil Gulati, Advocate.
For Respondents	: None.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Judgment on Board

Per Parth Prateem Sahu, J

22/09/2020

1. Driver & owner of vehicle bearing registration No.CG16/F/4424 have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 29.03.2014 passed by learned Additional Motor Accident Claims Tribunal, (FTC) Baikunthpur, Distt. Korea C.G in Claim Case No.129/13.
2. Facts relevant for disposal of this appeal are that on 20.03.2011, claimant No.1 -Smt. Fulchi Bai her husband -Sahela Bhagat & their son-in-law Rameshwar Minj was travelling on scooter and going towards Virendra Harijan's House. Rameshwar Minj was driving the scooter, Smt. Fulchi Bai and Sahela Bhagat was travelling as pillion rider. When they reached near office of Patwari at village- Kudeli, one vehicle bearing registration No.CG16/F/4424 (for short, 'offending vehicle'), driven by non-applicant

No.1/appellant No.1, dashed against the scooter from its back side, as a result of which, Sahela Bhagat suffered grievous injuries over his person. He was brought to Ramkrishna Care Hospital, Raipur where during the course of treatment he died on 19.04.2011.

3. Claimants, who are widow and children of deceased -Sahela Bhagat, filed an application under Section 166 of the Act of 1988 before the Tribunal seeking compensation of Rs. 42,33,000/- on the ground that on the date of accident, deceased was aged about 53 years and earning Rs.16,000/- per month.
4. Non-applicant No.1 & 2/appellants submitted their reply to application and denying the pleadings made therein. It was pleaded that offending vehicle was not involved in any manner in accident and application has been filed on false and fabricated grounds. It was further pleaded that deceased was an old man and he was not having any source of income. On the date of accident, driver of scooter Rameshwar Minj consumed liquor, due to which, he could not control his scooter and met with accident. It was further pleaded that there was no valid and effective driving license with driver of scooter, on the date of accident, offending vehicle was insured with respondent No.3/Insurance Company, hence liability, if any, to make payment of amount of compensation would be of Insurance Company.
5. Respondent No.3/Insurance Company resisted the claim application pleadings therein that no information has been given to insurance company with respect to accident and on the date of accident, offending vehicle was being plied in breach of condition of Insurance Policy. It was further pleaded that on the date of accident, driver of scooter was also

not having valid & effective driving license. As there was breach of condition of insurance policy, therefore, insurance company is not liable to indemnify insured.

6. On appreciation of pleadings and evidence placed on record by the respective parties, the Tribunal allowed claim application in part, awarded a sum of Rs.3,50,936/- as compensation in a death case, alongwith interest @ 8% p.a by holding that late Sahela Bhagat died in the accident occurred due to rash & negligent driving of offending vehicle by non-applicant No.1 and further that on the date of accident, driver of offending vehicle was not having valid and effective driving license. The Tribunal further held that there was no negligence on the part of the driver of scooter and driver of scooter and insurance company are not necessary party.
7. Learned counsel for the appellants submits that the Tribunal committed error in holding that on the date of accident, driver of offending vehicle was not having valid and effective driving license and erroneously exonerated the Insurance Company from its liability. He further submits that amount of compensation awarded by the Tribunal to the claimants is on higher side.
8. To appreciate the submission of learned counsel for the appellants, we have perused the record of claim case.
9. Short question arises before this Court is, whether on the date of accident, driver of offending vehicle was having valid and effective driving license or not ?

10. A glance of copy of driving license of Santosh Kumar Dewangan driver of offending vehicle available on record as Ex. D/1 would show that said license was issued on 17.05.2006 having its validity upto 16.05.2026. Holder of license was authorised to drive 'Light Motor Vehicle' only, there is no endorsement to drive 'motorcycle with Gear'. Insurance Company examined Shri V. K. Lakda as NAW-3-1, employee of Insurance company, who also accepted in his evidence that Santosh Kumar Dewangan was possessing driving license to drive 'Light Motor Vehicle'. Appellant No.1 has been examined as NAW-1(1).

11. After taking into consideration the evidence of NAW 3-1, NAW-1-1 as well as Ex.D-1 ie copy of license, Tribunal held that Ex.D-1 was issued by the Competent Authority authorizing non-applicant No.1-Santosh Kumar Dewangan to drive 'Light Motor Vehicle'.

12. On the date of accident, non-applicant no.1 was not possessing valid and effective driving license to drive two wheelers ie motorcycle with gear. The Hon'ble Supreme Court in the matter of **Oriental Insurance Company Limited v. Zaharul Nisha & Ors** reported in **(2008) 12 SCC 385** has considered the issued with regard to driving of motorcycle by the persons holding the license to drive 'heavy goods vehicle' and held that driver though possessed the license issued by the licensing authority but was not valid for driving motorcycle, it was held as under :-

“In the light of the above-settled proposition of law, the appellant -Insurance Company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective

licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle, which act of his is in violation of Section 10(2) of the MV Act”

13. In case at hand also non-applicant no.1/appellant No.1 was possessing the license to drive LMV but there was no authorisation by the licensing Authority permitting him to drive the motorcycle (two wheeler).

14. In view of above, submission made by the learned counsel for the appellants that on the date of accident, appellant No.1 was possessing valid and effective driving license is not sustainable and is hereby repelled.

15. So far as the second submission raised by the learned counsel for the appellants with regard to the quantum of compensation is concerned, accident was on 20.03.2011, the Tribunal assessed income at Rs.3000/- per month on notional basis, compensation towards future prospect not awarded. The compensation awarded in the opinion of this Court cannot be said to be on higher side, therefore, second submission is also repelled.

16. For the foregoing reasons, we do not find any merit in this appeal. Appeal being devoid of substance is liable to be and is hereby dismissed.

Sd/-

(P.R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-