

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 1076 of 2010

Rajendra Chhabda, S/o Khel Kumar Chhabda, aged 55 years, R/o 111/20 GT Road, Kanpur(UP).

---- Appellant

Versus

1. Amarnath S/o Sabursay, aged about 28 years
2. Sigaro W/o Amarnath aged about 25 years.
Both are Caste By Kanwar, R/o Village Chandora, P.S. Chandora, Tahsil Pratappur, Distt.-Surguja (CG).
3. The New India Insurance Company Limited, Office 14/138, G.T. Road, Gumti No.5, Kanpur (Up), Through Branch Office, The New India Insurance Company Limited, Korba (CG).
4. Abhishek Tiwari S/o Rambahadur Tiwari Village And Post Bamrouli, Tahsil Pukhraya, Distt.-Kanpur Dehat (UP)
5. Dinesh Kumar Sachan S/o J.N.Sachan R/o Post Harchandarpur, Kanpur (UP).

---- Respondents

For Appellant	:	Shri Sunil Tripathi, Advocate.
For respondents 1&2	:	Shri DN Prajapati, Advocate.
For respondent No.3	:	Shri Srikumar Agrawal, Sr. Advocate along with Shri Anand Gupta, Advocate.
For respondents 4&5	:	Shri Akhilesh Mishra, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

09.10.2017.

1. The present is an appeal under Section 173 of the Motor Vehicles Act (for short, the MV Act) filed by the owner of the vehicle against the award dated 05.08.2010 passed by the Additional Motor Accident Claims Tribunal (FTC) Pratappur, Distt. Surguja (for short, the Tribunal) in Claim Case No.61 of 2008. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act in a death case has awarded compensation of Rs.1,57,000/- along with interest @ 6 percent per annum from the date of application.

2. While passing the impugned award, the liability of payment of compensation has been fastened upon the appellant-owner of the Truck involved in the accident and the insurance company was exonerated of its liability on the ground that the vehicle at the relevant point of time was being driven by Abhishek Tiwari, the respondent No.4, who was engaged as a Cleaner in the Truck and was not having licence to drive the offending Truck.
3. According to appellant, the stand of the claimants before the Tribunal was that at the time of accident the vehicle was being driven by respondent No.5 and not respondent No.4. Further, the respondent No.4, against whom a criminal case for the offence under Sections 279 and 304-A IPC was registered also has culminated in an acquittal which further establishes the fact that he was not driving the Truck at the time of accident which had caused accident and thus, the liability in the given facts of the case could not have been fastened upon the present appellant-owner and it should have been shifted upon the respondent No.3-Insurance Company.
4. It was further contended by the appellant that the respondent No.5 Dinesh Kumar, the actual driver of the vehicle, infact had appeared before the Tribunal and have stated that it was he who was driving the vehicle at the time of accident and that he had a valid licence. Thus, prayed for setting aside of the award to the extent of liability being fastened upon the appellant.
5. Counsel for the respondent No.3-insurance company, however opposing the appeal submits that it is a case where sufficient evidence was led before the Tribunal with which it can be safely presumed that it

was the respondent No.4 who was driving the vehicle and he was a Cleaner of the said vehicle and he was not having licence yet he was driving the Truck when the accident occurred. He further referred to FIR, Ex. P/1, which was lodged by the respondent No.1 before the Tribunal i.e. father of the deceased. In the FIR he has stated that the vehicle at the time of accident was being driven by respondent No.4, Abhishek Tiwari. Thus, the findings of the Tribunal does not warrant any interference and the appeal deserves to be rejected.

6. Having heard the rival contentions put forth on either side and considering the facts and circumstances of the case more particularly the evidence of respondent No.5 as also judgment dated 26.09.2011 passed in criminal case No.474/2011, decided by the Judicial Magistrate First Class, Pratappur, where the respondent No.4 has been acquitted from the criminal case for the offence under Sections 279 and 304-A IPC, and also taking note of the pleadings and evidence of the claimant before the Tribunal stating that accident occurred when the vehicle was being driven by respondent No.5, Dinesh Kumar, this court is of the opinion that the findings of the Tribunal fastening the liability upon the present appellant-owner was uncalled for and the same deserves to be and is accordingly set aside.
7. It is ordered that the liability of payment of compensation is now shifted upon the respondent No.3-The New India Insurance Co. Ltd. indemnifying the present appellant.
8. The appeal thus stands allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge