

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 496 OF 2008

Afroz Iqbal, S/o Mohd. Jafaruddin, aged about 33 years, occupation-vehicle owner (Transporter), R/o Handi Chowk, Raigarh, Tahsil and District Raigarh (C.G.)

... Appellant

versus

1. Raghunath Gupta, S/o Shri Ghasiram Gupta, aged about 40 years
2. Smt. Sumitra W/o Shri Raghunath Gupta, aged about 38 years
3. Minor Ahilya, S/o Shri Raghunath Gupta, aged about 16 years, through next friend father Shri Raghunath Gupta, S/o Shri Ghariram Gupta No. 1 to 3 R/o Village- Bade-Gumda, P.S. Gharghoda, Tahsil Gharghoda, District Raigarh (C.G.)
4. Mohd. Mustafa, S/o Mohd. Usman Khan, aged about 50 years, occupation-driver, R/o Madhubanpara, Raigarh, District Raigarh (C.G.)
5. The Branch Manager, The Oriental Insurance Company Limited, Branch Office- Itwari Bazar, Raigarh, Tahsil and District Raigarh (C.G.)

... Respondents

MISC. APPEAL (C) NO. 688 OF 2010

Guru Mehar Construction Company Limited, through Manager, office at Village Singhol, Post- Amaghat, Tahsil- Gharghoda, District Raigarh (C.G.)

... Appellant

versus

1. Yashwant S/o Dhol Singh, aged about 21 years, by caste- Patel, occupation- Mechanic, R/o Village- Badegumda, Thana and Tahsil- Gharghoda, District Raigarh (C.G.)
2. Mohd. Mustafa, S/o Mohd. Usman Khan, aged about 50 years, occupation- Driver, R/o Village- Madhuwanpara, Raigarh, Tahsil and District Raigarh (C.G.)
3. Afroz Iqbal, S/o Mohd. Jafruddin, aged about 33 years, occupation-owner of the Vehicle, R/o Handi Chowk Raigarh, Tahsil and District Raigarh (C.G.)
4. Branch Manager, The Oriental Insurance Company Ltd., Branch Office, Itwari Bazar, Raigarh (C.G.)

... Respondents

MISC. APPEAL (C) NO. 687 OF 2010

Guru Mehar Construction Company Limited, through Manager, office at Village Singhol, Post- Amaghat, Tahsil- Gharghoda, District Raigarh (C.G.)

... Appellant

versus

1. Bhishma Deo Patel, S/o Tribhuwan Patel, aged about 45 years
2. Smt. Lalita Patel, W/o Bhishma Deo Patel, aged about 43 years
3. Ku. Meena, D/o Bhishma Deo Patel, aged about 20 years
All are residence Village- Badegumda, Thana – Gharghoda, District Raigarh (C.G.)
4. Mohd. Mustafa, S/o Mohd. Usman Khan, aged about 50 years, occupation- Driver, R/o Village- Madhuwanpara, Raigarh, Tahsil and District Raigarh (C.G.)

5. Afroz Iqbal, S/o Mohd. Jafruddin, aged about 33 years, occupation-owner of the Vehicle, R/o Handi Chowk Raigarh, Tahsil and District Raigarh (C.G.)
6. Branch Manager, The Oriental Insurance Company Ltd., Branch Office, Itwari Bazar, Raigarh (C.G.)

... Respondents

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- Mr. A.L. Singroul, Advocate, for the Appellant in MAC No. 496/2008, for Respondent No.3 in MAC No. 688/2010 and for Respondent No.5 in MAC No. 687/2010.
 - Mr. Vivek Tripathi, Advocate, for the Appellants in MAC No. 688/2010 and in MAC No. 687/2010, for Respondents No. 1 to 3 in MAC No. 496/2008.
 - Mr. Ghan Shyam Patel, Advocate, for Respondent No.5 in MAC No. 496/2008, for Respondent No.4 in MAC No. 688/2010 and for Respondent No.6 in MAC No. 687/2010.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/10/2017

1. The present three appeals arise out of the claim cases preferred in respect of the same accident by three separate set of claimants.
2. MAC No. 496/2008 arise out of Claim Case No. 58/2007, MAC No. 688/2010 arise out of Claim Case No. 104/2007 and MAC No. 687/2010 arise out of Claim Case No. 105/2007.
3. Claim Case No. 58/2007 was adjudicated on 5.3.2008 whereas Claim Case No. 104/2007 and Claim Case No. 105/2007 stood decided on 5.4.2010, by the Motor Accident Claims Tribunal, Raigarh.
4. While deciding Claim Case No. 58/2007 that is the subject matter in MAC No. 496/2008, the liability of payment of compensation has been fastened upon the driver and registered owner of the vehicle involved in the accident. Whereas, in Claim Case No. 104/2007 and Claim Case No. 105/2007 which is the subject matter in MAC No.688/2010 and MAC No. 687/2010 respectively, the liability has been fastened upon the company namely Guru Mehar Construction Company Limited who was in actual possession of the vehicle at the time of accident and the vehicle was also being operated under its supervision and control, after specifically exonerating the registered owner as well as the driver of the vehicle.

5. All three MACs have been filed assailing the respective liability which has been fastened against the appellant in each of the claims cases vide impugned awards in the three appeals.

6. Brief facts relevant for the adjudication of the appeals are that an accident arose on 13.5.2007 at around 6pm when the Mahindra Pickup Van bearing Registration No. CG13-A-6011 overturned, which was being driven by Mohd. Mustafa and the registered owner of which was Afroz Iqbal. As a result of the accident, two persons had died, namely, Shravan Kumar, aged about 22 years, and Arun Kumar, aged about 18 years, and one Yashwant, aged about 21 years, sustained grievous injuries.

7. The legal representatives of deceased-Shravan Kumar filed Claim Case No.58/2007 and the legal representatives of deceased-Arun Kumar filed Claim Case No.105/2007 and the injured-Yashwant filed Claim Case No.104/2007.

8. The undisputed factual matrix of the case are that Afroz Iqbal, registered owner of the Pickup Van, had handed over the vehicle on rental basis for a period of 11 months with effect from 10.1.2007 onwards. From the time of the agreement, the vehicle was under control and possession of Guru Mehar Construction Company and it was they who were using the vehicle for their business. The intimation of the accident was first reported to the Police Station at Gharghoda by an authorised officer of the said company and it was duly intimated by them that the vehicle was being used for transportation of certain articles to be taken to the house of one of its employees, Kaushal Chaudhary, on his marriage when the accident occurred. While the claim application of deceased-Shravan Kumar was filed, the said company was not made a party and it was only the registered owner and the driver who were made the party. Whereas, in the other two claim cases, Guru Mehar Const. Company was made a party.

9. During the course of evidence it has specifically come out that the vehicle at the relevant point of time was under control, possession and supervision of Guru Mehar Construction Company Limited and the vehicle at the relevant point of time was also being operated as per the directions given by the authorities of Guru Mehar Construction Company Limited and it was also being used for transportation of marriage related articles of one of its employees. Based on the evidence which have come before the Tribunal, Claim Cases No.104/207 and No.105/2007 have been decided vide order dated 5.4.2010 wherein the entire liability of payment of compensation has been fastened upon the Guru Mehar Construction Company i.e. the appellant in MAC No. 687/2010 and MAC No. 688/2010.

10. Though in the Claim Case No. 58/2007 which is the subject matter in MAC No. 496/2008, Guru Mehar Construction Company Limited is not a party, but the registered owner i.e. appellant in MAC No. 496/2008 in his written statement had specifically taken the plea that the vehicle had been leased out to Guru Mehar Construction Company Limited and it was under their control and supervision and was being used on their direction when the accident occurred. But, the Tribunal took a stand that since the appellant in MAC No. 496/2008, i.e., Arfoz Iqbal, was the registered owner of the vehicle and Mohd. Mustafa was the driver of the vehicle at the time of accident, they shall be responsible for the payment of compensation as assessed by the Tribunal vide impugned award dated 5.3.2008.

11. Thus, the two set of awards i.e. award dated 5.3.2008 in respect of claim case filed by the legal representatives of deceased Shravan Kumar and the award dated 5.4.2010 in respect of the claim cases arising out of death of Arun Kumar and the injured-Yashwant, there is a definite contradictory and conflicting finding so far as the liability which has been fastened for payment of compensation. The conflict which is apparent is

inasmuch as in Claim Cases No. 104/2007 and No. 105/2007 the liability has been fastened upon the Guru Mehar Construction Company and in these two claim cases, the registered owner, driver and the insurance company have been specifically exonerated of their liability, whereas in Claim Case No. 58/2007 the liability has been fastened upon the registered owner who in the two other claim cases stood exonerated.

12. In view of the conflicting stand which has come up before this Court, this Court has no hesitation in reaching to the conclusion that the award passed in Claim Case No. 58/2007 filed on behalf of the legal representatives of deceased-Shravan Kumar, which stood decided on 5.3.2008, deserves to be remanded back to the Tribunal for passing fresh award after permitting the claimants to incorporate Guru Mehar Construction Company Limited as a respondent. It is ordered accordingly.

13. Registry is directed to forthwith remit the records of the said case to the Tribunal. Since all the parties are represented before this Court, they are directed to remain present before the Tribunal on 28.11.2017 and the Tribunal shall make all endeavours for an early disposal of the case considering its seniority.

14. As regards MAC No. 688/2010 and MAC No. 687/2010, the ground of appeal raised by the appellant-Guru Mehar Construction Company primarily is that they are not the registered owner of the vehicle and that during the relevant period the vehicle was duly insured with the Oriental Insurance Company Limited and therefore if it all if the liability has to be fastened it should had been against the registered owner-Afroz Iqbal and who since had duly insured the vehicle, the liability of payment of compensation should had been jointly and severally upon the registered owner and the insurance company.

15. However, from the perusal of the record it is revealed that there is a specific agreement entered into between the registered owner-Afroz Iqbal and Guru Mehar Construction Company Limited i.e. the appellant in the said two appeals. Further, the documents enclosed with the file would also reveal that it is an admitted position of the vehicle being used for marriage purpose of one of the employees of Guru Mehar Construction Company Limited. That the intimation of accident was also first reported to the police authorities by the appellants. That in the intimation made to the police, Guru Mehar Construction Company Limited took the stand that in the course of vehicle being used for marriage of one of its employees the accident had occurred. Further, so far as the agreement between the appellant-Guru Mehar Construction Company Limited and Afroz Iqbal is concerned the same is again an admitted fact and has not been denied or disputed by the appellant at any point of time.

16. Therefore, in the light of the decisions of the Hon'ble Supreme Court in the case of **Rajasthan State Road Transport Corporation v. Kailash Nath Kothari & Ors., 1997 (7) SCC 481** and **National Insurance Co. Ltd. v. Deepa Devi & Ors., 2008 (1) SCC 414**, this Court is of the opinion that the finding arrived at by the Tribunal in its award dated 5.4.2010 is proper, legal and justified and the same does not warrant any interference and the two appeals i.e. MAC No. 688/2010 and MAC No. 687/2010 being devoid of merits the same deserves to be and are accordingly dismissed.

17. As a result, MAC No. 496/2008 is partly allowed and is remitted back to the Tribunal for passing a fresh award as per the directions given in the preceding paragraph. MAC No. 688/2010 and MAC No. 687/2010 being devoid of merits stand dismissed.

Sd/-
(P. Sam Koshy)
Judge