

CANCELLED - 1 -



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IN THE HIGH COURT JUDICATURE AT BILASPUR

Misc. Appeal [C] No. 528 OF 2012

APPELLANT
INSURER

Branch Manager, The Oriental Insurance
Company Ltd. Branch Office- Rajnandgaon, Tehsil
and District Rajnandgaon, C.G.

Division Bench

VERSUS

RESPONDENTS
CLAIMANTS

1. Smt Kiran Mishra W/o Late Poornendra @
Bunty Mishra aged about 22 years R/o
Panchvati Nagar, Vidhan Sabha Road, Mowa,
Raipur, Tehsil and District Raipur, C.G.

2. Krishna Kumar Mishra S/o Shri Govind
Prakash Mishra aged about 48 Years, R/o
Shaspur Lohara District Kabirdham C.G.

3. Smt. Shobha Mishra W/o Krishna Kumar
Mishra aged about 44 Years, R/o Shaspur
Lohara District Kabirdham C.G.

Driver

4. Lav Singh S/o Kaval Singh Cast Rajput aged
about 38 Years R/o Darripara Kawardha
Tehsil and District Kabirdham, C.G.

Owner

5. Lalit Kumar Nahta S/o Jaichand Nahta
presently R/o Bilaspur Road Kawardha District
Kabirdham C.G.

APPEAL U/S 173 OF THE MOTOR VEHICLES ACT AGAINST THE
AWARD/ORDER DATED 29.02.2012 PASSED BY, MOTOR ACCIDENT
CLAIMS TRIBUNAL KABIRDHAM (KAWARDHA) (C.G) PRESIDED
OVER BY SMT. ANURADHA KHARE, IN C.T. NO 98/2010.



(23)

HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

CORAM : HON'BLE MR. ABHAY MANOHAR SAPRE &
HON'BLE MR. G. MINHAJUDDIN, JJ.

M.A.(C) NO. 528 OF 2012

APPELLANT : Branch Manager, The Oriental
Insurance Company Limited

Versus

RESPONDENTS : Smt. Kiran Mishra & others

APPEAL UNDER SECTION 173 OF THE
MOTOR VEHICLES ACT, 1988

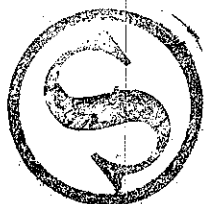
Present: Mr. Abhishek Sinha, Advocate for appellant.
Mr. Samir Singh, Advocate for respondent No. 1.
Mr. Malay Shrivastava, Advocate for respondents No.2 & 3.
Mr. Ajit Singh, Advocate for respondents No.4 & 5.

ORDER (Oral)
(Passed on 31-10-2012)

Per G. Minhajuddin, J.

This appeal has been filed by the appellant under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') against the award dated 29.2.2012 passed by Motor Accident Claims Tribunal, Kabeerdham (Kawardha) (for short, 'Claims Tribunal') in Claim Case No.98/2010 so far as it relates to fastening of liability to pay compensation upon appellant-insurance company.

2. Facts, in brief, are that on 19.4.2010 at about 9:30 p.m. the deceased *Poornendra @ Bunt Mishra* was returning to his residence at *Sahaspur Lohara* from *Kawardha* on motorcycle and at the same time near *Gurukul School* situated at *Bhagutola* he collided with Truck No.CG07-ZC/4359 which was standing in the middle of the road without its parking/indicator lights on and was driven by respondent No.4, owned by respondent No.5 and insured with appellant. On account of said accident, *Poornendra* sustained grievous injuries on his head and succumbed to the same. Therefore, the claimants/respondents No.1 to 3 filed the aforementioned claim petition, under Section 166 of the Act, before the Claims Tribunal claiming a total compensation of Rs.47,40,000/-.



(24)

3. The Claims Tribunal on a close scrutiny of evidence led, material placed and submissions made by the parties before it, vide impugned award has awarded a total compensation of Rs.10,75,000/- in favour of claimants/respondents No.1 to 3 with interest at the rate of 9% per annum from the date of filing of claim petition till its realization, fastening the liability to pay compensation jointly and severally upon respondent No.4, respondent No.5 and appellant who were driver, owner and insurer of the Truck in question respectively at the relevant time.

4. Heard learned counsel for the parties and perused the record of the case as well as the impugned award.

5. Learned counsel for the appellant-insurance company has contended that the Claims Tribunal has committed manifest error of law and fact in fastening the liability to pay compensation upon the appellant-insurance company because the deceased *Poornendra* was solely responsible for the accident as he was driving the motorcycle in a rash and negligent manner in a drunken state and had collided with the stationary Truck in question, from behind. The counsel has also contended in the alternative that at-least there had been contributory negligence to the extent of 50% on the part of the deceased and the same has not been taken into consideration by the Claims Tribunal while assessing the amount of compensation. Lastly, the counsel has contended that the monthly income of the deceased has been assessed arbitrarily as Rs.7500/- without there being any evidence in support of it and therefore the same needs to be reduced to Rs.3000/- per month. In support of his arguments, the counsel has also relied upon the judgments of Hon'ble Supreme Court rendered in the cases of *Municipal Corporation of Greater Bombay v. Laxman Iyer & Anr* [2003 (8) SCC 731], *Oriental Insurance Co. Ltd. v. Chennappa Shettigar & Ors* [IV (2009) ACC 406 (DB)], *Oriental Insurance Co. Ltd. v. Premlata Shukla & Ors* [2007 AIR SCW 3591], *Oriental Insurance Co. Ltd. v. Meena Variyal & Ors* [2007 (5) SCC 428] and *National Insurance Co. Ltd. v. Sinitha & Ors* [2012 (2) SCC 356].

6. On the other hand, learned counsel for respondents No.1 to 3/claimants has supported the impugned award. However, learned counsel for respondents No.4 & 5 i.e. driver & owner of the Truck in question, has supported the impugned award so far as fastening of liability to pay compensation upon the appellant-Insurance Company is concerned.

7. So far as contribution of deceased *Poornendra* towards the accident in question is concerned, it is not in dispute that the accident had occurred at about 9:30 O'clock in the night when the deceased was returning to his residence at *Sahaspur Lohara* and at that time the Truck in question was parked on the road in stationary condition. Although the driver/respondent No.4 has stated in his statement that on account of puncture of tyre of Truck in question, he had parked the same by the side of the road with its parking/indicator lights on but from perusal of the F.I.R. (Ex.P-7) which was recorded immediately after the accident by the then Station House Officer *Sushil Malik* of Police Station *Kawardha*, it is found that the Truck in question was found standing on the road and its indicator lights were not on. In F.I.R. (Ex.P-7), it has also been mentioned that on being asked by the Station House Officer, the driver-respondent No.4 had not given any satisfactory explanation for parking the Truck in question on the road and had only said that on account of puncture of tyre of Truck in question, the same was standing on the road. In view of this, the statement of driver/respondent No.4 given before the Claims Tribunal is definitely an afterthought and is a self-serving statement which cannot be relied upon. As such, on the basis of evidence available on record, it stands proved that at the time of accident, the Truck in question was standing on the public road obstructing the traffic and its parking/indicator lights were not on. At the same time, it is also expected that the deceased *Poornendra* must have seen the stationary Truck in question by means of headlights of the motorcycle which he was driving at the time of accident. In view of this, it cannot be said that there was no negligence to any extent on the part of the deceased *Poornendra*. In the totality of facts and circumstances as well as the evidence available on record, it can

safely be held that negligence of the driver/respondent No.4 and the deceased *Poornendra* resulting in accident in question had been 75% and 25% respectively.

8. So far as assessment of monthly income of the deceased *Poornendra* at the time of accident in question is concerned, it has been alleged that the deceased was about 24 years old and was having a monthly income of Rs.15,000/- from S.T.D. as well as Medical Store. The Claims Tribunal after ~~minutely~~ scrutinizing the evidence adduced by the parties has assessed the monthly income of the deceased as Rs.7500/- which, in view of the totality of facts and circumstances including the year of accident i.e. 2010, cannot be termed as excessive or arbitrary but is certainly just and reasonable and the same deserves to be and is hereby affirmed.

9. In the result, the appeal is allowed in part. Respondent No.4 who was driver of Truck in question and the deceased *Poornendra* who was driver of motorcycle are held liable to the extent of 75% and 25% respectively for the accident in question. Accordingly the impugned award of Rs.10,75,000/- is hereby modified to the extent of Rs.8,06,250/- which the respondents No.1 to 3/claimants shall be entitled to with interest at the rate of 9% per annum thereon from the date of filing of claim petition till its realization. However, apportionment of the modified amount of compensation as well as amount to be deposited in fixed deposit shall be made in the same proportion as made by the Claims Tribunal. No costs.

Sd/-
Abhay Manohar Sapre
Judge

Sd/-
G. Minhajuddin
Judge