

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 231 of 2014**

- The Oriental Insurance Company Ltd. Through- Divisional Manager, Divisional Office- Bilaspur, First Floor, Opposite Rama Trade Center, Near Rajeev Plaza, Bus Stand, Bilaspur C.G.

----Appellant**Versus**

1. Sagni Bai W/o Ram Kumar Dhruv, Aged About 50 Years
2. Ram Kumar Dhruv S/o Late Shovit Ram Dhruv, Aged About 55 Years
3. Arjun Singh Dhruv S/o Ram Kumar Dhruv Aged About 30 Years, All are R/o Nagdha, Thana- Nandghat, Tah. Navagarh, Distt. Bemetara C.G.
4. Vijay Singh S/o Jailal Singh Aged About 30 Years, Occupation Driver, R/o Distt. Sidhi M.P., Hal Mukam, Villge Parshada, P.O. Chakarbhata, Thana- Hirri, Tah. Bilha, Distt. Bilaspur C.G.
5. Pramod Jain S/o Shri L.C. Jain R/o Near Vinoba Nagar, Distt. Bilaspur C.G.

---- Respondents

For Appellant	Smt. Chitra Shrivastava, Advocate.
For Respondent nos. 1 to 3	Shri Samir Singh, Advocate.
For Respondent no.5	Shri Prateek Kumar Singh, Advocate on behalf of Shri Malay Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****16/05/2019**

1. This appeal is by the Insurance Company/non-applicant no.3 against the award dated 18.10.2013 passed by the Motor Accident Claims Tribunal, Bemetara, District Bemetara, C.G. in Claim Case No.34/2013 awarding total compensation of Rs.2,05,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant no.3 jointly and severally along with non-applicant nos. 1 & 2.

2. As per averments in the claim petition on 1-2 June 2008 in the midnight at around 8:15 pm, while deceased Raghuveer Dhruv, aged about 22 years, earning Rs.10,000/- per month as Helper in Hirri Mines, Indrapuri, was going to his home, non-applicant No.1 Vijay Singh by driving Truck bearing no. CG10/A/6569 in a rash and negligent manner dashed the deceased from back side. As a result of this, he suffered grievous injuries on various parts of his body and died on the spot itself. At the time of accident, offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.
3. On claim petition being filed by the claimants i.e. parents and brother of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.60,00,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
4. Learned counsel for the appellant submits that the Tribunal has wrongly fastened liability on the Insurance Company because the vehicle bearing No. CG10A-6569 insured with by non-applicant No.3/Insurance Company was not involved in the accident and the same has deliberately been involved in this case as an afterthought for taking benefit of the Insurance Policy. She submits that as per the postmortem report some unknown vehicle dashed the deceased. According to the evidence of non-applicant No.1 Vijay Singh, driver of the vehicle in question, the accident did not occur with his vehicle. She also submits that the non-applicant No.1 has been acquitted of the charge under Section 304A of IPC by the Judicial Magistrate First Class as the prosecution failed to prove its case beyond reasonable doubt. In these circumstances, the Insurance Company deserves to

be exonerated of liability fastened upon it by the Tribunal.

5. Learned counsel for the respondents support the impugned award and submit that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.
6. No counter appeal has been filed by the owner, driver and claimants as submitted by both the parties.
7. Heard learned counsel for the parties and perused the material available on record.
8. So far as involvement of vehicle bearing no. CG10-A-6569 is concerned, in their joint written statement filed by non-applicant Nos. 1 & 2, though it has been denied that the accident occurred due to rash and negligent driving of the vehicle by non-applicant No.1 but nowhere they have stated that the said vehicle was not involved in the accident. Non-applicant No.3 in its written statement has denied the involvement of the vehicle in the accident in para 3 but no evidence in support thereof has been adduced by it. As per Ex.P-2 FIR was registered promptly mentioning therein the manner in which the accident occurred and the number of offending vehicle as CG10-A-6569. Arjun Singh AW-1, lodger of the FIR, is an eyewitness to the accident. He has categorically stated that he witnessed the accident which was caused by rash and negligent driving of the vehicle Truck bearing No.CG10-A-6569 by its driver. As per Ex.P-5 seizure memo, the relevant documents pertaining to the offending vehicle i.e. Registration Book licence, Fitness, Insurance policy and driving licence were seized by the police. After due investigation charge sheet was filed against non-applicant No.1 Vijay Singh under Section

304A of IPC.

9. As regards the contention of the appellant that in the application for postmortem it is mentioned that the accident was caused by an unknown vehicle, from perusal of the said document it is mentioned that the said application was sent by the police on 2.06.2008 at 8:00 am and the accident occurred in the night intervening of 1-2 June, 2008 and the FIR was registered on 02.06.2008 in which the time of recording of the FIR is not mentioned. Therefore, in view of the eyewitness account rendered by the Arjun Singh, the prompt FIR lodged by eyewitness in which the number of the offending vehicle has specifically mentioned, seizure memo Ex.P-5 whereby all the relevant documents of the offending vehicle were seized, final report Ex.P-1, no denial on the part of the non-applicant Nos. 1 & 2 regarding involvement of the said vehicle in the accident in their joint written statement, in the given facts and circumstances of the case, merely on the basis of application for postmortem wherein it is mentioned that the accident occurred by an unknown vehicle it cannot be said that the vehicle bearing No. CG10-A-6569 was not involved in the accident.
10. So far as argument of the appellant that non-applicant No.1 has been acquitted by the trial Court of the charge under Section 304A of IPC is concerned, true it is that non-applicant No.1 has been acquitted of the charge under Section 304A of IPC on the ground that the prosecution has failed to prove its case beyond reasonable doubt but the same is of no help to the appellant for the reason that while deciding the criminal case, the Court is required to go by the strict rule of evidence whereas while deciding claim cases which are civil in nature, the same has to be decided on the basis of preponderance of

probabilities.

11. On the basis of aforesaid discussions, this Court finds no substance in the appeal filed by the Insurance Company and, therefore, the same being without any substance is hereby dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh