

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1489 OF 2008

The Oriental Insurance Co. Ltd., Branch Office-16, R.S.S. Market, P.H. Bhilai (C.G.)

... Appellant

versus

1. Santoshi Bai Sahu, W/o Late Takeshwar Sahu, age about 20 years, R/o Kusami, present address Bilai, Tah. & Thana- Bemetara, District Durg (C.G.) ... Claimant
 2. Sanjay Singh, S/o Deepchand Singh, age about 35 years, R/o Ramkrishna Ward No.13, Ahirwara, Nandani, Thana- Nandininagar, District Durg (C.G.) ... Driver
 3. Julfikar Ali, S/o Late Abdul Gaffar Ali, R/o House No. 11F, Road No.5, SE-4, Bhilai, Thana- Bhatthi, Bhilai (C.G.) ... Vehicle Owner
 4. Soman, S/o Late Sukheram Sahu, age about 55 years
 5. Gunman Bai, W/o Soman Sahu, age about 50 years
- Both No. 4 & 5 are residents of Village Kusami, Tah. & Thana Beral, District Durg (C.G.)

... Respondents

For Appellant	:	Mr. Sudhir Agrawal, Advocate.
For Respondent No.1	:	Mr. Dashrath Kushwaha, Advocate, under instructions of Mr. P.K. Patel, Adv.
For Respondents No.2 & 3	:	Mr. Utsav Mahiswar, Advocate, under instructions of Mr. P.R. Patankar, Adv.
For Respondents No.4 & 5	:	Mr. Atanu Ghosh, Advocate, under instructions of Mr. P.P. Sahu, Adv.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-insurance company, assailing the award dated 30.6.2008 passed by the Additional Motor Accident Claims Tribunal, Bemetara, District Durg (as it then was), in Claim Case No. 11/2008.
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. 2,23,500/- to the claimants with interest thereon at the rate of 6% per annum from the date of presentation of claim application and fastened the liability for payment of compensation jointly and severally upon the owner, driver and insurer of the vehicle involved in the accident.

3. Learned counsel for the appellant-insurance company assailing the liability submits that there is no evidence whatsoever so far as the accident to have occurred from the alleged vehicle belonging to respondent no.3-Julfikar Ali. The vehicle is a bus belonging to Ruby Travels, bearing registration no. CG07-ZA-0474. The contention of the learned counsel for the insurance company is that the FIR in the instant was lodged by the father of deceased-Tarkeshwar Sahu on the date of accident itself and that the FIR lodged promptly within a couple of hours' time from the accident was registered against an unknown vehicle and driver. It was only on the next day that the vehicle belonging to respondent no.3 was seized by the public at the place of accident and subsequently an offence was registered under Section 304-A of IPC against the driver i.e. respondent no.2-Sanjay Singh.

4. Learned counsel for the insurance company further submits that it is a case where the claimants have failed to prove their case by not leading evidence of any eye-witness to prove the negligence aspect as also the involvement of vehicle belonging to Ruby Travels. According to the learned counsel for the insurance company, in the absence of any evidence to prove the accident by eye-witness or by substantive piece of evidence, the claim application ought to have been rejected by the Tribunal and therefore the impugned award deserves to be set aside.

5. Learned counsel for the insurance company relies upon the statement of driver-Sanjay Singh wherein he has stated that he was not aware of the accident at all and that he came to know about the accident on the next day from the date of accident, i.e., 22.12.2007, when the general public at the Bus Stand- Kusami had blocked his bus while he was returning and were agitating for the accident that had occurred on the previous day in which the deceased-Tarkeshwar Sahu had died. Learned

counsel for the insurance company has relied upon a decision of the Hon'ble Supreme Court in the case of **Surinder Kumar Arora & Anr. v. Dr. Manoj Bisla & Ors., AIR 2012 SCW 2241**, highlighting the need of the claimants to prove and establish the accident so as to make the application under Section 166 of the Motor Vehicles Act maintainable.

6. Learned counsels appearing for the respective respondents however oppose the appeal and submit that there is sufficient evidence which have been brought on record with which it could be safely inferred and concluded that the accident did occur from the vehicle belonging to respondent no.3 and that the learned Tribunal has rightly reached to the conclusion fastening the liability upon the insurance company.

7. Learned counsel for the claimants refers to the application which has been filed in the appeal for taking additional documents on record, which are the documents pertaining to the criminal case which was lodged against the driver-Sanjay Singh for the offence punishable under Section 304-A of IPC. Learned counsel for the claimants refers to certain statements which were recorded during the investigation by the police authorities, which would prove the accident and the resultant death of deceased-Tarkeshwar Sahu.

8. Having considered the contentions put forth on either side and on perusal of record, undisputedly, an accident did take place on 21.12.2007 in which the deceased-Tarkeshwar Sahu received grievous injuries to which he later succumbed. An FIR regarding the accident was lodged on the same day. Another fact which is not in dispute is that the alleged vehicle involved in the accident was duly insured with the appellant-insurance company. Perusal of record would further reveal that owner of the bus in the instant case has not entered appearance to lead evidence before the Tribunal. Likewise, the insurance company has also not led any

evidence to prove and substantiate the contention that they have raised in their written statement. In the given circumstances, this Court would proceed to decide the matter based on the evidence of the claimants so also the driver-Sanjay Singh who has entered appearance and deposed before the Tribunal.

9. From the perusal of deposition of driver-Sanjay Singh it clearly reflects that he has categorically stated that on the next day of the accident the people from the nearby vicinity of Bus Stand- Kusami gathered together when the bus belonging to Ruby Travels was crossing that area and stopped it and started agitating and it was then thereafter that the criminal case was lodged against the driver of the bus belonging to Ruby Travels i.e. respondent no.3 in the instant case. The very fact that the general public had stopped the bus on the second day corroborates the claim of the claimants so far as the accident to have occurred from the vehicle belonging to respondent no.3 the previous day.

10. Further, another aspect which cannot be brushed aside is that once when the stand of the witnesses was that the driver of the offending vehicle fled away from that area and they had recognized the name of the travels and the next day when the same bus crossed that area the general public caught hold of the bus and started agitating. This fact which has come in the statement of the driver by itself gives sufficient strength and force to the claim of the claimants so far as the accident to have occurred from the vehicle belonging to respondent no.3 and insured by the appellant. Further, the driver himself has deposed before the Tribunal that admittedly an FIR has been lodged and he is being prosecuted in a criminal case for the offence punishable under Section 304-A of IPC vide Crime No. 231/2007 before the Court of Judicial Magistrate First Class, Bemetara.

11. So far as the claim application under Section 166 of the Motor Vehicles Act is concerned, it is a settled position of law that the standard of evidence required for establishing the case is applying the doctrine of 'preponderance of probability'. It is not necessary to prove the case beyond all reasonable doubts, as is required under the criminal law jurisdiction. In the instant case, if we look into the statement of the driver and the circumstances which prevailed, particularly the statement of the driver which says that the public had stopped the bus on the next day and were agitating in respect of the accident that occurred on the previous day is sufficient indication of the involvement of the bus in the accident.

12. Another factor which cannot be lightly taken is the fact that the owner and the insurance company have not led any evidence in the instant case. The fact which has to be borne in mind is, as to why would a false case be lodged against the owner of the vehicle when a large number of buses pass through that area, therefore, an inference would always be against the owner. In the instant case, the claimants have produced certain documents along with their application for taking on record the same. These documents are the statements which were recorded immediately after the accident and these statements would reveal that it were recorded just in about 2 or 3 days from the date of accident. Therefore, there is no reason why these statements have to be disbelieved. In the statements which have been brought on record, we find the statements of some of the persons who have witnessed the accident and these statements form part of the criminal case as well.

13. In the given facts and circumstances of the case, this Court is of the opinion that there are sufficient materials produced before the Court below to draw an inference of an accident to have taken place on 21.12.2007 involving the bus belonging to respondent no.3. The finding of the learned

Tribunal cannot be said to be either erroneous or contrary to the evidence which have come on record.

14. The appeal of the insurance company thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/