

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 987 of 2012**

Vasiruddin Ansari S/o Moinuddin Ansari Aged About 65 Years, Caste Musalman, occupation-owner, R/o Village Asta, Tah. Manora, P.S. & Post- Aasta, Distt. Jashpur C.G. Pin- 496330.

---- Appellant

Versus

1. Khiramati Patel W/o Late Arvind Patel Aged About 37 Years
2. Ku. Salini Patel D/o Late Arvind Patel Aged About 15 Years
3. Mayank Patel S/o Late Arvind Patel Aged About 12 Years
Respondents No.2&3 are Minor, Through Mother Khiramati Patel R/o Aasta, P.S. & Post- Aasta, Tah. Manora, Dpsth. Jashpur C.G. Pin- 496330, Permanent Address- Ankira, P.S. Farsabahar, Distt. Jashpur C.G. Pin-496245.
4. Smt. Sumita Bai W/o Balak Ram Patel Ankira, P.S. Farsabahar, Post- Ankira, Distt. Jashpur C.G.
5. Nelson Kujur S/o Tarsiyus Kujur Aged About 23 Years Aasta, Tah. Manora, P.S. And Post- Aasta, Distt. Jashpur C.G. Pin- 496330
6. Kamal Toppo S/o Nikolas Toppo Aged About 25 Years Mado, P.S. & Post- Manora, Distt. Jashpur C.G. Pin- 496330.
7. National Insurance Company Ltd. Zone Office- Priyadarshani Nagar, Vyapar Vihar, Bilaspur, P.S. & Post- Tarbahar Distt. Bilaspur C.G. Pin- 495001.

---- Respondents

For Appellant	:	Shri Sunil Tripathi and Shri AK Prasad, Advocates.
For Respondent No.7	:	Shri Ratan Pusty, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

12.12.2017

1. The present is a owner's appeal filed under Section 173 of the Motor Vehicles Act assailing the award dated 06.08.2012 passed by the Motor Accident Claims Tribunal, Jashpur (in short, the Tribunal) in Claim Case 29 of 2010. Vide the said impugned award, the Tribunal in a death case has awarded compensation of Rs.11,50,000/- along with interest @ 6 percent per annum from the date of application.

While passing the award, the Tribunal has exonerated the insurance company and the responsibility of payment of compensation was fixed upon the present appellant-owner of the vehicle.

2. Brief facts of the case is that, Arvind Kumar Patel, while going on a motorcycle bearing registration No.CG-15-CA-3299 being driven by the respondent No.6-Kamal Toppo, was hit by a Tractor owned by the present appellant bearing registration No.MP-27-B-5610 driven by respondent No.5-Nelson Kujur as a result of which Arvind Kumar Patel sustained grievous injuries to which he later succumbed.
3. The family members of the deceased filed a claim application which was decided in favour of the claimants whereby the insurance company was exonerated of its liability on the ground that the driver of the Tractor i.e. Nelson Kujur did not have license at the time of accident and the entire responsibility of payment of compensation fell upon the present appellant.
4. Assailing the award, the present appellant submitted that the findings of Tribunal is erroneous and contrary to the evidence which have come on record. According to him, it is a case where there was a specific stand taken by the appellant as well as by the other respondents that the Tractor involved in the accident was being driven by one Vinod Ram and not by respondent No.5-Nelson Kujur. Further, that the said Vinod Ram had a valid license at the time of accident. Therefore, the liability of payment of compensation, if any, should had been fastened upon the insurance company. The appellant stressed hard on the FIR (Ex. P/1) which was recorded at

the instance of deceased himself where it was stated that the Tractor at the time of accident was being driven by Vinod Ram which the Tribunal should have taken into account, and therefore, the award deserves to be interfered with.

5. It was further contended by the appellant that said Nelson Kujur was not driving the vehicle at the time of accident also stands established from the fact that criminal case registered against Nelson Kujur resulted in an acquittal. The fact that the vehicle was being driven by Vinod Ram also stands proved from the evidence of Shri P.R. Bhagat, ASI, NAW-3, the person who recorded FIR at the instance of deceased when he was in hospital. On the basis of statement of said witness, the counsel for the appellant submits that since the author of the FIR himself has deposed before the Tribunal, there was no reason for the Tribunal to have dis-believed his version and should have accepted the fact that the Tractor at the time of accident was being driven by Nelson Kujur who later stood acquitted in the criminal case.
6. According to appellant-owner, the vehicle at the time of accident was duly insured with the respondent No.7-National Insurance Company Ltd. and which is not in dispute. That, since there is sufficient material which was produced before the Tribunal of the Tractor being driven by the person who was having a valid license i.e. Vinod Ram, the Tribunal should have fastened the liability of payment of compensation jointly and severally upon the insurance company as well. In support of his contention, he relied upon judgment of

Supreme Court in case of Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Ors., 2007(13)SCC 476.

7. Having heard the contentions put forth by the parties, if we peruse the records, what clearly reflects is that it is a case where before the Tribunal the owner i.e. the present appellant and the driver of the vehicle had all been duly served. During the course of trial they had entered appearance and were represented through their respective lawyers. They have also filed their respective written statements. However, except for the insurance company, no other respondents entered appearance to lead evidence to prove their case. It is also pertinent to mention that though the Driver Nelson Kujur had been acquitted from the criminal case, even then the said fact was also not brought to the notice of the Tribunal by way of any evidence led by any of the parties. It is also pertinent to mention that the present appellant-owner inspite of taking specific stand of the vehicle being duly insured and that the vehicle being driven by Vinod Ram had not examined himself nor has he got Vinod Ram examined before the Tribunal.
8. So far as acquittal of Nelson Kujur from the criminal case is concerned, it is by now a settled position of law that the standard of evidence required in proving the criminal case is entirely different than the standard of proof required in establishing the claim case under the MV Act. The proof required in criminal case is a proof which is established beyond all reasonable doubts whereas, in a claim case it is the preponderance of probability with which the claim

case could be established.

9. As regards the FIR having been initially lodged against Vinod Ram is concerned, this aspect has not been further substantiated in criminal case nor has it been proved before the Tribunal by any evidence by the present appellant-owner or Nelson Kujur himself. Unless there is a strong proof and evidence led by the owner before the Tribunal, the Tribunal cannot without any basis draw an inference in favour of the owner. In spite of contesting the case before the Tribunal by duly entering appearance and filing written statement, the owner did not think it fit to lead any evidence in respect of his contentions is a fact which goes against the appellant.
10. Another aspect which cannot be lost sight of is the fact that there is no statement of Vinod Ram on record of having accepted the fact that it was he who was driving the Tractor at the time of accident which could have given some weightage to the stand taken by the owner. Neither is the acquittal of Nelson Kujur on the ground that he was not driving the vehicle but it was somebody else, but the acquittal was on the ground that the prosecution has not been able to establish its case to prove the charges which have been levelled against him.
11. So far as judgment of Premlata (Supra) relied upon by the appellant-owner is concerned, the facts and the issue involved in the said case was entirely different from the issue which is being stressed upon by the appellant in the instant case and hence is distinguishable on facts alone. In the instant case there is no evidence whatsoever which has been led by the appellant-owner before the Tribunal to substantiate

his case. At the same time, even if the FIR is taken into consideration though the FIR at the first instance was registered against Vinod Ram, but when the charge sheet was filed after due investigation, it was revealed that it was not Vinod Ram who was driving the vehicle but it was Nelson Kujur and that was the reason that the case was proceeded only against Nelson Kujur and that Vinod Ram was not prosecuted at all.

12. Another aspect which cannot lost sight of is the fact that even though the prosecution case was filed only against Nelson Kujur, at no point Nelson Kujur had taken any steps ensuring Vinod Ram to have been added as an accused in the said case. That, at the same time there is no statement of Vinod Ram accepting the fact that it was he who was driving the Tractor at the time of accident with which the contention raised by the appellant-owner could have been accepted.
13. In the given facts and circumstances of the case, this court is of the opinion that no illegality or infirmity has been committed by the Tribunal while fastening the liability upon the present appellant-owner as there is sufficient evidence to establish that there was clear breach of policy to the extent of driver Nelson Kujur was not having valid license at the time of accident.
14. So far as judgment of Supreme Court in case of Bhuwan Singh Vs. M/s Oriental Insurance Co. Ltd. & Anr., AIR 2009 SCW 2869 which was relied upon by the parties is concerned, the same also is distinguishable on facts of the case as in that case the contesting parties had led sufficient evidence before the Tribunal whereas, in the

instant case inspite of being represented before the Tribunal, the appellant-owner had not led any evidence.

15. For the reasons mentioned hereinabove, the appeal fails and is dismissed.

Sd/-
(P.Sam Koshy)
Judge

inder