NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.No.752 of 2005

1. Goberdhan S/o Dalsai, Aged about 42 years,
2. Jaichand, S/o Gobardhan, Aged about 20 years,
3. Ramchandra, S/o Gobardhan, Aged about 18 years

All Caste of Kunwar, R/o Village Mayapur (11) P.S. and Tahsil Pratappur, Post Songara, District Sarguja (C.G.) **---- Appellants**

Versus

1. Mohad. Taufiq, S/o Mohd. Ishak, Aged about 35 years, Caste – Musalman, R/o Vill. Sadar Road, Opp. Ambika Sotre, Ambikapur, At Present, New Mines Qtr No. 415, Bhatgaon, P.S. and Tahsil Pratpur, Dist. Sarguja (C.G.) Post-Baya, P.S. Kashdol, Distt. Raipur (C.G.)
2. Sub-Area Manager, S.E.C.L. Bhatgaon, District Sarguja (C.G.)
3. United India Insurance Com. Ltd. Through : Branch Manager, Near Mandir, Ambikapur, District Sarguja (C.G.) **---- Respondents**

For Appellants	:	Shri Sanjay Agrawal, Advocate.
For Respondents No. 1 & 2	:	None appears.
For Respondent No.3	:	Shri Dashrath Gupta, Advocate

HON'BLE SHRI JUSTICE SANJAY AGRAWAL

Award On Board

23/12/2016

1. The appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988 in short) against the award dated 21.04.2005 passed by the First Additional Motor Accidents Claims Tribunal, Surajpur, in claim case No. 115/2003 whereby the Tribunal has dismissed the claim petition by observing that the claimants have failed to establish the fact that the alleged accident had occurred due to rash

and negligent driving of the offending vehicle by its driver.

2. Briefly stated the facts of the case are that on 22.07.2003 at about 3.00 pm, the deceased Parvathi @ Patango was travelling in the offending vehicle, i.e., bus bearing its registration No. CG-15-ZA/1525, owned by non-applicant No.2 and was being driven by its driver Mohammad Taufik, the non-applicant No.1. The said vehicle was insured with the appellant / insurance company. At the relevant time, it was stopped at Jhingadohar and when she was alighting from the bus, the driver of the bus immediately drove the vehicle rashly and negligently, due to which, she fell down on the earth resulting in her death on account of head injury. It is pleaded in the claim petition that the deceased was a labourer and used to earn Rs.3,000/- per month and has expired because of rashness and negligent driving of the vehicle by its driver, i.e., Mohammad Taufiq (respondent No.1). Thus, a total compensation of Rs.10,00,000/- has been claimed on account of alleged accident by preferring claim petition under Section 166 of the Act of 1988.

3. Non-applicants No.1 & 2 have contested the claim by submitting, inter alia, that the deceased – Parvati was not travelling in the said vehicle at the relevant time and stated further that she herself was responsible for the alleged accident. It was pleaded further by the non-applicant No.2 that, in case, it is found that she was travelling in the said vehicle, then in that eventuality he is entitled to be indemnified by the insurance company as his vehicle was insured with the United India Insurance Company Limited.

4. The Non-applicant No.3 – United India Insurance Company Limited has contested the claim on the ground that the deceased was not travelling in the alleged vehicle and pleaded further that the alleged accident has occurred with some unknown vehicle. It was contested further on the ground that the vehicle in question was being driven by a person, who was not possessing a valid and

effective driving licence, therefore, it was being used in utter violation of the insurance policy and under such circumstances, the insurance company cannot be held liable to pay any amount of compensation.

5. Upon hearing the parties, the Claims Tribunal has come to conclusion that although the deceased Parvati Bai was travelling in the alleged vehicle on the fateful day, but the claimants have failed to establish that alleged accident has occurred due to rashness and negligent driving of the offending vehicle by its driver. In consequence, the Claims Tribunal has dismissed the claim by awarding a sum of Rs.50,000/- only under the head of 'No Fault Liability".

6. Shri Sanjay Agrawal, learned counsel for the appellants has submitted that the Claims Tribunal has erred in holding that the alleged accident has not occurred due to rash and negligent driving of the offending vehicle by its driver and thereby erred in dismissing the claim petition. He argued further that to establish the said fact, the burden was heavily upon the respondents/non-applicants and the said fact could not be established by them. He has invited Court's attention to the documentary evidence, like the first information report and the final charge sheet as submitted against Mohd. Taufiq, the driver of the offending vehicle, under Section 304-A of the I.P.C. and submits that it speaks very specifically that the alleged accident has occurred due to rash and negligent driving of the vehicle by its driver. By ignoring the said material documentary evidence, the Claims Tribunal has thus erred in dismissing the claim as such.

7. Shri Dashrath Gupta, learned counsel for respondent No.3/Insurance Company has supported the award impugned as passed by the Claims Tribunal.

8. I have heard the learned counsel for the parties and perused the entire evidence, documentary as well as oral, adduced in this behalf carefully.

9. In order to establish the fact as to whether the alleged accident has occurred due to rash and negligent driving of the vehicle by its driver, the claimants had examined the witnesses, namely, Ramchandra (A.W.1) and Nageshwar Prasad Mishra (A.W.2). However, a bare perusal of their statements, it is clear that they are not the witnesses to the said incident, and therefore, they were not in a position to state the true facts in this regard.

10. The driver – Mohd. Taufiq himself has entered into the witness box and stated that no such accident as alleged has not occurred nor was the deceased Parvati Bai travelling in the bus. However, a bare perusal of its statement would show that the bus did not meet with any accident. But, a bare perusal of the record would show that the offence punishable under Section 304-A of the I.P.C. has been registered against him and he has failed to establish the fact that under what circumstances the alleged offences have been registered against him. Besides, the said witness has not reported the matter to the higher police authorities by complaining that why the false offences have been registered against him. In any case, the burden was heavily upon the owner and driver to establish the fact that the alleged accident has not occurred to their bus, but have failed to prove the same.

11. Pertinently to be mentioned here further in this regard that while entertaining the issue No.1, the Claims Tribunal has come to the conclusion that the deceased Parvati @ Patango Bai was travelling in the said offending vehicle and the post-mortem report as submitted in this regard would also show that she expired due to the said accident when she fell from the vehicle in question on the ground. If, we examined, the findings as recorded by the Claims Tribunal with regard to issue No.1, vis-a-vis, the post-mortem report, it would lead to an irresistible conclusion that the deceased Parvati Bai has expired due to rash and negligent driving of the driver, i.e., Mohd. Taufiq, the Non-applicant No.1. I, therefore, held by setting aside the findings of the Claims Tribunal that the

alleged accident has occurred due to rash and negligent driving of its driver and as a result of which, the deceased Parvati Bai has died.

12. As far as the quantum is concerned, it is clear that the deceased Parvati Bai was working as a labourer and used to earn Rs.3,000/- per month. By taking into consideration her monthly income as Rs.3,000/-, yearly Rs.36,000/- and that by deducting 1/3rd of it towards her personal expenses, the yearly dependency would arrive at Rs.24,000/-. Since the deceased was 38 years old at the time of the accident, and therefore, the proper multiplier would be 16 in this regard and that by multiplying the dependency of Rs.24,000/- with the multiplier of 16, the total dependency would come to Rs.3,84,000/-. The claimants are also entitled to a sum of Rs.15,000/- towards consortium, Rs.20,000/- (Rs.10,000/- each) towards love and affection and Rs.10,000/- towards funeral expenses and thus the claimants are entitled to a sum of Rs.4,29,000/- as total compensation.

13. I, therefore, award the total amount of compensation to the tune of Rs.4,29,000/- payable to the claimants. Since the Claims Tribunal has awarded Rs.50,000/- under no fault liability, therefore, by deducting it from Rs.4,29,000/-, the claimants would now be entitled to a total sum of Rs.3,79,000/- as compensation, along with interest @ 6% per annum on this amount, from the date of claim petition till its realisation. The respondents are liable to pay the claimants the entire amount as awarded by this Court, within a period of two months.

14. The appeal is accordingly allowed. There shall be no order as to costs.

Sd/-

(**Sanjay Agrawal**)
Judge

Anjani