

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 370 of 2013

Shivkumar S/o Ramdas Satnami Aged About 28 Years, Occupation Owner of Tractor No. CG 04 ZQ 5134, R/o Sahaspur Lohara, P.S. Sahaspur Lohara, Distt. Kabirdham C.G.

----Appellant

Versus

1. Ku.Laxmi @ Mahima D/o Derharam Sahu Aged About 6 months.
2. Ku. Bagiya @ Bagya D/o Derharam Sahu Aged About 3 Years.
3. Ku. Saraswati D/o Derharam Sahu Aged About 6 Years, Occupation- Student of Class 1st.
4. Ku. Deenu D/o Derharam Sahu Aged About 8 Years, Occupation- Student of Class 2nd.
5. Ku. Sangeeta D/o Derharam Sahu Aged About 13 Years, Occupation- Student of Class 6th.
6. Ku. Namita D/o Derharam Sahu Aged About 13 Years, Occupation- Student of Class 6th.
Respondent No.1 to 6 represented through Natural Guardian Father, Derharam Sahu, S/o. Manrakhan Sahu, aged about 33 years.
7. Derharam Sahu S/o Manrakhan Sahu Aged About 33 Years.
8. Manrakhan S/o Kanwar Sahu Aged About 65 Years
All R/o. Village- Pendritarai, P.S. Sahaspur Lohara, Tah. Kawardha, Distt. Kabirdham C.G.
9. Bhuleshwar @ Jageshwar S/o Siyaram Sahu Aged About 19 Years, Occupation- Driver of Tractor No. CG 04 AQ 5234, R/o Sahupara, Sahaspur Lohara, P.S. Sahaspur Lohara, Tah. Kawardha, Distt. Kabirdham C.G.
10. United India Insu. Co. Ltd. Raipur, Krishna Complex, First Floor, Kachhari Chowk, Distt. Raipur C.G.
11. Suresh Sahu @ Sanglu S/o Mahasingh Sahu Aged About 26 Years, Occupation-Driver of Tractor No.09 ZD 4460, R/o Telipara, Sahaspur Lohara, P.S. Sahaspur Lohara, Distt. Kabirdham C.G.
12. Mahendra Shrivastava S/o Tribhuvan Shrivastava, Occupation – Owner of Tractor No. 09 ZD 44460, R/o Bus Stand Lohara, P.S. Sahaspur Lohara, Distt. Kabirdham C.G.

--- Respondents

For Appellant	:	Mr. M.K. Bhaduri & Ms. Sareena Khan, Advocate.
For Respondent Nos. 1 & 8	:	Mr. Vijay Kumar Sahu Advocate on behalf of Mr. Gautam Khetrpal.
For Respondent No.10	:	Mr. H.B. Agrawal Sr. Advocate with Ms. Ritu Rani, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

29/03/2019

1. By the instant appeal, appellant-driver of Tractor bearing registration No.CG04/ZQ/5134 is challenging legality and validity of impugned award dated 30.03.2013 passed by learned Motor Accident Claims Tribunal, Kabirdham (Kawardha), C.G (in short 'the Tribunal') in Claim Case No.76/2007, whereby the Tribunal has partly allowed claim application of claimants/respondents and awarded a total compensation of Rs.4,48,000/- in a death case.
2. Brief facts necessary for disposal of this appeal are that on 3.11.2007 Chhanni Bai (since deceased) came to Kasturba Hostel at Sahaspur Lohra for taking her daughter on Diwali holidays. When Chhanni Bai was returning to her house alongwith her daughter, on the way one Tractor bearing registration No.CG04/ZQ/5134 (hereinafter shall be referred to as "offending vehicle"), which was being driven by respondent No.9- Bhuleshwar @ Jageshwar, dashed her from back side due to which she sustained grievous injuries and succumbed to those injuries on spot. The matter was reported to concerned police station within one hour based on which offences under Sections 279, 337, 338 & 304(A) of the Indian Penal Code was registered against Bhuleshwar @ Jageshwar Sahu, driver of offending vehicle, and after completion of investigation, final report was submitted before competent Court for offences under Sections 279, 337, 338 & 304(A) of the IPC and Section 3/181 & 5/181 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988').

3. Claimants/respondents have filed claim application under Section 166 of the Act of 1988 before the Tribunal claiming Rs.52,70,000/- as compensation.
4. Non-applicants No. 1 & 2/appellant & respondent No.9 herein submitted reply to claim application and denied averments made in claim application. They further pleaded that offending vehicle got some mechanical defect, therefore, owner of offending vehicle after leaving respondent No.9 (driver of offending vehicle) to look after offending vehicle, had gone to Lohra for bringing mechanic. At that time one another Tractor bearing registration No.CG09/ZD/4460 came near offending vehicle and driver of said vehicle offered help and offered to tow offending vehicle to the garage and when offending vehicle was moving being towed with said tractor to garage, on the way accident took place. They further pleaded that offending vehicle was not in a running condition and therefore, they have denied the fact of accident from offending vehicle. On the date of accident offending vehicle was insured with respondent No.10/Insurance Company.
5. Non-applicant No.3/Respondent No.10-Insurance Company also submitted reply to claim application and denied its liability on the ground that there was breach of condition of insurance policy as on the date of accident, driver of offending vehicle was not having valid and effective driving license to drive offending vehicle and therefore, insurance company is not liable for making payment of any compensation to the claimants/respondents.
6. Non-applicant No.5/Respondent No.12-owner of Tractor bearing No.CG09/ZD/4460 submitted reply and pleaded that his tractor was not

involved in alleged accident in any manner because at the time of accident he was ploughing field from his tractor. He further pleaded that owner & driver of offending vehicle has concocted a false story only to implicate his vehicle in accident in question.

7. Learned Claims Tribunal while appreciating the pleadings and evidence of respective parties, dismissed claim application vide award dated 31.03.2011, against which an appeal was preferred before High Court bearing MAC No.960/2011 and the High Court while partly allowing the appeal had remanded back the matter to the Tribunal for deciding it afresh after providing opportunity to the parties to amend their pleadings and adduce further evidence in support of their respective case.
8. In compliance of remand order dated 25.01.2012 passed by the High Court, Claims Tribunal recorded further evidence of respective parties and thereafter partly allowed claim application and awarded a sum of Rs. 4,48,000/- as compensation to respondents/claimants.
9. Learned counsel for appellant argued that rash and negligent act of driver of offending vehicle has not been proved. At the time of accident offending vehicle was being toed with another tractor and it was driver of said tractor who drove his tractor in a rash and negligent manner as a result of which accident took place. He further argued that both the aforesaid vehicles were involved in alleged accident, therefore, liability cannot be fastened solely upon appellant and its driver. He further argued that the Tribunal has wrongly recorded a finding that there was violation of condition of insurance policy.
10. Per contra, learned counsel for claimants/respondent Nos.1 to 8 supported impugned award and pleaded that ample evidence is

available on record showing involvement of offending vehicle in accident. He further argued that there is specific evidence of AW-3 Namita, daughter of deceased, an eye-witness of accident, who has specifically stated in her evidence that offending vehicle, which was in toed condition, suddenly started and after breaking tie rope, dashed her mother due to which her mother sustained grievous injuries and died on spot. He further argued that statements of other witnesses also reflect that offending vehicle was involved in accident in question.

11. Learned Senior counsel appearing for respondent No.10/Insurance Company has argued that there is ample evidence available on record showing that on the date of accident driver of offending vehicle was minor and therefore offences under Sections 3/181 & 5/181 of the Act of 1988 was also registered against him. He further argued that neither owner nor driver of offending vehicle has produced any license before the Tribunal, therefore, the Tribunal has rightly exonerated the insurance company by recording a finding that there was breach of condition of insurance policy.

12. I have heard learned counsel for the parties and perused the record.

13. Perusal of Ex.A-2 which is a copy of FIR recorded on 03.11.2007 in between 1400 & 1500 hrs i.e. within one hour of accident, reveals that in this document driver of offending vehicle has been specifically shown to be offender. Contents of FIR also bears that offending vehicle was suddenly started and after breaking tie rope dashed pedestrian walking on left side of road i.e. deceased- Channi Bai.

14. Evidence of AW-2-Banwali also makes it clear that on the date of accident, offending vehicle came from behind and dashed deceased-

Channi Bai. Driver of offending vehicle was caught hold by him and other persons present on the spot and on being asked, he told his name as Jageshwar Sahu.

15. AW-3 -Namita, daughter of deceased, categorically stated that on the date of accident offending vehicle was being toed with another vehicle, however, it suddenly got started and after breaking tie rope, dashed her mother due to which her mother sustained grievous injuries and died on the spot.

16. From aforementioned material available on record, it is clear that offending vehicle was involved in alleged accident and it is by its dash deceased-Channi Bai died.

17. In view of above, argument raised by learned counsel for the appellant that accident did not occur from his vehicle is not sustainable.

18. Other grounds raised by learned counsel for appellant is that as two vehicles were involved in accident, the Tribunal could not have fastened liability solely upon appellant.

19. Evidence and material available on records in this regard specifically shows that though offending vehicle was towed and pulled by another tractor, but accident occurred due to sudden start of tractor by its driver i.e. respondent No.9. Even otherwise, offending vehicle was running on road and as per reply of appellant himself and witnesses categorically stated that accident took-place from offending vehicle. Therefore, as per provision of Section 165 (1) of the Act of 1988, offending vehicle only is liable for payment of amount of compensation.

20. In this regard law is well settled that when accident is between two vehicles then the Lr's of deceased or injured can claim against both or either of the two vehicles. This issue is decided by Hon'ble Supreme Court in the matter of **TO Anthony Vs Karvarnan and others** reported in **(2008) 3 SCC 748** as under :-

"6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of

his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

21. In view of above, the second ground raised by learned counsel for the appellant is also not sustainable.

22. Last ground raised by learned counsel for appellant that the Tribunal has wrongly held that there is violation of condition of insurance policy.

23. NAW-1 Bhuleshwar @ Jageshwar, driver of offending vehicle, in his statement has tried to state that at the time of accident Shiv Kumar (owner of offending vehicle) was driving offending vehicle but at the same time he has also admitted that on the date of accident, he was below 18 years of age and not possessing valid & effective driving license.

24. Appellant was examined before the Tribunal as AW-2 and he narrates altogether different story. He has stated that on the date of accident, he was not driving offending vehicle. He has stated that he saw that his tractor was toed with tractor, which was being driven by respondent No.12 -Mahendra Shrivastava, and suddenly toe hook/rope got broken and accident took place.

25. Evidence of NAW-1 & NAW-2 driver & owner of offending vehicle are contradictory to each other. Even written statement submitted by them are contradictory to their evidence.

26. Looking to the aforementioned facts and contradiction in reply statements, evidence of NAW-1 & NAW-2 is not believable.

27. Learned Claims Tribunal has rightly arrived at a finding that accident took place with offending vehicle on account of rash and negligent driving by its driver. The appellant failed to produce license of driver of offending vehicle before the Tribunal at the time of hearing and even no such document has been filed before this Court. Therefore, the Tribunal has rightly exonerated the insurance company from its liability on the ground of breach of condition of insurance policy.

28. In view of the above, last ground argued by learned counsel for the appellant is also not sustainable.

29. In view of above discussions, I do not find any good ground to interfere with the impugned award, therefore, appeal being devoid of merit is liable to be and is hereby dismissed.

Sd /-

(Parth Prateem Sahu)

Judge