

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 529 OF 2004

1. Niranjan Ram @ Nirgun Ram, aged about 50 years S/o of Jagmohan.
2. Kanti Bai W/o Niranjan Ram @ Nirgun Ram, aged 45 years.
3. Minor Ku. Amarwati D/o Niranjan Ram, aged 17 years.
4. Minor Jashwant Ram S/o Niranjan Ram aged 14 years.
5. Minor Ku. Sandhya D/o Niranjan Ram aged 11 years.

All by caste Oraon, resident of Village Dumari, P.S. Dumari, District Gumla (Jharkhand).

(Sl. No. 3, 4 and 5 minors, through their natural guardian father Niranjan Ram @ Nirgun Ram.

... Appellants

Versus

1. Ranjit Kumar Minj S/o Blasicious Minj, aged 25 years, R/o village Bhagalpur, District Jashpur Nagar (C.G.), Owner of Vehicle Marshal Jeep No. MP 04 H/9078.
2. The New India Insurance Company Limited, Office at Satigudi Para Raigarh (C.G.).
3. The Aadiwasi Vitt Evam Vikas Nigam Bhopal (M.P.), through Manager, District Vyapar Udyog Kendra, Jashpur Nagar, District Jashpur (CG).

... Respondents

For Appellants	:	Dr. Sanjeet Sharma, Advocate.
For Respondent No.1	:	None appears.
For Respondents No.2	:	Mr. Qamrul Aziz, Advocate.
For Respondent No.3	:	Mr. Akhilesh Kumar, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/07/2017

1. The present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act assailing the award dated 18.3.2004 passed by the Motor Accident Claims Tribunal, Jashpur, in M.A.C. No. 17 of 2003.
2. Vide the impugned award, the Tribunal had rejected the claim application of the Claimants assuming the accident to have arisen because of rash and negligent driving of the deceased Jagat Prasad @ Jageshwar himself who was the driver of the offending vehicle at the time of accident, i.e., Marshall Jeep, bearing Registration No. MP04-H/9078.

3. Facts of the case in nutshell relevant for adjudication of this case are that the Appellants in the present case are the father, mother, two sisters and a brother of the deceased Jagat Prasad @ Jageshwar. The deceased was working as a driver on the aforementioned Marshall Jeep belonging to Respondent No.3 but was actually owned by Respondent No.1. On 10.2.2002, when the deceased was driving the said Jeep and was going from Jashpur to Raigarh en route the said Jeep met with an accident and fell down in a ditch resulting in the death of the deceased. The age of the deceased was about 23 years on the date of accident. According to the Claimants the deceased used to earn Rs.2000/- per month as wages.

4. The Claimants before the Tribunal have adduced evidence of the father of the deceased i.e. Appellant No.1 herein, as also that of one Sanjay Ram Bhagat who is also the person who was travelling in the said Jeep at the time of accident. The Tribunal vide impugned award rejected the claim application on the ground that the accident in question could not be proved and established by the Claimants. Likewise, it was also the finding of the Tribunal that the accident arose because of rash and negligent driving of the deceased himself. In view of the same, the Tribunal rejected the claim application, leading to the filing of the present appeal.

5. Learned Counsel for the appellants-claimants submits that in fact the claimants have established their case that the accident had occurred because of a technical defect of the offending vehicle, which was also proved by Sanjay Ram Bhagat (AW-2) who was also travelling in the said vehicle and who too had made a statement before the Tribunal that the accident arose because of technical fault that had erupted. This witness has stated that the deceased had been informing the passengers in the offending vehicle regarding the technical fault but at the instance of the

passengers he did not stop the vehicle and proceeded towards Raigarh and en route the accident took place.

6. Learned Counsel for the appellants-claimants further submits that the finding of the Tribunal in dismissing the claim application was on assumption basis and that there is no sufficient evidence so far as the accident having occurred because of the fault and mistake on the part of the deceased. It was also the contention of the learned Counsel for the appellants-claimants that in the absence of any evidence to establish the rashness and negligence on the part of the deceased, the Tribunal could not have rejected the claim application. He further submitted that the Tribunal has also committed an error in not believing the statement of Sanjay Ram Baghat (AW-2) only on assumption.

7. Learned Counsels appearing for the Respondents however oppose the appeal and submits that in fact the finding of the Tribunal is based on the evidence which have come on record and the same does not warrant any interference and the appeal deserves to be rejected.

8. Having considered the contentions put forth on either side and on perusal of the record, what clearly reflects is the fact that the only evidence which has come on record is that of the appellant/claimant no.1 as well as of one Sanjay Ram Bhagat (AW-2). There is no evidence which has been led by any of the Respondents. The Tribunal has rejected the claim only on the ground that the statement of Sanjay Ram Bhagat (AW-2) cannot be believed as he has not been cited as a passenger in the FIR which was lodged pertaining to the same accident nor was his statement recorded during the course of criminal investigation as also the fact that there does not appear to be any injury sustained by the said witness (AW-2) since he was also the person who was allegedly travelling in the offending vehicle

which met with an accident and there was a great possibility of his also getting injured.

9. It is settled position of law that the requirement of proving a criminal case is entirely different and the parameters in proving the two cases are also entirely different. Only because the name of Sanjay Ram Bhagat (AW-2) was not reflected in the FIR and that he was also not shown as an injured person from the said accident, it cannot be presumed that he was not travelling in the said vehicle at the time of accident. The standard of proof required in a criminal case is much more than the standard of proof which is required to establish the claim under the Motor Vehicles Act. In the instant case, appellant/claimant no.1 has examined himself with the assistance of the statement of Sanjay Ram Bhagat (AW-2). One should not forget the fact that in the event if Sanjay Ram Bhagat would not have been examined as a witness, the Tribunal perhaps would have accepted the statement of appellant-claimant No.1 and have allowed the claim application. Only because the name of the said Sanjay Ram Bhagat did not reflect in the FIR by itself cannot be the sole ground for disbelieving his statement when the statement of the appellant-claimant No.1 also is on record reiterating the same fact. In view of the same, this Court finds it difficult to accept the analogy adopted by the Tribunal for rejecting the claim application of the claimants.

10. Under the normal circumstances, in the event of dismissal of a claim application on allowing the appeal of the claimant, the matter has to be remitted back to the Tribunal for fresh adjudication so far as the quantum part is to be decided. However, in the peculiar facts and circumstances of the present case where the accident had occurred on 10.2.2002 and today we are in July, 2017 i.e. more than 15½ years have passed, this Court does not find it proper to remit the case to the Tribunal for fresh

adjudication. For this reason, this Court is of the opinion that ends of justice would meet if this Court ventures into the aspect of deciding a just and reasonable compensation which could be payable to the Claimants.

11. The Claimants in their statement before the Tribunal have accepted that the deceased at the relevant point of time was being paid Rs.2000/- a month. That is to say that the yearly income of the deceased was Rs.24,000/-. If we add 50% of the said amount under the head of future prospects, the yearly income of deceased would had become Rs.36,000/-. Accepting 50% to have been deducted under the head of personal expenses, the balance amount would be Rs.18,000/-. If the said figure is multiplied by a multiplier of 18, as the age of the deceased on the date of accident was 23 years, the amount comes to Rs.3,24,000/- which the Claimants shall be entitled for under the head of loss of dependency. Likewise, so far as the compensation under the other heads are concerned this Court feels it proper to grant a lump sum compensation of Rs.1,00,000/-. It is ordered accordingly.

12. Thus, in all, the total compensation which the Claimants shall be entitled for would be Rs. 4,24,000/- which the Respondent No.2-Insurance Company shall be liable to pay to the Claimants within a period of two months from today. The said amount of compensation awarded by this Court shall also carry the interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Since the Appellants No. 3 to 5 by efflux of time have become major, the compensation awarded would be paid only to Appellants No. 1 and 2 and both shall be given equal share of the total compensation.

13. The appeal stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge