

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 04/09/2018

Order Delivered on 08 /10/2018

MAC No. 694 of 2013

Mohan Lal Sahu, S/o. Late Sukhlal Sahu, Aged about 50 years.

(Since Died).

Smt. Lata Sahu Wd/o Late Mohan Lal Sahu Aged About 45 Years,
Resident of Gole Bazar, Telipara, Revenue, Civil & Police, Raipur,
Distt. -Raipur C.G.

---- Appellant

Versus

1. Mahaveer Yadav S/o Jethuram Yadav Aged About 35 Years R/o- Village Gogaon, Raipur, Revenue, Civil & Police, Raipur, Distt. Raipur C.G. (Driver of the offending vehicle).
2. Smt. Mahadevi Modi W/o Suresh Kumar Modi Aged About 50 Years R/o Through- Gwalior Delhi Roadways, Bhanpuri, Raipur, Revenue, Civil & Police, Raipur, Distt. Raipur C.G. (Owner of the offending vehicle).
3. The New India Insurance Company Ltd, Through : its Branch Manager, Divisional Office- Second Floor, R.D.A. Building, Bajrang Market, G.E. Road, Raipur, Kumharpara Road, Revenue, Civil & Police, Raipur, Distt. Raipur C.G. (Insurer of the offending vehicle).

---- Respondents

For Appellant : Mr. Manoj Paranjpe with Ms. Rashul Bhawani, Advocate.

For Respondent No. 3 : Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. By the instant appeal, the appellant/claimant is challenging the legality and validity of the impugned award dated 03/09/2012 passed by the Third Additional Motor Accident Claims Tribunal, Raipur (in short 'Claims Tribunal') in Claim Case No.157 of 2011, whereby the learned Claims Tribunal dismissed the appellants' claim application on the ground that

the appellants failed to prove the accident as mentioned in the claim application.

2. Brief facts of the case for disposal of this appeal, are that on 07.10.2003 at about 11 P.M deceased- Sumit Sahu alongwith one Kaushal Yadav went to Anmol Dhaba for taking dinner, when they were returning from Dabba on motorcycle bearing No.C.G. 04 ZH 0431 at that relevant time one truck bearing No. C.G. 04 ZC 0327 driven by respondent No.1 dashed their motorcycle from back side, due to which, they fell down and driver Sumit Sahu sustained grievous injuries on his body. He was taken to the hospital, where during the course of treatment Sumit Sahu succumbed to injuries.
3. The claimants i.e. parents of the deceased filed claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V. Act'), before the Competent Authority i.e. Claims Tribunal for grant of compensation, on the ground that they were dependent on the income of the deceased who was aged about 25 years and earning about Rs.25,000/- per month. On that account they claimed Rs.37, 10,500/- as compensation. During pendency of proceeding Mohanlal died.
4. Respondent Nos. 1 and 2 who are driver and owner of the truck bearing No.C.G. 04 ZC 0327 submitted their reply to the claim application and denied all the adverse pleadings made in the claim application and, fact of accident was also denied by them. They further stated that the deceased met with an accident from the back portion of the truck on his own negligence and on the date of accident truck was insured with respondent No.3/insurance company, therefore, the liability for payment of compensation if any was on Insurance Company.

5. Respondent No.3/Insurance Company after service of notice made its appearance and submitted reply to the claim application that on the date of accident motorcycle bearing No.C.G. 04 ZH 0431 was driven by the Sumit Sahu, and it was deceased- Sumit Sahu who drove his motorcycle rashly and negligently, due to which, he hit the Bullock Cart which was coming from the opposite direction. It has further been pleaded that on the date of accident, the deceased was not having valid and effective driving license. It has lastly been pleaded in its reply that no accident took place from the offending vehicle bearing No.C.G. 04 ZC 0327, therefore, prayed for dismissal of the claim application.
6. Learned counsel appearing for the Appellant/claimant submits that learned Claims Tribunal without considering the documentary evidence in its true prospective and also the nature of the accident has erroneously dismissed the claim application by the impugned order.
7. Per contra, the learned counsel appearing for respondent No.3/Insurance Company supporting the impugned award have argued that the learned Claims Tribunal have rightly dismissed the claim application as the appellant failed to prove the accident from ill fated truck. He further argued that the deceased himself due to his own negligence have met with an accident with Bullock Cart, there is no evidence of any nature that the truck is in any way instrumental to the accident.
8. I have heard the learned respective counsel appearing for the parties perused the records.
9. Perusal of record shows that initially the Tribunal passed an award on 31.01.2006 whereby claim application was dismissed. The said award was challenged before this Court and after hearing the respective counsel appearing for the parties, this Court vide order dated 07.03.2011

remanded back the case to Claims Tribunal granting liberty to parties to amend their pleadings, adduce further evidence and to file additional documents if any or to get the documents verified.

10. After receiving back the case on remand, the Tribunal initiated further proceeding in April, 2011 itself. The order sheet dated 04.11.2011 mentions that the Tribunal intimated the contents of the order to the parties on which claimants made statement that they do not want to amend the pleadings they do not want to file documents, nor want to get the documents verified. Subsequently they produced one person as witness whose statement was recorded by the Tribunal as AW-3 (Kaushal).

11. FIR was lodged on the date of accident itself i.e. on 07.10.2003 after two hours, in which, it has only been mentioned that on account of rash and negligent driving of motorcycle of the deceased, the motorcycle hit the Bullock Cart, due to which, the deceased- Sumit Sahu sustained grievous injuries and he was taken to the hospital, where during the course of his treatment, he died.

12. The witness AW-3 stated that the offending truck bearing No.CG 04 ZC 0327 dashed the motorcycle from backside as a result of which Sumit Sustained injuries. He also stated that he himself lodged report at Police Station. On confronting with the FIR (Ex.A-1), he admitted that he lodged the same report to Police Station.

13. From perusal of the FIR (Ex.A-1) would show that it nowhere mentions that the accident took place by involvement of any motor vehicle as pleaded in the application i.e. truck bearing No. C.G .04 ZC 0327. FIR confronted to the witness Kaushal Yadav, who stated in his statement that it is the same report which he got registered with the concerned Police

Station. The Statements of Gurjeet Singh (AW-2) and Mukesh Sen recorded by the Police Authority during course of investigation also does not wisher about the involvement of truck as pleaded in the claim application. The claim application was filed on 28.08.2004 i.e. after about 10 months from the date of accident wherein, first time it was been pleaded that truck bearing No.C.G. 04 ZC 0327 was instrumental to the accident as the aforementioned truck dashed the deceased motorcycle from back side. After close scrutiny of statements of AW-1 (Mohanlal Sahu) and AW-2 (Gurjeet Singh), it reveals that AW-1 is not the eye-witness of the accident. Another witness AW-2 stated that he operates Dhaba (hotel) near place of accident and at the time of accident he was in his Dhaba and after hearing noise of accident he came out on road and found that the deceased Sumit Sahu laying on road and one other person also sustained injuries on his body.

14. From perusal of the statement of AW-2 itself, it is clear that he was not available on spot at the time of accident and he came out from his Dhaba after hearing noise of the accident. It is a case as pleaded and tried that the case is of in the nature of hit and run, therefore, statement made by Gurjeet Singh (AW-2) that he saw the number of truck appears to be fabricated and does not inspire confidence particularly in view of his statement that he came on spot after accident took place.

15. 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.....”

16. Kaushal (AW-3) was produced as witness after remand of the case. He was not produced as witness initially though he claimed himself to be an employee of deceased. He also admitted in his evidence that he lodged FIR (Ex.A-1) which does not bear any material/content showing involvement of the alleged offending Truck. All the aforementioned facts and acts of AW-3 Kaushal, as stated by him in his evidence, are not reliable in view of Ex. A-1.

17. The Ex.D-6 and D-7 are the statements of Gurjeet Singh and Mukesh Singh, recorded on 07.10.2003 mention that due to rash and negligent driving of motorcycle, deceased met with an accident with bullock-cart from its backside. Ex.D-8 is the Khatma report (closure report) of Police in which also it was mentioned that deceased met with an accident in drunken condition while driving motorcycle rashly and negligently.

18. Considering the discussions made herein above and also considering the evidence available on records as well as the statements of the witnesses,

the appellant failed to prove her case that the truck bearing No. C.G .04 ZC 0327 was in any manner involved in accident, but it is evident that the motorcycle driven by the deceased met with an accident dashing the bullock-cart due to his own negligence.

19. In view of the above in considered opinion of this Court the appellant failed to prove her case. There is no infirmity in the award passed by the Tribunal, and the same does not call for any interference by this Court.

20. In the result, this appeal has no merit the same is liable to be dismissed and is hereby dismissed.

Sd /-

(Parth Prateem Sahu)
Judge