

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 550 OF 2010

1. Rajendra Ray, S/o Subhash Ray, aged about 28 years, R/o Village and Post Selood, Tahsil Patan, Police Station Utai, District Durg (C.G.)
2. Subhash Ray, S/o Sonelal, aged about 50 years, Sai Traders, R/o Village and Post Selood, Tahsil Patan, Police Station Utai, District Durg (C.G.)

... Appellants

versus

1. Yuvraj Sahu, aged about 45 years, S/o Late Kisun Sahu
2. Smt. Shivbati Sahu, aged about 42 years, W/o Yuvraj Sahu
Both R/o Village and Post Selood, Tahsil Patan, Police Station Utai, District Durg (C.G.)
3. Bajaj Allianz General Insurance Company Limited, Office G.E. Plaza, Airport Road, Yervada Pune, Divisional Manager, Divisional Office, Shiv Mohan Building, Vidhan Sabha Road, Pandari, District Raipur (C.G.)

... Respondents

For Appellants	:	Ms. Savita Tiwari, Advocate.
For Respondents No. 1 and 2	:	Mr. Purnendra Kichariya, Advocate, under instructions of Mr. Goutam Khetrapal, Advocate.
For Respondent No.3	:	Mr. Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the driver and owner, assailing the award dated 26.2.2010 passed by the Seventh Additional Motor Accident Claims Tribunal (F.T.C.), Durg, in Claim Case No.85/2008.
2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.2,44,000/- in favour of respondents no. 1 and 2-claimants with interest thereon at the rate of 6% per annum from the date of presentation of the claim application and has fastened the liability for payment of compensation upon the appellants i.e. driver and owner, exonerating the respondent no.3-insurance company of its liability.

3. It is this award which has been assailed by the driver and owner in the instant appeal questioning the liability which has been fastened upon them.

4. Learned counsel for the appellants/driver and owner assails the impugned award on the ground that the Tribunal has not properly appreciated the evidence which was led by the owner and driver, inasmuch as there is no eye-witness to the accident and the driver and the other witnesses have categorically deposed before the Tribunal of the deceased not travelling in the tractor when the accident occurred and that the appellants have been falsely implicated in the case only with an intention of extracting compensation. It was further contended that there was no proof available on record with which it could be said that the deceased died because of the accidental death which arose from the use of the tractor involved in the case and the post-mortem report of the deceased also does not clearly show the cause of death was because of the injuries sustained from the fall from tractor.

5. Learned counsel for the respondent-insurance company on the contrary opposing the appeal submits that there is sufficient material produced before the Tribunal including the documents pertaining to the criminal case which was lodged against the driver and the other relevant documents from the criminal case registered, with which there are ample proof and evidence to establish the death of the deceased to have arisen out of the use of the tractor involved in the case. It was further contended that the evidence which have come on record also show that the deceased at the time of accident was travelling sitting on the body of the tractor when the tractor only has a sitting capacity of one i.e. driver alone and thus the Tribunal has rightly exonerated the insurance company of its liability.

6. Having heard the rival contentions put forth on either side and on perusal of record, when we consider the evidence which have come on record, the claimants have categorically led evidence of the deceased travelling in the tractor in which he sustained injuries to which he later succumbed. The record of the criminal case which was lodged against the driver of the tractor also shows that it was he who was negligent in driving which led to the accident in which the deceased succumbed to the injuries. There were other documents also like FIR, the Panchnama prepared at the time of accident, the seizure memos and the post-mortem report, which were all produced during the course of trial and nowhere during the course of investigation of the criminal case also did any of the witnesses on behalf of the owner make a statement which they have made before the Tribunal, which by itself leads to doubt to the stand taken by the owner and also gives a clear impression of the owner taking a stand of the tractor not being involved in the accident as an afterthought.

7. So far as the standard of proof for proving a case before the Tribunal under the Motor Vehicles Act is concerned, it is the doctrine of preponderance of probability which has to be applied and that the claimants so also the criminal case record which was available during the course of trial, gives sufficient strength and force for the reasoning arrived at by the Tribunal to reach to the conclusion of the deceased in the instant case travelling on the body of the tractor.

8. In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that no strong case has been made out by the appellants to interfere with the impugned award passed by the learned Tribunal.

9. The appeal thus being devoid of merits deserves to be and is accordingly dismissed.

/sharad/

Sd/-
(P. Sam Koshy)
Judge