NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 215 OF 2013

Judgment reserved on: 19/07/2018

Judgment delivered on: 26/07/2018

1. Sahdev Ram S/o Rohidas, Caste Kanwar, Aged about 40 yrs, R/o Village Maini, Post, P.S. & Tahsil Bagicha, District Jashpur (C.G.) ----Driver

2. Janardhan Mishra S/o Ramji Mishra, Aged about 38 years R/o Village, Post, P.S. & Tahsil Bagicha (Lota Mod), District Jashpur (C.G.). -----Owner

---- Appellants

Versus

1. Khirodhar S/o Ranjan, aged about 51 years,

2. Smt. Fulmet, W/o Khirodhar, Aged about 46 years,

3. Kishore S/o Khirodhar, Aged about 23 years,

All Castes- Nagvanshi, R/o Village Dhodharamba, Marol, P.S. Kansabel, District Jashpur (C.G.)

4. Bajaj Allianz Gen. Ins. Company Ltd., G.E. Plaza, Airport Road, Yerwada, Pune, Branch Office Shiv Mandir Bhawan, Vidhansabha Marg, Pandri, Raipur (C.G.) ------Insurer of the off. vehicle

---- Respondents

For Appellants	: Mr. J. K. Saxena, Advocate
For Respondents No. 1 to 3	: Mr. A.K. Prasad & Mr. Rishi Mahobia, Advocates
For Respondent No. 4	: Mr. Ghanshyam Patel, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

C A V Judgment

1. By this appeal, the appellants have challenged the legality and propriety of the impugned award dated 30/01/2013 passed by learned Additional Motor Accident Claims Tribunal, Jashpur, District Jashpur, C.G. (hereinafter referred to as 'the Claims Tribunal') in Claim Case No. 03/2012, whereby the learned Claims Tribunal has passed an award of Rs.1,60,000/- in favour of respondents No.1 to 3/claimants and fastened the liability on the driver and owner of the Tractor bearing registration No.CG14/A/3374 and Trolley bearing registration No.CG14/A/3375 (offending vehicle) and exonerated the Insurance Company

from payment of compensation on the ground that there was violation of conditions of insurance policy.

2. Brief facts of the case, are that, on 01/05/2010, at about 2.00 P.M., the deceased Parwati Bai along with one Sushma Nagwanshi were going to Kadamtoli ground as pedestrian, at that relevant time, the offending vehicle driven by respondent No. 1 rashly and negligently dashed them, due to which, Parwati Bai died on spot and Sushma Nagwanshi got injured. The First Information Report was lodged by Sushma Nagwanshi, on the basis of which, the offence was registered against the driver of the offending vehicle/appellant No.1 herein under Sections 279, 337 and 304-A of the IPC. The claimants, who are parents and brother of the deceased Parwati Bai have filed claim application before the competent Claims Tribunal claiming compensation of Rs.14,30,000/-.

3. The appellants after service of notice made their appearance before the learned Claims Tribunal and submitted reply to the claim application, in which, they have pleaded that offending vehicle was insured with the respondent No.4/Insurance Company and the accident occurred due to mechanical failure of the Tractor i.e. failure of brakes.

4. The Insurance Company/respondent No.4 has submitted its reply separately and denied all the adverse pleadings made in the claim application. It was further pleaded that the deceased Parwati Bai and injured Sushma Nagwanshi were travelling on the Tractor as labour and were going for bringing stone metals. It was also pleaded that the aforesaid fact was proved from the contents of First Information Report that the deceased was travelling on a Tractor and there is no sitting capacity in Tractor, therefore, there was violation of conditions of insurance policy.

5. The learned Claims Tribunal on the basis of pleadings, evidence and material available on record and also considering the contents of the First Information

Report, which was lodged by co-occupant of Tractor i.e. Sushma Nagwanshi (AW-3), passed an impugned award in favour of the claimants and exonerated the Insurance Company from its liability of payment of compensation on the ground that there was violation of conditions of insurance policy.

6. The appellants aggrieved by the findings recorded by the learned Claims Tribunal with regard to the exoneration of the Insurance Company from its liability, have preferred this appeal.

7. Learned counsel appearing for the appellants submits that the learned Claims Tribunal was required to consider only the pleadings made in claim application and evidence led by the parties in support of their case. He further submits that as the learned Claims Tribunal has considered the contents of the First Information Report only, for arriving at a conclusion that there was a violation of conditions of insurance policy without appreciating oral evidence available on record and prays for setting aside the impugned award so far as it relates to the fastening of liability on them.

8. Learned counsel appearing for respondents No. 1 to 3/claimants supported the impugned award.

9. Learned counsel appearing for respondent No. 4/Insurance Company supporting the impugned award submits that the document i.e. First Information Report was placed on record by the claimants, which was lodged by one Sushma Nagwanshi, in which, she has categorically mentioned that deceased Parwati Bai along with others were travelling on Tractor with her for bringing stone metals and during that time, due to negligent act of the driver of the Tractor, Parwati Bai died and she sustained injuries. He further submitted that once the First Information Report has been made as part of documentary evidence then all the contents as mentioned in the First Information Report have

to be considered as evidence, particularly, when one of the occupants of the offending vehicle has lodged the First Information Report.

10. I have heard learned counsel appearing for the respective parties and perused the record carefully.

11. Undisputedly, the accident took place on 01/05/2010 and on the same day within a period of 45 minutes, a First Information Report was lodged by Sushma Nagwanshi (AW-3). In the First Information Report, it was clearly mentioned that the deceased Parwati Bai and Sushma Nagwanshi were travelling on the Tractor along with other persons at the time of accident, though the claim application has been filed after about lapse of more than one year before the competent Claims Tribunal on the ground that the accident took place when Sushma Nagwanshi and Parwati Bai were going on road at that time the offending vehicle i.e. Tractor dashed them from back side.

12. Sushma Nagwanshi (AW-3) has categorically admitted in Paragraph-8 of her statement that the First Information Report (Exhibit A-2) was lodged by her at Police Station Baghicha.

13. From perusal of the contents of First Information Report, it is evident that the deceased along with Sushma Nagwanshi were travelling on the offending vehicle and at that relevant time, the offending vehicle met with an accident, in which, Parwati Bai died and Sushma Nagwanshi got injured. Sushma Nagwanshi also filed claim application before the Claims Tribunal, which was registered as Claim Case No.02/2012 and decided by common award but Sushma Nagwanshi (AW-3) not challenged the same.

14. It is well settled principle that when the First Information Report was lodged by injured himself or herself and places on record before the Claims Tribunal for proving the fact of accident then the said claimant or the person cannot be

granted liberty of her or his choice to get prove some part of the document and to deny the other part of the document. It is not a case where the First Information Report has been lodged by any third party where there can be scope for mentioning wrong facts for want of knowledge or some other reasons. The issue with regard to considering the First Information Report and its contents in the motor accident claim cases have arose before the Hon'ble Supreme Court in the matter of ***Oriental Insurance Co. Ltd. v. Premlata Shukla & Ors.*** reported in ***2007 AIR SCW 3591***, wherein the Hon'ble Supreme Court has held as follows:-

> 13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.
>
> 14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.
>
> 15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon................."

15. In ***Premlata Shukla*** (*supra*), the Hon'ble Supreme Court has held that once the person injured or co-occupant of the vehicle met with an accident has lodged First Information Report and placed it as evidence, then its contents as it, is also to be taken as evidence and the said person cannot be permitted to turn round and raise a contention that the other contents mentioned there which is a part of

the document had not been proved. In the case in hand, the facts are almost similar to the facts of the case in ***Premlata Shukla*** (supra). Here also one of the co-occupants of the offending vehicle has lodged the First Information Report mentioning that she along with the deceased were travelling on the Tractor and during that time, Tractor met with an accident. But subsequently in claim case though she admitted lodging of First Information Report but denied the contents of the First Information Report. No reason or clarification was made by her for mentioning wrong facts in First Information Report. In the light of the law laid down by the Hon'ble Supreme Court in ***Premlata Shukla*** (supra) and the facts and circumstances emerges in the present case, I am of the considered view that the learned Claims Tribunal has not committed any error of law while passing the impugned award by holding that there was violation of conditions of insurance policy and fastening liability on the owner and driver of the offending vehicle.

16. In view of the forgoing discussion, appeal fails and is hereby dismissed. However, there shall be no order as to costs.

Sd/-

(Parth Prateem Sahu))
Judge

Yogesh