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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 646 of 2012

Sambhu Patel S/o Shri Ramji Patel, R/o Baijnathpara, Raipur, at present R/o M/s Shivshakti Timbers, Ganjpara, Balod, District Durg (Now Balod).

---- Appellant

Versus

1. Shatruhan Prasad S/o late Radhika Prasad Dubey, aged about 47 years,
2. Smt. Annpurna W/o Shatruhan Prasad Dubey, aged about 44 years, Both R/o Chilhatikala, P.O Bharda, P.S. Dondi Lohara, Dist. Durg Now Balod C.G.
3. Lekhram S/o Dashrath Lal Halba, R/o Chilhatikala, P.S. Bharda, P.S. Dondi Lohara, Dist. Baloc C.G.
4. United India Insurance Co. Ltd. Kamthi Line Rajnandgaon, Dist. Rajnandgaon Micro Branch Station Road, Near Guruwara Durg P.S. And Dist. Durg C.G.

---- Respondents

For Appellant	:	Shri BP Singh, Advocate.
For respondent No.1&2	:	Shri Utsav Mahiswar, Advocate.
For respondent No.4	:	Shri HB Agrawal, Sr. Advocate along with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

05.03.2018.

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the owner against the award dated 24.03.2012 passed by the Ist Additional Motor Accident Claims Tribunal, Durg (in short, the Tribunal) in Claim Case No.112/2009. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.2,20,000/- with interest @ 6 percent per annum from the date of accident.
2. While passing the award, the Tribunal has exonerated the insurance company of its liability and has fastened the same upon the present

appellant-owner of the offending vehicle-Tractor.

3. The contention of the appellant is that the Tribunal has erroneously exonerated the insurance company of its liability. The date of accident, the vehicle involved in the accident and the resultant death of deceased Kuleshwar Prasad is not in dispute. The vehicle involved in the accident was duly insured with the respondent No.4 is also not in dispute. The only ground of exoneration was the contents of the FIR wherein it has been referred that the deceased was travelling on the Tractor when the accident occurred and since the Tractor did not have a sitting capacity beyond the driver, the insurance company would not be liable to indemnify any person who was travelling unauthorizedly on the Tractor.

4. According to counsel for the appellant-owner, the stand of the claimants was that the accident occurred when the deceased was connecting Trolley with the Tractor. The said contention of the claimants also stands corroborated from an eyewitness AW-3, examined before the Tribunal and therefore the Tribunal could not have disbelieved the claimant's version. Further, the Tribunal could not have relied upon the contents of the FIR which has not been effectively proved before the Tribunal. That, the lodger of the FIR itself was not examined and the witness of insurance company was not an eyewitness to the incident, nor was he the person who had investigated the matter, but had deposed before the Tribunal only based on the documents available with him. Thus, prayed for setting aside of the award to the extent of liability fastened upon the present

appellant-owner.

5. Per contra, the counsel for the insurance company opposing the appeal submits that the award seems to be fair and reasonable and does not warrant any interference as the contents of FIR are very clear that the deceased met with an accident when he was travelling on the Tractor. Therefore, the insurance company cannot be held liable to cover the risk of person who had not been indemnified under the policy. Further, the insurance company did lead evidence of its witness by referring to the contents of the FIR though the eyewitness was not examined on behalf of the insurance company. Thus, prayed for rejection of the appeal.

6. Having heard the contentions put forth on either side and on perusal of records, true it is that the claimants in the claim application have stated that the accident occurred when the deceased was affixing the Trolley to the Tractor. This averment of the claimants was corroborated by the statements of claimants themselves. In addition, eyewitness AW-3 was also examined who has also supported the version of the claimants. However, on behalf of the insurance company, it was only the Administrative Officer examined and who has deposed only on the basis of documents available on record.

7. At this juncture, it would relevant to refer Division Bench judgment of MP High Court in case of Dhanwanti & Ors. Vs. Kulwant Singh & Ors. 1994 ACJ 708, wherein in paragraphs 10 and 11 it has been held as under :

> "10. Coming to the other contention that the deceased was travelling as a passenger and, therefore, the Insurance

> Company was not liable to pay any compensation, it has also no merit. True, the F.I.R. (Ex. D/2-C) and the statement of the Investigating Officer gives a version which support the case of the Insurance Company, but even assuming that the F.I.R. is a public document, but it is the rule of law that it is not a substantive piece of evidence. It can be used only for the purposes of corroboration or contradiction of the maker only. The maker having not been examined by either side, the statement of A.S. Yadav carries no weight as he only investigated the occurrence. He is not an eyewitness to the occurrence. His testimony is of hearsay evidence, therefore, the conclusions which he drew after investigation cannot be taken into consideration unless supported by proper material, It is well settled proposition Of law that evidence recorded in criminal Court and the findings arrived at thereon should not be used in claim cases. Such evidence, for the purposes of claim cases is inadmissible. (See Shabbir Ahmad v. M.P.S.R.T.C., Bhopal, AIR 1984 MP 173).
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> 11. The fact that the deceased, at the time of accident, was travelling on the trolley or was going as a pedestrian, playing Dhapli has to be judged on the evidence adduced before the Tribunal which is not only proved by the claimants, but is admitted by the driver himself. It is not the case of the Insurance Company that the owner/driver have colluded with the claimants so as to get the compensation from the Insurance Company. Even if, for argument's sake it is assumed that the driver has stated so to save the owner and himself from liability, there is material on record that the finding arrived at by the Tribunal by rightly not taking into consideration the F.I.R., and the statement of the Investigating Officer as no eye-witness to the occurrence was examined and no other independent legal and cogent evidence was produced to support the plea of Insurance Company, the interference in appeal in the finding recorded by the Tribunal is not warranted. Accordingly, the cross-objections have no merit and are dismissed.”

8. The said stand has again been re-iterated by another Division Bench of MP High Court in case of Bapu and Ors. Vs. Karan Singh and Anr. 2000 (1)TAC 491 (MP), wherein in paragraph 4 it has been held as under :

> “We considered the arguments advanced by counsel for both sides and perused the evidence. It has come in the statement of Bapu (CW-1), the father of deceased Daryao and Ramnarayan (CW-2), the father of Sangita, that the Barat of Bhursingh was coming from Miyapura in two tractors, belonging to Karansingh and Radheshyam. They

> further deposed that thye were travelling in the tractor driven by Radheshyam along with deceased Sangita and Daryao. The deceased got down from the tractor for easing themselves. Radheshyam asked them to come in the tractor of Karansingh which was coming behind. They further stated that Karansingh came there driving his tractor at high speed, as a result of which it struck against Daryao and Sangita and turned turtle. No evidence in rebuttal has been produced by the respondents. Karansingh did not examine himself nor was examined by the respondent-insurance company. The learned Tribunal Committed error in disbelieving the evidence given on oath before it on the basis of FIR Ex. P/2 wherein, it was mentioned that the deceased were travelling in the tractor driven by Karansingh. Ratan Singh who is alleged to have lodged this FIR or the police officer who recorded it, has not been examined. Therefore, on the basis of Ex. P/2, the substantive evidence of the above witnesses cannot be brushed aside. In our opinion, from the evidence of the appellants' witnesses it has been proved that Sangita and Daryao were travelling in the tractor driven by Radheshyam and they got down for urination and thereafter Karansingh came driving his tractor rashly and negligently and dashed against them, as a result of which they sustained injuries and died on the spot."

9. Given the aforesaid two judgments of the Division Bench of the MP High Court, when we compare the facts of the present case, it clearly reflects that the facts of the present case are squarely covered by the aforesaid judgments inasmuch as the insurance company has led the evidence of only a witness who was not an eyewitness but was only deposing based on the documents available on records. The lodger of FIR was also not examined before the Tribunal.

10. The claimants case, as per claim application stands corroborated from their evidences as also from the evidence of AW-3. There was not much which could be extracted by the insurance company from the cross examination of these witnesses so as to either doubt or disbelieve the statement of claimants and the eyewitness.

11. Given the aforesaid factual matrix of the case, the exoneration of the insurance company does not seem to be proper, legal and justified. The same deserves to be and is hereby set aside.
12. So far as liability part is concerned, it is held that the liability of payment of compensation shall now be jointly and severally be upon the present appellant-owner and the insurance company of the Tractor involved in the accident and the responsibility of payment shall be upon the insurance company.
13. Any amount deposited by the present appellant-owner shall be refunded back subsequent to the insurance company depositing the entire amount of compensation before the Tribunal.
14. The appeal of the appellant-owner thus stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

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