

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1718 of 2016**

Manager, the National Insurance Company Ltd. Supela, Bhiali, District-
Durg, Chhattisgarh.(Insurer of Truck Hyva No. C.G.07-CA/9264).

---- Appellant

Versus

1. Jankibai Ramteke W/o Late Siyaram, Aged About 55 Years
2. Kailash Ramteke S/o Late Siyaram, Aged About 37 Years
3. Kamal Ramteke S/o Late Siyaram, Aged About 33 Years
4. Pushpanjali D/o Late Siyaram, Aged About 25 Years
All R/o Village Accholi Post Aamrgaon, Tashil Chhuriya, District
Rajnandgaon.
5. Nand Kumar Sahu S/o Ramnath Sahu, Aged About 28 Years R/o
Village Nandni Khundni Pal Para, P.S.- Nandni, District Durg,
Chhattisgarh(Driver Of Truck Hyva No. C.G.07-C A/9264).
6. Rana Arun Kumar Singh S/o Late Shri Ram Pratap Singh, R/o Old
Nehru Nagar Bhilai, District- Durg, Chhattisgarh(Owner Of
Truck Hyva No. C.G.07-C A/9264).

---- Respondents

and

MAC No. 1719 of 2016

Manager, the National Insurance Company Ltd. Supela, Bhiali, District-
Durg, Chhattisgarh.(Insurer of Truck Hyva No. C.G.07-C A/9264).

---- Appellant

Versus

1. Lata Meshram W/o Late Durga Prasad Meshram, Aged About 38 Years
2. Ku. Megha Meshram D/o Durga Prasad Meshram, Aged About 19 Years
3. Ku. Nidhi Meshram D/o Late Durga Prasad Meshram, Aged About 19
Years.
4. Harsh Meshram S/o Late Durga Prasad Meshram, Aged About 12 Years
Minor Through His Mother Appellant No.1.
5. Smt. Rambai Meshram W/o Mohpat Meshram, Aged About 65 Years
All R/o Ward No.62, B.R.P. Colony, Station Maroda, Bhilai, District-
Durg, Chhattisgarh.
6. Nand Kumar Sahu S/o Ramnath Sahu, Aged About 28 Years R/o
Village Nandni Khundni Pal Para, P.S.- Nandni, District Durg,
Chhattisgarh(Driver of Truck Hyva No. C.G.07-C A/9264).
7. Rana Arun Kumar Singh S/o Late Shri Ram Pratap Singh, R/o Old
Nehru Nagar Bhilai, District- Durg, Chhattisgarh(Owner of
Truck Hyva No. C.G.07-C A/9264).

---- Respondents

For appellants	:	Shri Raj Awasthy, Advocate.
For respondents/claimants	:	Shri Vinod Kumar Sharma, Advocate.
For respondent/Driver & Owner:		Shri Amiykant Tiwari, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Award on Board

17/03/2017

1. By this common award, Misc. Appeal (C) Nos. 1718 & 1719 of 2016 are being disposed of as common facts & issues are involved in both the appeals and are arise out of same accident.
2. Both the appeals are directed against the award dated 15.07.2016 passed by the IInd Additional Motor Accident Claims Tribunal, Durg, Distt. Durg (for short 'the Tribunal') in claim case Nos. 43/2015 and 41/2015.
3. The brief facts necessary for deciding these appeals is that, an accident took place on 30.09.2014 when the motorcycle bearing registration No.CG-07-A-1774 driven by one Durga Prasad Meshram with Siyaram as his pillion rider were travelling near Chopra Petrol Pump at Maroda Sector, Bhilai, was dashed by Truck (Hyva) bearing registration No.CG-07-CA-9264 from behind resulting in death of both the persons travelling on the said motorcycle.
4. The legal heirs of both the deceased filed separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') claiming compensation to the tune of Rs.8,50,000/- for death of deceased Siyaram (in Claim Case No.43/15) whereas, compensation was claimed to the tune of Rs.1,42,34,590/- for death of deceased

Durga Prasad (in claim case No.41/15).

5. The Tribunal, having found the accident had occurred due to rash and negligent driving of Truck bearing registration No.CG-07-CA-9264 by its driver, vide award dated 15.07.2016 awarded a total sum of Rs.4,07,000/- as compensation in favour of claimants for the death of deceased Siyaram whereas, an amount of Rs.30,23,625/- was awarded as compensation to the claimants for the death of deceased Durga Prasad. The Tribunal had also awarded interest @ 6 percent per annum from the date of claim application before the Tribunal which is 16.04.2015 in both the cases. It is this joint award which has been passed in both the claim petitions which has been assailed by the present appellant-Insurance Company.
6. The grounds raised by the insurance company was that the liability fastened upon the insurance company was not proper, legal and justified for the reason that the accident having arisen out of the use of Truck belonging to the respondent-Rana Kumar Singh and driven by the respondent-Nand Kumar Sahu was not established. According the counsel for the Insurance Company, a perusal of FIR at the first instance would reveal that it was registered against unknown person. Since at the time of lodging of FIR itself the identity of the vehicle involved in the accident was not established, the Insurance Company could not be saddled with the responsibility of payment of compensation to the claimants. According to Insurance Company, the award as such has been passed on the basis of assumption and presumption which cannot be accepted. There has to be cogent and

strong evidence establishing involvement of the Truck which had dashed the motorcycle on which the deceased persons were travelling.

7. Another ground which has been raised is the fact that accident arose because of rash and negligent driving on the part of person driving the motorcycle. Therefore, it was not proper on the part of the Tribunal to have casted the entire liability upon the owner and insurer of the Truck allegedly involved in the accident. Rather, the Tribunal should have applied the principle of contributory negligence and should have suitably distributed the liability of payment of compensation to the claimants. Thus, the award needs to be modified accordingly.
8. Per contra, learned counsel for the claimants opposes the appeals and submitted that the contention put forth by the insurance company is not sustainable for the simple reason that there has been sufficient evidence which has been adduced before the Tribunal to firstly establishing the accident and secondly in accepting the fact that it was from the said accident, the persons travelling on motorcycle had died and also the fact that subsequently the Truck involved in the accident belonging to the respondent-Rana Kumar was seized and it was only after a proper application being moved for release of the vehicle on Supurdnama, the said vehicle was released which also has been taken into consideration by the Tribunal while deciding the claim petitions. Thus, prayed for dismissal of both the appeals preferred by the insurance company.
9. Having heard the rival contentions put forth on either side and on perusal of records what clearly reflects is the fact that indisputably the

accident took place on 30.09.2014 as a result of which two persons namely Siyaram and Durga Prasad travelling on motorcycle had died. The legal heirs of both the deceased filed separate claim petitions before the Tribunal. Now coming to the issue whether there is evidence establishing the involvement of the Truck belonging to respondent-Rana Arun Kumar, if we peruse the evidence which have come on record, it would reveal that the accident and death of the two persons have been established and proved by the claimants.

10. Now, whether the Truck bearing registration No.CG-07-CA-9264 belonging to the respondent-Rana Arun Kumar was the vehicle which had dashed the motorcycle on which the deceased were travelling is concerned, the claimants have examined one Ashish Kumar Banerjee, AW-2, who in his evidence has categorically deposed that at the time of accident he was travelling behind the Truck which had dashed the motorcycle killing two persons. The evidence is also to the effect that he had taken photographs of the registration number of the said Truck from his mobile phone and had given the same to the police authorities. He had also made a statement that immediately after the accident, the driver of Truck fled away with the vehicle from the scene of accident.
11. Further from the evidence of AW-2, it is also established that during the course of evidence Ex. P/1 was exhibited which was a charge sheet filed in respect of criminal case registered against the driver of the said Truck. The records of the criminal case also reflects that there is a statement of said witness Ashish Kumar Banerjee who has been shown as an eyewitness to the accident. Further, from the finding of the

Tribunal also it reflects that the Tribunal had called the records of criminal case registered against the driver of the said Truck and in the said record statement of said witness recorded under Section 161 CrPC was found. The records of the criminal case and the statement recorded therein corroborated the statement made by witness Ashish Kumar Banerjee before the Tribunal. Therefore, strong inference was forced to be taken by the Tribunal in reaching to the conclusion that what is being stated by the said witness was true and believing the said statement inference was drawn that the accident did occur at the hands of the driver of the Truck belonging to respondent-Rana Arun Kumar.

12. Thus, this court is of the opinion that no strong ground is made out for taking a different view than what has been arrived at by the Tribunal. Neither does this court find any good reason for holding that the findings of the Tribunal is contrary to evidence or is perverse finding of fact. Therefore, the ground raised by the insurance company that involvement of Truck has not been established is not sustainable and the said ground stands negated.
13. Now so far as the issue with regard to contributory negligence is concerned, what is relevant to be considered is the fact that there is no evidence led by the insurance company to prove this contention. Neither has there been any evidence brought on record by the driver or owner of the Truck nor any such fact has been established from the cross examination of the eyewitness Ashish Kumar Banerjee.
14. In the absence of any evidence with regard to contributory negligence, the ground so raised by the insurance company also cannot be

accepted and the said ground also stands negated.

15. In view of the aforesaid factual matrix of the case and the findings recorded by the Tribunal, this court is of the opinion that no strong case has been made out calling for interference with the impugned award. Accordingly, both the appeals being devoid of merit are liable to be and are hereby dismissed.

Sd/-
(P.Sam Koshy)
Judge

inder