

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.1250 of 2009

Order Reserved on : 22.3.2017

Order Passed on : 17.5.2017

The New India Assurance Company Limited, through its Branch Manager, Branch Office In Front of Project Automobile, G.E. Road, Power House Bhilai, Tahsil and District Durg (Chhattisgarh)

---- Appellant

versus

1. Smt. Shyamlata Pal, Wd/o Late Rajendra Prasad Pal @ Ajeet Pal, aged 30 years,
2. Ku. Rubi Pal, D/o Late Rajendra Prasad Pal @ Ajeet Pal, aged 09 years,
3. Ku. Ruchi Pal, D/o Late Rajendra Prasad Pal @ Ajeet Pal, aged 04 years,

Respondents No.2 & 3 are minor through their mother Smt. Shyamlata Pal Wd/o Late Rajendra Prasad Pal @ Ajeet Pal (Respondent No.1)

All are R/o Lavkush Nagar, A.C.C. Jamul, Bhilai, P.S. Jamul, Tahsil & District Durg (Chhattisgarh)

4. Mansingh, S/o Dharamraj Singh, aged about 32 years, R/o through Allahabad Bhilai Transport Company, Transport Nagar Hathkhoj Bhilai, District Durg (Chhattisgarh), Permanent Address Village Gadhva, P.S. Mau, District Chitrakut (U.P.)
5. Smt. Dharmavati Devi, W/o Shri Dhurandhar Singh, aged about 40 years, R/o Allahabad Bhilai Transport Company, Transport Nagar Hathkhoj, Bhilai, District Durg (Chhattisgarh)

--- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondents	:	Shri C.K. Sahu, Advocate

Hon'ble Shri Justice Anil Kumar Shukla

C.A.V. ORDER

1. The Insurance Company has preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act')

being aggrieved by the award dated 15.5.2009 passed in Claim Case No.70 of 2007 by the 9th Additional Motor Accidents Claims Tribunal (F.T.C.), Durg. By the impugned award, the Tribunal has awarded compensation for a sum of Rs.6,51,500/- in favour of the Claimants/Respondents No.1 to 3 fastening liability on the Appellant/Insurance Company, Respondent No.4, Mansingh and Respondent No.5, Smt. Dharmavati Devi to satisfy the award jointly or severally.

2. Undisputed facts of the case are that on the date of accident, i.e., 20.8.2006, a truck bearing registration No.CG 07 C 3477, which was involved in the accident in question, was insured with the Appellant/The New India Assurance Company Limited. The owner of this truck was Respondent No.5, Smt. Dharmavati Devi. In connection with the accident, Crime No.30 of 2006 was registered against driver of this truck Respondent No.4, Mansingh in Police Station Chilfi, District Kabirdham, a charge-sheet was filed against Respondent No.4, Mansingh under Sections 337 and 304A of the Indian Penal Code in the Court of Chief Judicial Magistrate, Kabirdham (Kawardha) and a criminal case is pending against him.
3. It is the claim of the Claimants that husband of first Claimant and father of other two Claimants Rajendra Prasad Pal alias Ajeet Pal, aged about 33 years, was owner and driver of a truck bearing registration No.CG 07 C 4916 and was engaged in his own transport business. On 20.8.2006, truck No.CG 07 C 3477 was stood on a jack on N.H. 12-A Main Road, Near Gulla Pagwahi, Police Station Chilfi, District Kabirdham and was being got repaired by its driver. Since the jack was not properly fixed the jack broke and the truck overturned towards its driver side (right side).

Rajendra Prasad Pal alias Ajeet Pal, the owner and driver of truck No.CG 07 C 4916, who, at the relevant point of time, was standing on the driver side (right side) of truck No.CG 07 C 3477, crushed under the truck No.CG 07 C 3477 and died on the spot. As stated above, a crime was registered and a charge-sheet was filed.

4. The Claimants preferred a claim for compensation of total Rs.1,77,30,000/- under various heads. In reply to the claim petition before the Tribunal, Respondents Mansingh and Smt. Dharmavati Devi opposed the claim of the Claimants except the undisputed facts. In the reply, Respondent Mansingh denied that the accident took place due to his negligence. It is stated in the reply that Rajendra Prasad Pal and Ajeet Pal are not the names of one person, i.e., Rajendra Prasad Pal and Ajeet Pal are names of different persons. It is also claimed in the reply that the compensation so claimed by the Claimants is exaggerative. It is further claimed in the reply that at the time of accident truck No.CG 07 C 3477 was insured with the Appellant/The New India Assurance Company Limited and its driver Respondent Mansingh had a valid and effective licence and permit to drive the truck at the time of accident in question. Respondents Mansingh and Smt. Dharmavati Devi, in their reply to the claim petition before the Tribunal, claiming that liability to pay compensation, if any is of the insurer of the truck, prayed that the claim petition, so far as it relates to them, may be dismissed.
5. The Appellant/Insurance Company except the admitted facts denied rest of the pleadings of the claim petition before the Tribunal. The main defence of the Insurance Company before the Tribunal was that name of the deceased was Rajendra Prasad Pal,

not Ajeet Pal. At the time of accident, the offending truck was stand still and was not being driven. Therefore, the accident did not take place due to negligence of the truck driver. Mere filing of a charge-sheet against an accused does not prove a case against him. At the time of accident, Respondent Mansingh was not in possession of a valid and effective licence to drive the offending truck. The amount of compensation claimed is exaggerative. Therefore, the claim petition deserves to be dismissed.

6. The Tribunal has not found that Rajendra Prasad Pal and Ajeet Pal are names of one person. The Tribunal has also not found that Respondent Mansingh, committing breach of terms and conditions of the policy of insurance, caused the accident.
7. The Insurance Company has filed the instant appeal mainly on the ground that it was not proved before the Tribunal that the accident took place due to negligence of the driver of the offending truck. Since Arvind Kumar Dubey (AW-5) is not an eye-witness to the accident, therefore, negligence of the driver of the offending truck could not be proved. The amount of compensation awarded by the Tribunal is exaggerative. The Appellant/Insurance Company had obtained permission under Section 170 of the Act before the Tribunal to defend the case on all grounds. The impugned award is not justified. Therefore, the instant appeal of the Insurance Company may be allowed and the impugned award may be dismissed.
8. The points to be considered in this appeal are as under:

- (1) Whether at the time of accident, Respondent Mansingh for repairing of the offending truck bearing

registration No.CG 07 C 3477 fixed a jack below it negligently due to which the accident took place?

(2) Whether despite the offending truck, at the time of accident, was stand still and was not being driven, the accident can be considered as a result of negligence on the part of the driver of the offending truck?

(3) Whether the award passed by the Tribunal is justified?

9. It is evident from the evidence adduced before the Tribunal as also from the impugned award passed by the Tribunal that at the time of accident Respondent Mansingh was the driver of the offending truck bearing registration No.CG 07 C 3477 and at the time of accident Respondent Mansingh, after fixing a jack below the offending truck, was getting the truck repaired. During the repairing, the jack broke and the offending truck, which was loaded with sand, overturned. Rajendra Prasad Pal, who was owner and driver of truck bearing registration No.CG 07 C 4916 and who, due to a traffic jam, had stopped his truck and was standing near the offending truck bearing registration No.CG 07 C 3477, crushed under the offending truck due to its overturning upon him and died on the spot itself.

10. Learned Counsel appearing for the Appellant/Insurance Company argued that since at the time of accident the offending truck was not being driven and was stand still, driver of the offending truck Respondent Mansingh was not negligent and not liable for the accident and mere filing of a charge-sheet against Respondent Mansingh under Sections 337 and 304A IPC does not prove a

case against him. In this regard, this Court, in **Khitti Sahu v.**

Yashwant Kumar Sahu, 2006 (2) CGLJ 409 has observed thus:

“7. The second argument of the appellant that admittedly the alleged accident did not arise due to the use of motor vehicle, from the pleadings it is evident that the accident occurred when the tractor was stationary and the claimant was repairing the same and while changing the bearing all of a sudden the jack slipped and the tractor fell on the claimant resulting in grievous injury.

8. The word “use” is used in section 165 in a wide sense. It covers all employments of a motor vehicle, so that whenever the vehicle is put into action or service, there is “user” of the vehicle within the provisions of S. 110 of the 1939 Act, whether the vehicle was being driven, or repaired or simply parked or kept stationary or left unattended. In that sense the vehicle is used, whenever the vehicle is driven out for any purposes, whatsoever. This without anything more, is sufficient to attract Section 165. It is not the purpose for which, or the person who employs or uses the vehicle that matters. Therefore, whenever, any accident occurs causing death of or injury to persons because of the vehicle or in the course of its user the jurisdiction of the Claims Tribunal arises. Reliance is placed on the decision of the Supreme Court in the matter of *Shivaji Dayanu Patil Vs. Vatschala Uttam More*, AIR 1991 SC 1769, on the decision of Kerla High Court in the matter of *Babu Vs. Ramesan*, AIR 1996 Kerla 95 and in the matter of *V.G. Sumant Vs. Shallendra Kumar*, AIR 1980 MP 101.”

11. In the instant case, the Appellant/Insurance Company has not led any evidence before the Tribunal that the driver of the offending truck had no role in the accident in question. The principle of *res ipsa loquitur* clearly applies to the instant case. The occurrence of an accident implies negligence and the negligence in the instant

case was on the part of the driver of the offending truck is apparent. In **Bimla Devi v. Himachal Road Transport Corporation, (2009) 13 SCC 530**, the Hon'ble Supreme Court has observed thus:

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

In **V.G. Sumant v. Shailendra Kumar, AIR 1980 MP 101**, the Madhya Pradesh High Court has observed thus:

“8. It is nobody's case that the jeep was in a defective condition or that it was not in a fit condition for mechanical propulsion. The case is that the jeep which was in a fit condition was driven up to that place and had been parked on the road outside the shop of its owner respondent No.2 by the driver who then left it unattended; some mischievous children got into it and later the jeep started moving down the slope. What we have to decide is whether an accident happening as a result of rolling the slope of a motor vehicle parked on the slope of a road, the motor vehicle being in a fit condition and left unattended on the road in this manner, can be said to arise out of the use of a motor vehicle. The view taken by the Tribunal and supported by the respondents' counsel Shri D.M. Dharmadhikari and Shri P.C. Naik is that unless the engine of the motor vehicle is switched on and it is driven by someone, it cannot be said that the motor vehicle is being used. In our opinion, the narrow view suggested by the respondents' counsel and accepted by the Tribunal cannot be upheld.

9. We may mention at the outset that a distinction has to be drawn between a motor vehicle which is in a fit condition for mechanical propulsion like the jeep in the present case and a vehicle which is not in that condition. A vehicle which is out of use being incapable mechanical propulsion on account of some defect and being negligently parked starts rolling would be in a different category. Not so a motor vehicle which is fit for mechanical propulsion on the road and which during its use has been parked negligently on the road and later starts sliding down the road without being mechanically propelled by starting the engine.

11. We may add that the duties enjoined on a driver of a motor vehicle to take certain precautions while parking a motor vehicle on a public highway during the use of that motor vehicle obviously relate to the use of that motor vehicle on a public highway. It necessarily follows that any negligence of the driver in this respect which leads to an accident must obviously lead to the conclusion that such an accident arises out of the use of the motor vehicle. The expression 'accidents..... arising out of the use of motor vehicles' cannot be narrowly construed and must take within its ambit all accidents which are related to the use of a motor vehicle as a motor vehicle, i.e. any mechanically propelled vehicle adapted for use upon roads as defined in S. 2(18) of the Motor Vehicles Act. The definition of 'motor vehicle' given in S. 2(18) must be read to mean any such vehicle which is capable of mechanical propulsion for use upon roads and, therefore, a vehicle, which for the time being is incapable of mechanical propulsion ceases to fall within the ambit of the definition. A motor vehicle which being fit is capable of mechanical propulsion and for use as such but for the time being has only been parked or left stationary at any place is included within the definition. We find no reason why provisions like Ss.81 and 84 would be made in Motor Vehicles Act in Chap. VI relating to 'control of traffic' and dealing with the duties of a driver who leaves the vehicle parked or stationary on a public road unless it was intended to regulate the

use of motor vehicles at such places during its use. We are, therefore, unable to uphold the contrary view taken by the Tribunal on this point.”

12. Therefore, in the instant case, merely because the offending truck was stand still and was not being driven, it cannot be accepted that there was no negligence on the part of the driver of the offending truck. The contention of Learned Counsel appearing for the Appellant/Insurance Company in this regard is, therefore, rejected.
13. As far as the quantum of compensation awarded by the Tribunal is concerned, it is not disputed that on the date of accident Rajendra Prasad Pal was a truck driver. In this circumstance, I find no error in assessment of monthly income of Rs.4,500/-, i.e., yearly income of Rs.54,000/- of the deceased truck driver by the Tribunal. Deduction of 1/3rd towards personal and living expenses of the deceased is appropriate and resultantly assessment of loss of dependency of Rs.36,000/- is not exaggerative. Application of multiplier of 17, looking to the age of the deceased to be 33 years on the date of accident, is justified. The amounts of compensation awarded to the Claimants by the Tribunal towards other heads also do not appear to be exaggerative.
14. Consequently, the appeal is dismissed. The impugned award passed by the Tribunal is affirmed. No order as to costs.
15. Record of the Tribunal be sent back along with a copy of this order forthwith.

Sd/-

(Anil Kumar Shukla)
JUDGE