

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 529 of 2008

Ashok Kumar S/o Baran Lal Sahu, aged about 33 years, R/o village Sivani, Tah. Balod, District Durg (CG).

---- Appellant

Versus

1. Chamanlal S/o Suklal, aged about 48 years, Caste Sinha.
2. Smt. Muliyaibai W/o Chamanlal, aged about 40 years, Caste-Sinha,
Both are R/o village Sivani, Tah. Balod, Distt. Durg (CG).

---- Respondents

For Appellant	:	Shri PK Tulsyan and Shri AL Singroul, Advocates.
For respondents	:	Shri Shivendu Pandya, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

06.10.2017.

1. The present is an appeal under Section 173 of the Motor Vehicles Act (for short, the MV Act) filed by the driver of the vehicle against the award dated 26.03.2008 passed by the Additional Motor Accident Claims Tribunal (FTC) Balod, Distt. Durg (for short, the Tribunal) in Claim Case No.04 of 2007. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act has awarded compensation of Rs.2,63,128/- along with interest @ 6 percent per annum from the date of application.
2. Since the appeal is of the year, 2008 and there was nobody to prosecute the appeal inspite of matter being called on two occasions, we took the assistance of Shri PK Tulsyan and Shri A.L. Singroul, Advocates, on behalf of the appellant for disposal of the appeal.
3. The facts of the case is that, the Tractor which was being driven by

present appellant bearing registration No.CG-04-DA-0494 and Trolley attached with the Tractor bearing registration No.CG-04-DA-2797 met with an accident as a result of which the daughter of claimants namely Ku. Kiran died of the injuries sustained in the said accident.

4. A claim case was filed against the owner and driver of the offending Tractor. However, pending the claim case, the owner of the Tractor, who also happened to be the father of the present appellant, the driver of the tractor, had expired and therefore his name stood deleted.
5. While deciding the claim case, the Tribunal reached to the conclusion that since the vehicle was not insured at the relevant point of time, the entire liability of payment of compensation fell upon the present appellant-the driver and also who had become the owner of the Tractor subsequent to the death of his father, the original respondent No.2 in the claim case.
6. The contention of the appellant in the instant appeal is that there is no sufficient evidence to show that there was any negligence on the part of the present appellant for the accident to occur. Therefore, the claim case under Section 166 of the Motor Vehicles Act could not have been entertained particularly when there is no allegation of negligence against the owner or the driver of the vehicle which had dashed against the Tractor belonging to the appellant. It was also the ground of the appellant that the deceased had died because of a hit by the Tipper coming from opposite direction and that she was not sitting in the Tractor or the trolley belonging to the appellant, and therefore also, the appellant should have been exonerated of its liability.

7. The appellant also questioned the compensation assessed by the Tribunal and the compensation awarded is on the higher side which deserves to be interfered with.
8. The counsel for the respondents claimants however submits that apart from the claimants, the statement of Kamal Narayan, AW-2 and Hardevlal, AW-3 were also examined. Hardevlal, a co-villager of claimants and who was also travelling in the same Tractor at the time of accident, has specifically stated that the vehicle was parked on the road without sufficient indication. The contention of the claimant was that the statement of villager also stands corroborated from the statement of Kamal Narayan, AW-2 who was also travelling in the same Tractor at the time of accident. Thus, prayed for dismissal of the appeal preferred by the appellant.
9. Having heard the rival contentions put forth on either side and on perusal of records, what is undisputed is there being an accident that took place on 27.04.2007 in which Ku. Kiran, daughter of claimants, had died; an FIR was also lodged by the appellant himself in respect of the accident against the unknown person which prima facie establishes the accident to have occurred on 27.04.2007 resulting in the death of deceased.
10. So far as negligence part is concerned, true it is that an FIR lodged was against the unknown person which ultimately could not have been traced out as the criminal case also had resulted into its closure for want of sufficient evidence.
11. The relevant factors to be considered now is whether there was

sufficient evidence brought on record by the claimants to establish the liability upon the present appellant.

12. If we look into the evidence of the claimant Chamanlal, AW-1, which has been supported by an independent witness Hardevlal, AW-3 and which also stands corroborated by the evidence of Kamal Narayan, AW-2, all of whom were travelling in the same Tractor at the time of accident, proves the claim of the claimants. So far as the evidence which have been led by the present appellant is concerned, the same does not have sufficient force to disbelieve the case of the claimants. On the contrary, an adverse inference can easily be drawn, as the FIR itself was lodged by the present appellant and where he has categorically stated of his Tractor to have been hit by an unknown Tipper.
13. Giving the said set of evidence, this court is of the opinion that no strong case has been made out by the appellant calling for interference with the impugned award.
14. The appeal thus fails and is dismissed.

Sd/-
(P.Sam Koshy)
Judge