

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.45 of 2015

Jaspal Singh S/o Sohan Singh (wrongly typed as "Sahen Singh"), Aged About 42 Years, R/o- village- Agoli, Sohan Singh Lal Bagicha, Dhamtari, P.S & Post- Bagicha, Civil & Revenue Distt- Dhamtari, (C.G).

----Appellant/Non-applicant No.2

Versus

1. Ghanshyam Nishad S/o Ramsai Nishad Aged About 34 Years.
2. Smt. Buglibai W/o Ghanshyam Nishad Aged About 32 Years.

Both are R/o. Village- Bhatapara (Tumgaon), P.S & Post- Tumgaon, Civil and Revenue -Distt. Mahasamund C.G.

At Present R/o- Raju Yadav, Bade Ashok Nagar, Gudhiyari, In Front of Bouddha Bihar, Raju Cycle Stores, Ward No.3, Raipur, P.S & Post- Raipur, Civil and Revenue - Distt. Raipur, (C.G).

---Claimants/Applicants.

3. Tikaram Dhruw S/o Sukhram Dhruw Aged About 30 Years R/o -Village- Bakbudwa, P.S & Post- Bhatapara, Civil and Revenue -Distt. Raipur C.G.

----Non-applicant No.1

4. Future General India Insu. Co. Ltd, Shop No.03, 2nd Floor, Maruti Business Park, Near Thuppad Petrol Pump, Raipur, Distt. Raipur, (C.G).

--- Respondents/Non-applicant No.3

For Appellant	: Mr. Manoj Paranjpe, Advocate with Shri Bharat Sharma, Advocate.
For Respondents	: None.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J
Order on Board

Per Parth Prateem Sahu, J
14/01/2021

1. Appellant -owner of Tractor-Trolley bearing registration No.CG05/A/2205 & 2206 (for short, 'offending vehicle') has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') challenging the impugned award dated 27.09.2014 passed by learned Chief Motor Accident Claims Tribunal, Raipur in Claim Case No.98/2011, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded Rs.4,95,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 23.11.2010, Shyam Sunder (deceased), aged about 8 years, was going to village- Bhatapara (Tumgaon) from village -Parsada (Pokhra Rajim) along-with his father on motorcycle. When they reached near Shwet Ganga School at village-Bamhni, offending vehicle driven by non-applicant No.1 rashly and negligently dashed the motorcycle and caused accident. In the aforementioned accident, Shyam Sunder died and his father Ghanshyam Nishad suffered grievous injuries over his left hand and left leg. Accident was reported to concerned Police Station based upon which crime was registered against non-applicant No.1.

3. Claimants, who are parents of deceased, filed application under Section 166 of the Act of 1988 seeking compensation of Rs.10,10,000/- on different heads.

4. Non-applicant Nos.1 & 2, driver and owner of offending vehicle, did not appear before the Tribunal, therefore, proceeded ex-parte.

5. Non-applicant No.3-Insurance Company, submitted reply to application, while denying pleadings made therein pleaded accident was the result of negligence on the part of driver of motorcycle. In alternate, it was pleaded that there was contributory negligence on the part of driver of motorcycle. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving license as such there was breach of policy condition.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Shyam Sunder died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1. Contributory negligence was not found to be proved. Breach of policy condition on the ground that non-applicant No.1 was not possessed with valid license was found to be proved. Tribunal allowed claim application in part,

awarded total compensation of Rs.4,95,000/- along with interest at the rate of 9% p.a and fastened liability upon non-applicants to satisfy the amount of compensation, jointly and severally. Tribunal granted liberty to Non-applicant No.3-Insurance Company to recover the amount of compensation so deposited by it from non-applicant No.1 & 2.

7. During the course of argument, learned counsel for the appellant submits that impugned award passed by Tribunal was put to challenge by respondent/Insurance Company also challenging the direction of pay and recover against it in MAC No.1143/2014. On 28.11.2018 said MAC was dismissed, cross-objection filed by claimants was allowed and amount of compensation was enhanced to Rs.1,85,000/-. He further submits that appellant was not served with notice of that appeal otherwise appellant could have represented and made his submission. In this appeal also the same award is under challenge, appeal was filed challenging the impugned award within time on 15.01.2015, but notices could not be issued to respondent. He further submits that perusal of MAC No.1143/2014 shows that challenge in that appeal by Insurance Company is limited with regard to direction of pay and recover only. In that appeal finding recorded by Tribunal that non-applicant No.1 was not possessed with valid and effective driving license was not under challenge. In this appeal, appellant has challenged only that finding of Tribunal whereby Tribunal held that there was breach of policy condition as on the date of accident, non-applicant No.1 was not possessed with valid and effective driving license. He further submits that he has filed an application under Order 41 Rule 22 of CPC alongwith copy of appeal on 05.01.2015 showing that on the date of accident, non-applicant No.1 was possessed with valid and effective driving license.

8. Records of MAC No.1143/14 is also attached with this record, we have perused the pleadings and grounds taken in that appeal also wherein challenge is only to the direction of pay and recover.

9. Impugned award passed by Tribunal was challenged by Insurance Company also in MAC No.1143/14, learned Judge while disposing of that appeal has upheld the direction issued by Tribunal of pay and recover on the ground of breach of policy condition. In the aforementioned facts of the case, till the order passed in MAC No.1143/14 is standing in the way of appellant/owner of offending vehicle where he also one of the parties as respondent No.4, no order can be passed in this appeal.

10. In the facts and circumstances of this case, where direction of pay and recover has already been upheld by the learned Single Judge of this Court, no order can be passed on merits in the present appeal and same is liable to be dismissed.

11. At this stage, learned counsel for the appellant submits that he may be permitted to file appropriate proceeding challenging the order dated 28.11.2018 passed in MAC No.1143/2014 and liberty may be granted to him to revive this appeal challenging the impugned award passed against him, if he succeeds in the proceedings filed by him challenging the order dated 28.11.2018 in MAC No.1143/2014.

12. Prayer made by learned counsel for the appellant appears to be reasonable.

13. In view of above, appeal is dismissed granting liberty to appellant to pursue the remedy available to him against order 28.11.2018 and if he succeeds, he will be at liberty to challenge the impugned award dated 27.09.2014 passed by

learned Chief Motor Accident Claims Tribunal, Raipur in Claim Case No.98/2011 in accordance with law.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-