

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 678 of 2015

Judgment reserved on 16.07.2021

Judgment delivered on 11.11.2021

1. Vinay Agrawal S/o. Kunjbihari Agrawal, aged about 32 years, R/o. Village Pithora, Police Station and Post Pithora, Civil and Revenue District Mahasamund (CG)
2. Vimal Kumar S/o. Kunjbihari Agrawal, aged about 36 years, R/o. Village Pithora, Police Station and Post Pithora, Civil and Revenue District Mahasamund (CG)

---- Appellants

Versus

1. Kamla Bai Patel W/o. Late Thakur Ram Patel, aged about 55 years, R/o. Village Memra, Police Station and Post Pithora, Tahsil Pitara, Civil and Revenue District Mahasamund (CG)
2. Fagulal S/o. Late Thakur Ram Patel, aged about 28 years, R/o. Village Memra, Police Station and Post Pithora, Tahsil Pithora, Civil and Revenue District Mahasamund (CG)

---- Respondents

For Appellants : Mr. Anurag Singh, Advocate on behalf of
Mr. Manoj Paranjpe, Advocate
For Respondents : None

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

This is an appeal under Section 173 of the Motor Vehicles Act (hereinafter referred to as 'the Act') against the award dated

28.02.2015, passed in Motor Accident Claim Case No. H-35/2014 by Motor Accidents Claims Tribunal, Mahasamund (CG).

2. As per claim petition on 23.11.2013, Thakurram was going to Village Firangi in his CD Dawn motor cycle bearing registration No. CG-06/B-4005 and when he reached near Petrol Pump of Lakhagarh at Pithora, at that same time appellant Vinay Agrawal came there on his Hero Honda Glamor motorcycle riding in a rash and negligent manner and dashed against the motorcycle of Thakurram from the back side, as a result of which he suffered grievous injuries on his head and waist and thereafter was admitted in the Government Hospital Pithora for treatment and during the treatment, he died.

3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicle Act before the tribunal. The Tribunal considering the evidence led by both the parties, passed an award of compensation and awarded Rs. 5,61,000/- with interest of 6% per annum to the claimants from the date of application till realization.

4. Learned counsel for the appellants submits that respondent No.2 Fagulal, aged about 28 years, at the time of filing of the claim petition (who is the son of the deceased) was not the dependent on the income of the deceased in any manner and hence no dependency can be ordered to be paid. He further submits that there is no evidence in respect of monthly income of the deceased and the monthly income assessed by the tribunal is on the higher

side, therefore, the award may kindly be set aside. Hence, this appeal.

5. No representation has been made on behalf of the respondents/claimants.

6. Heard learned counsel for the appellants and perused the documents on record.

7. The Tribunal has relied on the statement of eyewitness of the accident AW-1 Kamaldhar Patel. This witness has stated that at the relevant time the offending vehicle i.e. Hero Honda Glamor motorcycle was driven by applicant Vinay Agrawal in rash and negligent manner and dashed against the motorcycle of the deceased. He deposed that from the said accident, the deceased sustained grievous injuries on his head and waist and he was admitted in the Government Hospital for treatment. In absence of any challenge to such finding by either of the parties, the said finding is affirmed. From the evidence of AW-1 Kamaldhar Patel, where he has stated that Thakurram was riding his motorcycle on his side at limited speed and when he stopped his motorcycle at petrol pump then Vinay Agrawal came there while riding his motorcycle at high speed and hit the motorcycle of Thakurram as a result of which he sustained injuries on his body and ultimately died in the hospital during treatment. No apparent fault on the part of the deceased in riding the motorcycle in a negligent manner is attributable from the evidence. Rather the evidence shows that at

the relevant time he was just slowly riding his motorcycle that too on his side.

8. FIR was lodged in the police station Pithora by one Suresh Kumar Patel, younger brother of the deceased immediately after the accident. According to him, the accident happened due to rash and negligent driving of Vinay Agrawal.

9. Miraj Hussain and Mandeep Singh were examined as defence witnesses but they have not stated anything in support of Vinay Agrawal and Vimal Agrawal. Vinay Agrawal was examined before the tribunal in which he has stated that he suffered injuries from the accident and he was also admitted in the hospital for about 21 days, but he has not produced any documents to this effect either in respect of his admission or discharge. Doctor who conducted the autopsy of deceased Thakurram has opined that the cause of death was accidental in nature. No mechanical fault in the vehicle leading to the accident in question has been attributed by the defence witnesses. In the case at hand, the driver of the vehicle has been found to be guilty of rash driving on public street and his act unfortunately resulted in loss of a precious human life. Thus, from the evidence on record it is apparent that the accident involving the life of the deceased had taken place with the offending vehicle and its rider was responsible for the same.

10. The legal position as regards the major dependent son as has been expressed by the Apex Court in a recent decision in the case of **National Insurance Company Limited vs. Birender and**

other (2020) SCC 356, is that even the major dependent sons are eligible to be compensated in respect of motor vehicle accident. This being the law laid down by the Apex Court, there is absolutely no merit in the said argument advanced on behalf of the appellants. Therefore, in view of the foregoing discussion the finding of learned tribunal cannot be disturbed and the same is affirmed.

11. In a result, the appeal has no merits and accordingly, it is dismissed.

Sd/-
(Vimla Singh Kapoor)
JUDGE