AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 57 of 2014

The National Insurance Company Ltd, through its Sr. Divisional Manager D.O B1 Taha Complex, Ring Road I, Priyadarshini Nagar, Bilaspur, C.G.

----Appellant

Versus

1. Smt. Rampyari, W/o Late Shri Pyaarelal, aged about 49 years, at Dhamdha Naka Road, Near Mohannagar Over-bridge, Tahsil and Revenue & Civil District Durg, C.G.
2. Surendra Prasad, S/o Late Pyarelal, aged about 32 years, at Dhamdha Naka Road, Near Mohannagar Over-bridge, Tahsil and Revenue & Civil District Durg, C.G.
3. Ashok Kumar Yadav, S/o late Pyarelal, aged about 28 years, At Dhamdha Naka Road, Near Mohannagar Over-bridge, Tahsil and Revenue & Civil District, Durg, C.G.
4. Kumari Leelam, D/o Late Pyarelal aged about 28 years, At Dhamdha Naka Road, Near Mohannagar Over-bridge, Tahsil and Revenue & Civil District Durg, C.G.
5. Lata Sahu, W/o Late Chamanlal Sahu, R/o Rajeed Nagar Basantpur, Ward No.18 Rajnandgaon, P.S. Rajnandgaon, Civil and Revenue District Rajandgaon, C.G.
6. Mohd Tahir, S/o Jaffar Ahmed, R/o Housing Board MIG 2/2616 1/E, Bhilai, P.S. Jamul, Civil and Revenue District Durg, C.G.

---- Respondents

For Appellant	Shri R.N. Pusty, Advocate.
For Respective Respondents	Shri Shikhar Bakhtiyar, Advocate and Shri A.C. Sahu, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

16.01.2019

1. This appeal is filed by the Insurance Company under Section 173 of the Motor Vehicles Act against the award dated 29.06.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Durg, District Durg, Chhattisgarh

in claim case No. 106/2013 whereby the Tribunal has awarded a sum of Rs.8,95,000/- as compensation in favour of the claimants with interest @ 6% per annum from the date of claim petition till its realization, fastening liability on non-applicant no.3/Insurance Company jointly and severally along with non-applicant nos. 1 & 2.

2. As per averments in the claim petition 21.05.2009, Pyare Lal Yadav, aged about 50 years alongwith his friend Bisan Yadav was returning from Durg by Motorbike, however, on the way Chamanlal Sahu (Husband of Non-Applicant No. 1 Lata Sahu, who died during pendency of claim petition) by driving vehicle Tata 407 bearing registration no. CG07-ZB-1079, owned by non-applicant no. 2 and insured with non-applicant no.3, driving the said vehicle in a rash and negligent manner dashed the motorbike of Pyarelal Yadav, as result of Pyarelal Yadav died on the spot.

3. On claim petition being filed by the claimants i.e. wife and children of the deceased under Section 166 of the Motor Vehicle Act for compensation to the tune of Rs.20,10,000/-, the Tribunal considering the evidence of parties passed an award as mentioned in para 1 of this judgment.

4. Learned Counsel for the appellant/Insurance Company submits that the Tribunal has wrongly fastened liability upon the Insurance Company because the alleged offending vehicle bearing registration No. CG07-ZB-1079 was infact not involved in the accident and the vehicle which caused the accident bears registration No.CG07-ZB-1081 which was not insured with the appellant/Insurance Company at the time of accident, as is evident from the FIR dated 22.05.2009. However, the owner of both the aforesaid vehicles i.e. non-applicant no.02, in-connivance with the police authorities and the claimants implanted vehicle Tata 407 bearing no. CG07-ZB-1079 as the offending vehicle in this case which was insured at the relevant time with the appellant/Insurance Company to avoid his liability towards the death of the

deceased Pyarelal Yadav. He submits that though no such plea was taken by the Insurance Company in its written statement, however, the Insurance Company cannot be prevented from rasing such plea at a later stage. Reliance has been placed on the decisions of Hon'ble Surpeme Cour in the matters of ***Nandkishore Lalbhai Mehta Vs New Era Fabrics Private Limited and others,*** reported in **(2015) 9 SCC 755 &** ***Bhagwati Prasad Vs Chandramaul*** reported in **AIR 1966 SC 735.** He further submits that the Tribunal was also not justified in assessing the monthly income of the deceased as Rs. 10,000/- per month without there being any specific evidence in this regard and at the most the income of the deceased could have been taken on notional basis as Rs. 3,000/- per month. Thus, by way of this appeal the appellant has prayed for exoneration of the Insurance Company of its liability or reduction of the amount of compensation awarded by the Tribunal in favour of the claimants.

5. Learned Counsel for the respondents/claimants and counsel appearing for the respondent nos. 5 & 6 jointly submit that Tribunal considering the overall evidence, oral and documentary adduced by the parties has rightly fastened liability on the Insurance Company and awarded compensation in favour claimants which need no interference by this Court.

6. No counter appeal has been filed by the respondents as submitted by both the parties.

7. Heard both the parties and perused the material available on record.

8. So far as the question of involvement of offending vehicle i.e. Tata 407 CG07-ZB -1079 in the accident is concerned, from perusal of the written statement of the Insurance Company, it is seen that nowhere the Insurance Company has taken this plea that vehicle bearing no. CG07-ZB-1079 was not involved in the accident and it was vehicle CG07-ZB-1081 which has caused the accident. As per the evidence of eye-witness Bijendra Yadav (AW-2) the

vehicle which caused the accident bears No. CG07-ZB-1079 which was being driven by Chamanlal Sahu (deceased) in a rash and negligent manner. Fagun Ram Sinha (AW-3), Investigating Officer has specifically denied the suggestion in the cross-examination that vehicle bearing No. CG07-ZB-1079 has been falsely implicated in this case because the another vehicle owned by non-applicant no.2 bearing No. CG07-ZB-1081 was not insured at the time of accident.

9. Mohammad Tahir (NAW-2), owner of both the aforesaid vehicles, in cross-examination has categorically stated that the accident was caused by vehicle bearing CG07-ZB-1079 and his another vehicle bearing no. CG07-ZB-1081 was standing at his home on the date of accident which was not insured at the relevant time. The Insurance Company has not adduced any evidence to the contrary in the cross-examination of the aforesaid witnesses. This apart from the final report filed against driver Chamanlal Sahu under Section 304 A of IPC and the seizure memo, though both these documents are unexhibited, it is seen that the vehicle involved in this case bears no. CG07-ZB-1079. Though in the FIR the number of offending vehicle is mentioned as CG07-ZB-1081, however, in view of unrebutted, oral and other documentary evidence, as mentioned above, available on record and the fact that there is no such plea taken by the Insurance Company in its written statement and no evidence to the contrary has been adduced, mere mentioning of different number in the FIR of the offending vehicle, it cannot be said that the vehicle bearing no. CG07-ZB-1079 was not involved in the accident and the same has been implanted subsequently by the owner of the vehicle (non-applicant no.02) in-connivance with the police authorities and the claimants to avoid his liability. Even otherwise in a case like the present nature, strict rule of evidence is not to be insisted and it has to be decided on the basis of preponderance of probabilities. Thus, considering the oral evidence adduced

by the parties, this Court is of the opinion that the Tribunal was fully justified in holding that vehicle bearing no.CG07-ZB-1079 was involved in the accident and fastening the liability on the Insurance Company jointly and severally along with non-applicant nos. 01 & 02. So far as the judgments relied upon by the Insurance Company in the matters of ***Nandkishore Lalbhai Mehta & Bhagwati Prasad*** (supra) is concerned, since the plea of involvement of vehicle bearing no. CG07-ZB-1081 in the instant case is quite at variance with the original pleadings and it has not been satisfactorily proved by the evidence, such plea cannot be taken into consideration.

10. As regards the quantum of compensation, though, the claimants have pleaded that the deceased was earning Rs. 60,000/- per month by selling buffaloes, however, no income tax return to this effect has been filed by them. The claimants have filed the receipts Ex.P-11 to 155 of Cattle Registration Fees issued by Municipal Corporation, Durg, which shows that he was engaged in the business of selling buffaloes. The Tribunal considering the overall facts and circumstances of the case, the price index at the relevant time, the occupation of the deceased, assessed his monthly income as Rs. 10,000/-, which cannot be faulted with. Therefore, the compensation awarded by the Tribunal in favour of the claimants cannot be said to be on the higher side requiring any reduction by this Court.

11. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh