

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No.853 of 2000

1. Balram, son of Firat Ram Sahu, aged 38 years,
 2. Parmeshwari Bai, wife of Balram Sahu, aged 35 years,
- Both R/o Village Kodebode, P.O. Marad, District Raipur (Madhya Pradesh) (now Chhattisgarh)

---Appellants

versus

1. Gopeswar, son of Badri Prasad Sahu, R/o Murra (Tahsil), P.S. Abhanpur, District Raipur (Madhya Pradesh) (now Chhattisgarh)
2. Sadashiv Sahu, R/o Murra (Tahsil), P.S. Abhanpur, District Raipur (Madhya Pradesh) (now Chhattisgarh)

---- Respondents

For Appellants	:	Shri A.L. Singroul, Advocate
For Respondents	:	None

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

17/6/2016

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act') is directed against the award dated 24.1.2000 passed by the Seventh Additional Motor Accidents Claims Tribunal, Raipur in Claim Case No.24 of 1998, whereby the Claims Tribunal dismissed the claim petition on the ground that the claimants had failed to prove that the accident in question had occurred due to rash and negligent driving of the driver of the tractor bearing registration No.CIT 9142 attached with trolley bearing registration No.CIT 9143.
2. Briefly stated the facts of the case are that the claimants are the parents of deceased Somprakash Sahu, who was aged about 8 years at the time of his death. The allegation of the claimants is that on 19.6.1998 at about 6:30 pm the tractor in question hit the deceased from behind. The deceased received serious injuries and before he could be even taken to hospital, he succumbed to his injuries. It

appears that the tractor in question was not insured and the claim petition was filed only against the owner and driver of the tractor. The case set-up by the Respondents before the Claims Tribunal was that in fact both the tractor and the trolley were stand-still and the trolley was being unloaded. There were 50 bags of rice in the trolley. Child Somprakash Sahu climbed onto the trolley and he slipped from one of the rice bags and fell down. It was alleged that since the tractor was stand-still and was not moving, the death of the deceased could not be attributed to the motor vehicle.

3. The Claims Tribunal accepted the version of the Respondents and dismissed the claim petition. Hence, this appeal.
4. I have heard Learned Counsel appearing for the Appellants. No one is present on behalf of the Respondents. I have also perused the evidence available on record.
5. The mother of the deceased Parmeshwari Bai appeared in the witness box. She stated that she along with her son (deceased Somprakash Sahu) had gone to Village Murra and was standing outside a general goods store where they were purchasing goods. Suddenly, the tractor in question hit her son Somprakash Sahu, as a result of which Somprakash Sahu fell down and received injuries. She took her son from the place of occurrence to her home and then to one doctor in Village Darbha. Thereafter, Somprakash Sahu was being taken to the hospital at Raipur, but he died on the way itself. The claimants also produced copies of the First Information Report, Post Mortem Report and other documentary evidence. The version of the claimants is supported by PW-2, Uttam, who also stated that he was present at the place of occurrence. He also stated that the

deceased was hit by the tractor in question. In cross-examination, Parmeshwari Bai, PW-1 admitted that 50 bags of rice were being carried in the tractor. However, she denied the suggestion that her son Somprakash fell down from one of the rice bags being carried in the trolley attached with the tractor.

6. The Respondents examined one Gopiram as DW-1, who stated that he was working in the house of Gopeswar, Respondent No.1, the owner of the tractor. His statement is that both the tractor and the trolley were standing and the deceased climbed onto the trolley and fell down when he slipped from one of the rice bags. In cross-examination, he admitted that he neither saw the deceased climbing onto the trolley nor saw him falling down from the trolley. However, he, on hearing the cries of the child, had rushed to the spot. The other witness Dularu examined as DW-2. His version is that a young boy, when he was climbing onto the tractor-trolley, fell down. However, he admitted in cross-examination that he had seen the child climbing onto the top of the trolley and he did not warn him not to climb onto the tractor. He was also an employee of Gopeswar. From the record, it appears that the police report was lodged only after information was received from the Medical College, Raipur after the post mortem of the minor child. On the basis of the report so filed, a criminal case under Section 304A IPC was lodged against Gopeswar. In the police report, it is mentioned that the child was standing on the high point of the house, i.e., *Chabutara*. He caught hold of the trolley and was hanging from the trolley and when there was sudden movement, he got stuck between the trolley and the *Chabutara*.

7. The Claims Tribunal held that the negligence of the driver of vehicle

was not proved and hence dismissed the claim petition. I am of the considered opinion that the Claims Tribunal did not properly appreciate the evidence nor did it understand the concept that no negligence can be attributed to a small child. It is well settled law that no negligence or contributory negligence can be attributed to a small child of about 8 years. It is the duty of the person driving a motor vehicle to ensure that the motor vehicle is driven, parked and unloaded properly and safely in such a manner that no child running on the road suffers any injury even though the child may be at fault. The concept of negligence envisages that a person knows what is right and what is wrong. A person can be held guilty of negligence only if he can differentiate between right and wrong. A child aged about 8 years does not know what is right and what is wrong. It is the duty of the person driving the vehicle to ensure that he drives the vehicle in such a manner that even if a child wrongly runs on the road the vehicle could be controlled and the accident could be avoided.

8. The stand of the Respondents that because the tractor was stand-still, no negligence can be attributed to them, is totally wrong. Unloading of a vehicle is directly related to the use of a motor vehicle. While the vehicle is being unloaded, it is for the owner and/or driver to ensure that the vehicle is unloaded in such a manner that no injury is caused to any person.
9. As far as this case is concerned, I see no reason to disbelieve the statements of the mother of the deceased, PW-1, Parmeshwari Bai and the other witness PW-2, Uttam. They have clearly stated that the child was standing outside a shop and was hit from behind. Even for the sake of arguments, if it is assumed that this version is incorrect,

then also the version of the Respondents themselves is totally contradictory and also shows negligence. In the written statement, the stand taken was that the child climbed onto the trolley from which rice bags were being unloaded and then he fell down. It was the duty of the person unloading the trolley to ensure that no child climbs onto the trolley and the act of the person in charge of the trolley in letting the minor child climb onto the trolley is itself an act of negligence. The statements of the two witnesses examined by the Respondents are also contradictory. Gopiram, DW-1 has given a version similar to the one given in the written statement that rice bags were being unloaded from the trolley and a boy fell down from the trolley. Dularu, DW-2 gives a different version. According to him, the deceased was trying to climb onto the trolley from the *Chabutara* and then fell down. This is totally different from the version given by DW-1, Gopiram that the deceased had already climbed onto the trolley and also different from the version given that the deceased fell down when he slipped from one of the rice bags. Motor accidents claim cases are decided on basis of preponderance of evidence and I am of the considered view that the claimants in the instant case have successfully proved that the deceased died due to the act of negligence of the Respondents.

10. As far as quantum of compensation is concerned, in the instant case, the deceased was a boy of 8 years and would not have been earning any money. Learned Counsel for the Appellants/Claimants placed reliance on a judgment of the Apex Court in **Kishan Gopal and another v. Lala and others, (2014) 1 SCC 244**, wherein for death of a 10 years' child, the Apex Court awarded compensation of Rupees Five Lakhs. The only difference is that in that case the deceased was aged about 10 years and in the instant case the deceased was only 8

years old. Other facts are virtually similar and, therefore, following the judgment of the Apex Court, compensation of Rupees Five Lakhs is granted along with simple interest @ 9% per annum from the date of filing of the claim petition before the Claims Tribunal till the date of realisation of the amount of compensation. The Respondents shall be jointly and severally liable to pay the amount of compensation.

11. The appeal is allowed in the aforesaid terms.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE