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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 748 of 2013

(Arising out of Award dated 26.06.2013 passed by the Motor Accident Claims Tribunal, Rajnandgaon in Claim Case No.78/2012)

- Indradhwaj Rawate, son of Pramod Kumar, aged about 25 years, resident of Village Jiratola, Post Kondikasa, P.S. Ambagarh Chowki, Civil and Revenue District Rajnandgaon, Chhattisgarh

---- Appellant/Owner

Versus

1. Pushai Bai, wife of Late Krishna Ram, aged about 47 years
2. Narad Singh, son of Late Krishna Ram, aged about 29 years
3. Kumari Kiran, daughter of Late Krishna Ram, aged about 20 years
4. Bhavesh, son of Late Krishna Ram, aged about 18 years

   All resident of Village Parsatola, P.S. and Tehsil Ambagarh Chowki, Civil and Revenue District Rajnandgaon, Chhattisgarh.
5. Gangotri Bai, wife of Sant Kumar, aged about 23 years, resident of Village Kalchuwa, Post Gotatola, Civil and Revenue District Rajnandgaon, Chhattisgarh (**Claimants**)
6. Manager, The Oriental Insurance Company Limited, Ranjandgaon Office, Civil and Revenue District Rajnandgaon, Chhattisgarh (**Insurance Company**)

---- Respondents

For Appellant	:	Shri Shobhit Kosta, Advocate
For Respondents No.1 to 5/Claimants	:	Shri Samir Singh, Advocate
For Respondent No.6/Insurance Co.	:	Ms. Chitra Shrivastava, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

20.08.2020

1. Fixation of contributory negligence to an extent of 50% on the Appellant / Rider of the offending Motorcycle and the exoneration of the Insurance Company from satisfying the claim in respect of the deceased, rider of a Scooty which was knocked down by the Appellant, on the strength that the Appellant had consumed alcohol while riding

the Motorcycle and hence there was clear violation of statutory / policy conditions, is the subject matter for consideration in this appeal preferred by the Owner / Rider of the offending Motorcycle.

2. The case of the Appellant is that, on 07.03.2020 he was proceeding on his Motorcycle (Hero Honda) bearing No.CG08/A/9467 and when he reached the place of occurrence, the Scooty bearing No. CG08/N/4837, ridden by the deceased (who had also consumed alcohol as revealed from the postmortem certificate), collided against each other causing fatal injuries leading to the death of the deceased. This was sought to be compensated by filing a Claim Petition against the Appellant and also the Insurer of his Motorcycle by the widow and children of the deceased.

3. The claim was resisted by the Appellant on different grounds, attributing negligence solely on the part of the deceased rider of the Scooty. The 6th Respondent–Insurance Company (insurer of the Motorcycle of the Appellant) contended that the Appellant was riding the Motorcycle after consuming alcohol at the relevant time and hence there was clear violation of the statutory/policy conditions and under such circumstances, the Insurer was not liable to satisfy the claim. After hearing both the sides, the Tribunal arrived at a finding that the accident was because of the negligence on the part of both the deceased rider (who was riding the Scooty) and the Appellant (who was riding the Motorcycle) in an equal proportion. The total compensation payable was worked out as Rs. 4,56,000/-. By virtue of

the contributory negligence on the part of the deceased, only an amount of Rs.2,28,000/- (50%) alone was directed to be satisfied with interest @ 6% per annum from the date of filing of the claim petition till the date of satisfaction. The Insurance Company was exonerated for the violation of the statutory / policy conditions and the liability was mulcted upon the shoulders of the Appellant and hence the challenge in this appeal.

4. The learned counsel for the Appellant points out that the fixation of contributory negligence on the Appellant is not correct and further that the Tribunal ought not to have exonerated the Insurance Company, merely on the basis of the version of the Officer of the Insurance Company, who had deposed with reference to some records that the Motorcycle was being ridden after consuming alcohol. The learned counsel also submits that the no blood test was conducted, nor was there any material to infer the satisfaction of the ingredients under Section 185 of the Motor Vehicles Act 1988 (for short, 'the MV Act'). Merely on the suspicion that the Appellant had consumed liquor; it cannot be held that he was riding the Motorcycle 'under the influence of alcohol' and to have fixed the liability accordingly, exonerating the Insurance Company. The learned counsel placed reliance on the verdict passed by the Apex Court in ***Jiju Kuruvila and Others v Kunjujamma Mohan and others AIR 2013 SC 2293*** (paragraph 26).

5. Ms. Chitra Shrivastava, the learned counsel for the Respondent–Insurance Company seeks to sustain the Award; adding that the Respondent–Insurer has already deposited the awarded amount before the Tribunal.

6. We heard the learned counsel for the Claimants as well.

7. During the course of hearing, it has come to the notice of this Court that the very same Award under challenge in this appeal had already been subjected to challenge by the Claimants by filing **MAC 831/2013**, seeking for enhancement of the compensation and also challenging the fixation of contributory negligence on the part of the deceased; besides in exonerating the Insurer of the Motorcycle, owned and ridden by the Appellant herein. The said appeal, after final hearing, was disposed off by a learned Judge of this Court as per judgment dated 30.04.2019, whereby it was categorically held in 'paragraph 7' that the evidence on record fully justified the course pursued by the Tribunal in holding the deceased as contributory negligent in causing the accident; the extent of which was fixed as 50%. Then the learned Single Judge referred to the mandate of Section 185 of the MV Act and held that no blood test test or breath analysis was conducted as envisaged under Section 185 of the MV Act and no evidence was adduced to show that the Appellant / Rider of the Motorcycle was riding the vehicle 'under the influence of alcohol' at the relevant time. It was accordingly, that a finding was rendered to the effect that the Tribunal was not justified in exonerating

the Insurance Company merely on the basis of Ex.D/8 and fixed the liability on the Insurer.

8. With regard to the quantum of compensation, the learned Single Judge was of the view that there was some deficit and it was re-worked and fixed as Rs.5,84,000/-. Since the finding on 'contributory negligence' on the part of the deceased rider of the Scooty was upheld, only 50% of the said amount i.e., 2,92,000/- was awarded. After giving credit to the sum Rs. 2,28,000/- awarded by the Tribunal, the balance sum of Rs.64,000/- was directed to be satisfied with interest, mulcting the liability upon the Insurance Company, jointly and severely along with the Driver-cum-Owner of the Motorcycle (Appellant herein).

9. From the above, it is quite clear that the Award passed by the Tribunal has been interdicted and modified to the above extent, whereby the liability has been ordered to be enshoulded by the Respondent-Insurer. This being the position, the present appeal, separately preferred by the Owner of the Motorcycle, is not maintainable; the matter having attained finality. Hence this appeal stands dismissed in terms of the judgment dated 30.04.2019 passed in MAC No.831/2019.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Chandra