

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1240 of 2014

The Oriental Insurance Company Limited, through the Branch
Manager, Raipur, Distt. Raipur C.G.

---- Appellant

Versus

1. Iqbal Kaur wife of Late Dr. Harjeet Singh Bhalla, Aged About 47 Years, Housewife R/o Darripara, Ambikapur, Distt. Surguja C.G.
2. Prabhujot Singh S/o Late Dr. Harjeet Singh Bhalla Aged About 19 Years, Occupation Student R/o Darripara, Ambikapur, Distt. Surguja C.G.
3. Manpreet Kaur D/o Late Dr. Harjeet Singh Bhalla Aged About 22 Years, Occupation Student R/o Darripara, Ambikapur, Distt. Surguja C.G.
4. Indian Broiler Farms Through- Proprietor Baldev Bag, Rajnandgaon, Distt. Rajnandgaon C.G.
5. Rajendra Kumar S/o Premlal, Occupation Driver, resident of Tethwarpara, Dongargarh, Distt. Rajnandgaon C.G.
6. Shyamlal S/o Etwar Sai, Occupation- Driver, R/o Radhapur, Tah. Sitapur, Distt. Surguja C.G., At Present- Village- Godhanpur, Ambikapur, Distt. Surguja C.G.
7. United India Insurance Company Limited. Through the Branch Manager, Ambikapur, Distt. Surguja C.G.

---- Respondents

And

MAC No. 1241 Of 2014

The Oriental Insurance Company Limited, through- The Branch
Manager, Raipur, Distt. Raipur C.G.

---- Appellant

Vs

1. Shyamlal S/o Etwarsai, Occupation Driver R/o Radhapur, Tah. Sitapur, Distt. Surguja C.G., At Present- Village- Godhanpur, Ambikapur, Distt. Surguja C.G.

2. Indian Broiler Farms Through- Proprietor, Baldev Bag,
Rajnandgaon, Distt. Rajnandgaon C.G.
3. Rajendra Kumar S/o Premlal Occupation Driver R/o Tethwarpara,
Dongargarh, Distt. Rajnandgaon C.G.
4. United India Insurance Company Ltd. through The Branch
Manager, Ambikapur, Distt. Surguja C.G.

---- Respondents

MAC No. 1240 of 2014

For Appellant - Shri H.S. Patel, Advocate.
 For Respondents No.1 to 3 - Shri Vimlesh Bajpai, Advocate.
 For Respondent No.6 – Shri Vikrant Pillay, Advocate appears on behalf of
 Shri Rishi Rahul Soni, Advocate.
 For Respondent No.7 – Shri Dashrath Gupta, Advocate.

MAC No. 1241 of 2014

For Appellant – Shri H.S. Patel, Advocate.
 For Respondent No.1 – Shri Vikrant Pillay, Advocate appears on behalf of
 Shri Rishi Rahul Soni, Advocate.
 For Respondent No.3 – Shri Alok Tiwari, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

23/07/2015

1. Both these appeals are being decided together by this common order as two separate claim cases were decided by a common award arising out of same accident wherein one person died and the other was injured. Award is dated 19/09/2014 passed by the First Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja. One claim petition was filed by Iqbal Kaur, Prabhujot Singh and Manprit Kaur. The said claim case was bearing No.25/2011. The said claim case was filed by widow and two children of the deceased Dr. Harjit Singh Bhalla. Another claim petition bearing No.26/2011 was filed by Shyamlal who was driver of the car which met with the accident. Both the appeals are preferred by the insurance company.

2. Briefly stated facts of the case are that on 8/07/2009 Dr. Harjit Singh Bhalla, on instructions of Civil Surgeon, District Hospital Ambikapur

to participate in a conference at Raipur started along with his driver in his Verna Car bearing No. C.G. 15-B/2522. The car was driven by Shyamlal who was one of the claimant. It is stated that vehicle was being driven in a moderate speed, when they reached near a place called Suttara Petrol pump, at that time another vehicle i.e. Tata 407 being driven by original non-applicant Rajendra Kumar in a rash and negligent manner dashed the said vehicle Verna. By impact of such accident, Dr. Harjit Singh Bhalla sustained severe injuries and consequently succumbed to it whereas driver also sustained injuries and was admitted to hospital. It was stated by the widow and children of the deceased Dr. Harjit Singh Bhalla that deceased was hail and hearty person and was Dental Surgeon posted at District Hospital, Ambikapur wherein he was drawing salary of Rs.51,410/-. Apart from that, he was doing his private practice, therefore on different heads amount of Rs.72,13,600/- was claimed.

3. Driver of the Verna Car too preferred an application for claim and stated that after the accident he was admitted to the Appollo Hospital from 8/07/2009 to 16/07/2009 as he also sustained severe injuries. Therefore on the different heads amount of Rs.4,09,300/- was claimed.

4. Learned tribunal after adjudicating the claim case, passed an award of Rs.39,98,400/- in favour of the widow and children of deceased Dr. Harjit Singh Bhalla whereas the driver of the vehicle was awarded Rs.1,07,300/-. The learned tribunal further held that at the relevant time offending vehicle i.e. Tata 407 bearing No.C.G. 08-B 2133 was driven in a rash and negligent manner which caused the accident and thereby held responsible the driver, owner and the insurance company of the said vehicle liable to pay the compensation. The instant appeals are therefore by the insurance company.

5. Learned counsel for the appellant/insurance company vehemently argued and submitted that in this case accident had happened due to

head on collusion, therefore there would be presumption of contributory negligence. He stated that the driver of the car i.e. Verna vehicle was also liable for the accident. Consequently, 50% of the compensation awarded should be shared by them along with the company which insured it. He relied on two case laws reported in **AIR 2006 SC 1255** in between **Bijoy Kumar Dugar v. Bidyadhar Dutta & Ors.** and another reported in **2008(3) C.G.L.J. 478** in between **Smt. Annamma Philip & Others Vs. Pusau Ram Sahu & Others** and would submit that in the similar circumstances when there is head on collusion, it would be presumed that there is contributory negligence. It was further contended that insurance company has raised this defence in their written statement which the learned tribunal has failed to hold that it was a case of contributory negligence. It is therefore submitted that award made be set aside to the above extent against this insurance company.

6. Per contra, learned counsel appearing for the claimants, the driver supported the award and the counsel appearing for United India Insurance Company Ltd., Shri Dashrath Gupta also supported the award and submits that award is well merited which do not call for any interference and it is submitted that learned tribunal has assessed the income on the basis of evidence which was available which needs no interference.

7. I have heard learned counsel for the parties at length, perused the documents and the evidence.

8. Primary argument which is raised by the insurance company is that accident was out come of contributory negligence. Since both the cases were tried and were decided together by the trial court, evidence in both the cases were jointly perused. Claimant Iqbal Kaur in their case had examined Navrang Lal who was travelling on the date in the said car being a compounder. He stated that on the date of accident on 8/07/2009 they were travelling from Ambikapur to Raipur at a moderate speed. When they

reached near place called Suttarra Petrol pump, another offending vehicle i.e. Tata 407 driven by Rajendra Kumar bearing No.C.G. 08-B 2133 driven in a rash and negligent manner in a high speed dashed their car and after accident he took injured Dr. Harjit Singh Bhalla and driver to the hospital and the matter was immediately reported to the Khatghora Police Station at 7.45. Reading of the cross examination would show that nothing has been suggested or has been stated in the cross examination so as to deny such rash and negligent act. No suggestion was even given to the witness with respect to the negligence of the driver of the car i.e. Verna. He stated in the cross examination that at the relevant time of the accident their car was on the left side of the road.

9. The injured Shyamlal was examined in claim case 26/11. He was driver of the car. In the examination in chief, it was stated that at the time of accident, the Tata 407 vehicle bearing No. C.G. 8 B 2133 came at a high speed and dashed on the right side of the vehicle whereby Dr. Bhalla who was sitting in vehicle died. Cross examination of this witness also do not suggest anything to deny such rash and negligent act with respect to the offending Tata 407 vehicle. No questions have been put to the witness to deny such averment made in examination in chief. Claim case bearing No.25/11 also contains the FIR and site map of the accident which are exhibited. The perusal of it also do not suggest otherwise to infer that at the relevant time the vehicle wherein the deceased doctor and driver were travelling were negligent.

10. The insurance company had examined one Mohd. Zafir. He has stated that while he was cleaning his shop, at that time one Tata 407 vehicle which was coming from Bilaspur dashed the car which was going from Ambikapur to Bilaspur and the collision was head on and the car was being driven at a high speed at the middle of the road. In the cross examination it is stated that after the accident, police had come and

however he did not disclose anything to the police about happening of the accident. In the cross examination he stated that name of his shop was KGN Tyre and in front of his shop one Masod Tyre shop also exist besides that Baldev Dhaba exist and near accident place petrol pump exist and hotel of Ram Singh also exist.

11. In the context of the statement when FIR Ex.A-4 is examined it states that at the time of the accident Tata 407 bearing No.C.G. 08-B 2133 being driven in a rash and negligent manner came and dashed the car at the front. It states that report was made by Navrang Lal who was also travelling in the said car. The accident was on 8/07/2009 at about 6.30 and the police prepared the map on the same date at about 10:15. Perusal of the said map do not depicts the presence of shop of KGN Tyre whereas presence of other shops have been established i.e. of hotel of Ram Singh, Petrol Pump, shop of Masod tyre and Baldev Dhaba. Spot where accident had happened shown as 'A' which also shows that it is on the extreme left side, therefore the evidence adduced by the insurance company through Mohd. Zafir do not inspire much confidence. Presence of his shop itself is in doubt. Said witness also stated that he had not disclosed anything to the police. Consequently, the theory of head on collision as has been tried to be established by the insurance company, through witness of Mohd. Zafir itself is diluted. Consequently, in view of the evidence on record, case law relied on by learned counsel for the appellant cannot be applied to existing case.

12. In a result, after evaluating the statement of eye witness who has not been examined on the issue about rash and negligent act of the driver and examination of the map spot Ex.A-7 would establish that at the relevant time offending vehicle i.e. Tata 407 was being driven in a rash and negligent manner which resulted in to accident. Therefore, the finding arrived by the learned tribunal do not appear to be without any evidence.

13. Consequently, both the appeals filed by the insurance company have no merit and are hereby dismissed.

Sd/-
(Goutam Bhaduri)
JUDGE

Gouri