

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 26.07.2018

Order delivered on : 14.08.2018

MAC No. 979 of 2012

- Smt. Saraswati Bai W/o Late Bisauha Ram Verma Aged About 49 Years
Ghor Bhatti, Post- Devtilda, P.S. Kharora, Distt. Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Murli Manohar, S/o Late Bisauha Ram Verma Aged About 49 Years Ghor Bhatti, Post- Devtilda, P.S. Kharora, Distt. Raipur, Chhattisgarh
2. Bajaj Alliance Gen.Insu.Com.Ltd. Thru- Branch Manager, Office At- Shiv Mohan Bhavan, Vidhan Sabha Marg, Pandri, Raipur, District : Raipur, Chhattisgarh
3. Vimal Transport Thru- Competent Officer, Vimal Transport, Sadar Bazar, Raipur, Tah. And Distt. Raipur, District : Raipur, Chhattisgarh
4. Santosh Kumar Nishad S/o Ram Prasad Nishad Jarouda, P.S. Dharsiva, Distt. Raipur, District : Raipur, Chhattisgarh
5. The Oriental Insu. Com.Ltd. S/o Thru- Divisional Manager, Branch No. 2, Chawla Complex, Devendra Nagar, Raipur, District : Raipur, Chhattisgarh
6. M/s Verdhman Cargo Carriers S/o Tatibandh, P.S. Amanaka, Raipur, Tah. And Distt. Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	: Shri Amiyakant Tiwari, Advocate
For Respondent-1	: None appears
For Respondent- 2	: Shri Ghanshyam Patel, Advocate
For Respondents- 3, 4 and 6	: Shri Sharad Mishra, Advocate on behalf of Shri Anant Bajpai, Advocate
For Respondent- 5	: Shri Raj Awasthy, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. By this appeal, the appellant challenged the legality and validity of the impugned award dated 22.09.2011 passed by the 5th Additional Motor Accident Claims Tribunal, Raipur (for short, 'the Tribunal') in claim case No.21 of 2011 whereby learned Claims Tribunal rejected the claim of the

appellant filed under Section 166 of the Motor Accident Tribunal (for short, 'the Tribunal') only considering the ground that the deceased while travelling on his own vehicle met with an accident and succumbed to death.

2. Brief facts of the case are that on 25.03.2005 at about 6 pm., Bisauha Ram Verma was travelling on his motor cycle bearing No.CG-04-CH-8815 and returning home from office. At that relevant time when he reached near village Khartora, one of the tyres of his motorcycle burst and he met with an accident with a stationary truck bearing No.CG-04-ZC-0323 (hereafter, referred to as 'the offending truck').

3. On account of the aforementioned accident Bisauha Ram Verma sustained grievous injuries on his person and was taken to the MMI Hospital, Raipur, where during the course of treatment, he succumbed to the injuries on 28.03.2005. The merg was reported to concerned Police Station- Tikra Para whcih was transferred to Police Station- Palari on the basis of which, after merg enquiry, Crime No.222 of 2005 was registered against respondent- 4, driver of the offending truck u/s 304 (A) IPC.

4. Claimant/appellant who is unfortunate widow of deceased Bisauha Ram Verma filed a claim application under Section 166 of MV Act before the competent Claims Tribunal claiming Rs.22,80,000/- in total on the ground that she was dependant on deceased.

5. Respondent- 1, owner of the offending motorcycle submitted reply to the claim application and submitted that on the date of accident, vehicle driven by deceased was duly insured with respondent- 2 Bajaj Insurance

Company. He further submitted that the accident took place on account of the parking of truck, negligently on road. He also submitted that the accident occurred only on account of sole negligence of the truck driver, respondent- 4.

6. Learned counsel for respondent- 2, insurer of the offending motorcycle submitted reply and denied claim of the appellant and further submitted that as the deceased himself died while driving motorcycle therefore, the claim application itself is not maintainable. He further pleaded that the driver of the motorcycle on the date of accident was not having a valid and effective driving licence. He further pleaded that the driver, owner and Insurance Company of the offending vehicle truck are not arrayed as respondents and therefore, the claim application is not maintainable. Subsequently, the owner, driver and Insurance Company of offending truck were also arrayed as non-applicants.

7. Respondent- 3, owner of the offending truck submitted his reply and denied the fact of accident and further submitted that the offending truck was not involved in any accident. It has further been pleaded that the offending truck was parked on side of road due to mechanical fault and therefore, no case was registered against respondent- 4, driver of the offending vehicle truck.

8. Respondent- 4 even after service of notice, not made his appearance and he was proceeded *ex-parte*.

9. Respondent- 5 Insurance Company of the offending vehicle truck submitted its reply and denied the adverse claim made by the

appellant/claimant against the Insurance Company. It has been pleaded that on the date of accident, the deceased as well as respondent- 4 (driver of the offending vehicle truck) were not having valid and effective driving licence, there was no permit and fitness certificate of the offending vehicle truck and further that the accident took place only on account of negligence of driver of the motorcycle.

10. Respondent- 6, earlier owner of the offending truck also submitted his reply and denied the appellant's claim. He further submitted that the liability if any for payment of compensation arrived by the Tribunal will be on respondent- 5, as the offending vehicle truck was insured with respondent- 5 on the date of accident.

11. Learned Claims Tribunal, after considering the pleadings and evidence available on record, rejected the claim of the appellant on two grounds. Firstly, that the appellant failed to prove that the accident occurred due to negligent parking of the offending truck. Secondly, that on the date of accident, the deceased himself was driving the motorcycle and due to his own negligence, he met with an accident and succumbed to the injuries. Therefore, he being stepped into shoes of owner, he is not entitled for any compensation.

12. I have heard learned counsel for the parties and perused the records carefully. From perusal of the claim application filed under Section 173 of the Act, it is evident that the appellant has made a specific pleading with regard to the involvement of the offending truck in accident

due to negligent parking on road. The FIR lodged on the basis of merg intimation also reflects the manner in which accident took place.

13. Undisputedly, it is not the case of any of the parties that accident never took place. It is also not in dispute that the deceased died on account of the accidental injuries sustained by him. On perusal of the final report submitted by the police authorities and filed by Insurance Company, which is part of the record of the claim case, in which it is clearly mentioned that the deceased himself dashed the offending vehicle truck and thereafter he fell down and succumbed to the injuries. The learned Claims Tribunal while considering the FIR (Ex.P/4) that has been filed by the appellant/claimant, disbelieved the contents on the ground that the person who got the FIR registered has not been examined and further held that the evidence of Shivnandan (AW-2) could not prove that the accident occurred due to parking of the offending truck at centre of the road. For purpose of proving the accident, over all facts and circumstances of the case are to be considered including the documents enclosed with the claim application until and unless it is proved otherwise.

14. In the instant case, the claimant filed copy of FIR and postmortem report in support of her claim application along with medical bills. The Insurance Company i.e respondent- 5 (Insurance Company of the offending vehicle truck) also placed documents on record before the Claims Tribunal along with the covering memo in which they filed copy of final report, FIR, postmortem report, naksha panchnama and the statements recorded under Section 161 of the CrPC. From considering all the aforementioned documents, it is evident that initially merg was

intimated to the Police Station concerned ie PS Tikrapara, Raipur from hospital and thereafter, it was forwarded to PS Palari and after merg enquiry, FIR has been registered.

15. I find no reason as to disbelieve the registration of FIR as Ex.P/4 in the facts and circumstances of the case and also considering the contents of the final report which has been recorded on the basis of merg enquiry after recording statements under Section 161 CrPC.

16. From perusal of statement of NAW- 3 Jitendra, who is transporter and owner of the offending vehicle truck in his deposition at para 36 admitted that he was intimated by helper of the truck at about 6 pm that one person travelling on motorcycle fell down near truck. Further from perusal of the post-mortem report Ex.P/3, it can be easily presumed that the nature of injuries sustained by the deceased in the accident may not occurred only because of falling down from the motorcycle. In fact, it reflects from the post-mortem report that the injuries sustained by the deceased may be due to dashing his motorcycle with truck.

17. From the facts it is clear that in this accident truck is also instrumental and it occurred due to its use and parking on corner of road. The instant case is arising from filing of an application for grant of compensation under Motor Vehicle Act which is a beneficial piece of legislation. In the cases like this, the proof of facts are to be considered on the basis of preponderance of probabilities, correlating with evidence and material available on record.

18. From the material available, it can be gathered that the deceased met with an accident due to dashing with a stationary vehicle truck on account of bursting of tyre of motorcycle and thereafter, fell down near truck. The learned Claims Tribunal in para- 23 of the award considered that in spite of the contents of FIR (ExP/4), evidence of AW- 2 Shivnandan (AW-2) is more reliable and the Tribunal do not find any reason to disbelieve the evidence of Shivnandan. Shivnandan in his evidence specifically stated that one of the tyres of motorcycle burst and thereafter, the deceased by losing his balance, dashed with the stationary offending truck. From the finding recorded by Tribunal, the evidence of Shivnandan (AW-2), content of FIR (Ex.P/4) and also the statement of NAW-3(1) clearly shows that the deceased for one or the other reason, dashed with the stationary truck and thereafter, succumbed to the injuries sustained by him.

19. From the aforementioned facts, material and evidence available on record, the involvement of the truck in the accident could not be ruled out. The involvement of offending truck is clear from record, though there can be fact of contributory negligence by the truck driver and driver of the motorcycle which is fact finding and can be considered by Tribunal for the purpose of calculation of the amount of award.

20. Learned Claims Tribunal committed gross illegality in arriving at finding that the claimant failed to prove the involvement of the truck in accident, parking of truck on centre of road and also failed to produce any evidence and other material in support of her claim. The said findings are

perverse and liable to be and are hereby set aside. Consequently, impugned award is also set aside.

21. The matter is remitted back to the Claims Tribunal with a direction to frame additional issues with respect to contributory negligence. Thereafter, to provide opportunity to all parties to lead evidence in their support and to pass an award afresh in accordance with law considering all the materials available on record.

22. In the result, appeal is partly allowed.

23. Record be sent forthwith. Parties are represented by their counsel, therefore, it is directed that they may appear before the learned Claims Tribunal on **13th September, 2018**.

Sd/-
(Parth Prateem Sahu)
JUDGE