

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 82 of 2015

- Ksheershambhu @ Khirshambhu S/o Late Chandrashekhar Verma Aged About 68 Years R/o Village- Dongia, Post, P.S. And Tah. Sarangarh, Distt. Raigarh, Chhattisgarh (Non-applicant)

---- Appellant

Versus

1. Dhalenra Prasad, S/o Ishwar Prasad Patel Aged About 50 Years
 2. Smt. Kewra Bai W/o Dhalendra Prasad Patel Aged About 45 Years
 3. Smt. Hemlata W/o Late Virendra Ku. Patel Aged About 22 Years
 4. Sahil S/o Late Virendra Ku. Patel Aged About 4 Years Minor
 5. Ku. Rahi D/o Late Virendra Ku. Patel Aged About 2 Years Minor
- Respondents- 4 and 5 Thru- Mother Smt. Hemlata
All R/o Village- Dongia, Post, P.S. And Tah. Sarangarh, District :
Raigarh, Chhattisgarh

---- Respondents

For Appellant	: Shri Keshav Dewangan, Advocate on behalf of Shri PN Bharat, Advocate
For Respondents	: Shri Soumitra Kesharwani, Advocate on behalf of Shri Awadh Tripathi, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

21.06.2019

1. The instant appeal has been preferred by non-applicant 1/owner of tractor-trolley bearing No.CG-13A-0593 (for short, 'offending vehicle') under section 173 of Motor Vehicle Act, 1988 challenging impugned award dated 18.12.2014 passed by Additional Motor Accidents Claims Tribunal, Sarangarh, Raigarh (for short, 'Claims Tribunal') in Claim Case No.19 of 2013, wherein learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.4,41,500/- as compensation in a death case.

2. Brief facts relevant for disposal of this appeal are that on 13.1.2013 at about 1.30 pm Veerendra Kumar Patel was travelling on offending vehicle owned by the appellant herein and going to village Singhanpur. At that relevant time, when he reached near village Chotekoseer, tractor turned turtle and in the accident Veerendra Kumar Patel, driver of tractor suffered severe injuries over his person, and succumbed to those injuries.

3. On account of death of Veerendra Kumar Patel, respondents/Claimants who are parents, widow and children of deceased filed claim application before competent authority claiming Rs.7,28,000/- as compensation on account of death of Veerendra Kumar Patel (hereafter, 'deceased').

4. The appellant /non-applicant submitted reply to claim application and denied fact of accident from his vehicle. He further pleaded that on the date of accident offending vehicle was not being driven by deceased at the time of accident. He further stated that one Tilak Ram was engaged by the appellant to drive his tractor and deceased was never engaged by him to drive his tractor. It was also pleaded that he received information that on the date of accident, deceased was driving his own tractor and as on the date of accident deceased was driving his own tractor after consuming liquor, he fell down from tractor and became unconscious. It was also pleaded that when after receiving information about the accident and death of deceased, he went to his house where he found that dead body has already been taken for cremation and non-applicant attended funeral of deceased along with other villagers. Lastly it has been pleaded that false complaint has been lodged against him. It was also pleaded that false report has been lodged against him after long time of accident ie on 06.02.2013.

5. On the basis of pleadings made by respective parties, learned Claims Tribunal framed as many as four issues for consideration including the issue that whether death of deceased took place due to accident or heart attack.

6. Learned Claims Tribunal after conclusion of trial, on appreciation of pleadings and evidence placed on record by respective parties held that deceased died due to accidental injuries suffered by him and not by heart attack. After calculating amount of compensation, awarded a total sum of Rs.4,44,500/- along with interest @ 6% per annum from date of application till its realisation.

7. Learned counsel for the appellant submitted that since beginning, his defence was that accident did not take place from his vehicle. On the date of accident, deceased was driving his own tractor. He further argued that immediately after the accident FIR has not been lodged but matter was reported after a lapse of long time after the accident, therefore, accident itself has not been proved. He also argued that learned Claims Tribunal fell into error in not considering the fact that deceased died of heart attack which is evident from Ex.D1, which is an information given by one Hulasram to Secretary of village Panchayat. He further argued that as there is no postmortem report on record, it is not proved that deceased died on account of accidental injuries suffered by him.

8. Learned counsel for respondent /claimant submitted that appellant /non-applicant and his son being working as government servants, they were under pressure and not lodged any FIR. He further submitted that after sometime, written report was made by father of deceased to concerned Police Station on

30.01.2013 in which detailed reason for not making the report immediately after the accident was given. He also argued that apart from father of deceased, other villagers were also examined in support of claim application, who in their evidence specifically stated before learned Claims Tribunal that on the date of accident deceased was driving tractor of appellant, therefore, learned Claims Tribunal correctly passed impugned award which does not call for interference.

9. I have heard learned counsel for the parties and perused the records. Claim application would show that it has been filed under Section 163-A of Motor Vehicle Act, 1988. In claim application it has been pleaded that deceased died in accident while driving the tractor bearing No.CG 13A -0593 attached with trolley when said tractor turned turtle and deceased suffered injuries. While taking deceased to home, he died. In the application, reasons for not making any complaint/information of accident to concern Police Station immediately after the accident were also categorically mentioned.

10. Dhalendra Prasad, father of deceased submitted written report (Ex.P/1) to Station House Office, Police Station Sarangarh against appellant/non-applicant on 30.01.2013. In the said written report, it has been specifically mentioned that as appellant and his son came to the house of claimants immediately and they mounted pressure for cremation of deceased immediately. It has also been stated in the report that appellant stated that it is a matter between family and therefore, lodging FIR is not required.

11. Claimants also filed Panchnama (Ex.P/2) and one *Istagash* was registered by concerned Police Station. Ex.P/3 *Istagash* would show that it

has been prepared against non-applicant and his son. Police have recorded evidence of about nine villagers and in crime details, it has been mentioned that on the date of accident, at about 1.30 pm, deceased was driving tractor of appellant- Ksheershambhu @ Khirshambhu and met with an accident. In the said accident, deceased came under offending vehicle and succumbed to injuries. It was also recorded that under pressure of appellant and his son, dead body of deceased was cremated immediately, without giving any intimation to concerned Police authorities.

12. Claimants in support of their claim application have produced as many as four witnesses to prove their claim and on perusal of evidence of all the witnesses, it is clear that all of them categorically stated that on the date of accident, deceased was driving offending vehicle owned by appellant herein. Witnesses have also stated that they reached to the spot immediately after the accident and found that deceased was under offending vehicle. They also narrated registered number of offending vehicle as CG-13-A-0593.

13. Non-applicant examined himself as NAW-1 and Lukeshchand Patel as NAW-2, Secretary, Village Panchayat, Mudiyadih. Evidence of NAW-1, appellant himself would show that after being noticed by Police Officer on the complaint made by father of deceased, he only intimated Police that death of deceased took place due to his illness. He in his evidence, nowhere make statement that he intimated the Police authorities that accident did not take place from his vehicle, while deceased was driving his vehicle or on the date of accident some other person was driving his vehicle. He also admitted that neither he made any complaint to Police authorities that false and fabricated

complaint against him was made by claimants, nor he challenged the complaint made against him before any other forum.

14. Perusal of evidence of NAW 2 would also show that intimation with regard to death on account of illness has not been given by parents of deceased, but it has been given by one Hulasram, who is said to be uncle of deceased, but resident of different area of village. He further states in his evidence that, in the information Ex.D1, it is nowhere mentioned that on account of what illness deceased died. This witness also admitted that appellant-Ksheershambhu was working as Clerk in office of Janpad Panchayat, Sarangarh, whereas his son was working as Secretary of Village Panchayat.

15. The evidence available on record would show that death of deceased was due to accident which took place when he was driving offending vehicle (tractor-trolley) of appellant bearing No.CG-13 A-0593. The pleadings of appellant/non-applicant himself is that deceased fell down from tractor, while driving his own tractor, meaning thereby death of deceased took place in an accident. Witnesses examined on behalf of claimants have specifically stated that accident took place when deceased was driving offending tractor of appellant/owner.

16. Other aspect of case is that appellant himself is working as Clerk in the office of Janpad Panchayat and his elder son was working as Secretary of village Panchayat, who are educated people and dealing with number of people of different status during the course of their employment, but they have not made any specific statement to concerned Police Station that death

of deceased was not on account of accident with offending vehicle. They have also not made any complaint to higher Police authorities making allegation, thereby mentioning that false and fabricated criminal case has been lodged against him. This conduct of appellant is sufficient to draw adverse inference against him.

17. So far as argument raised by learned counsel for appellant that death was not intimated to Police immediately and post-mortem has not been done to prove that deceased died on account of illness is concerned, as discussed above, there are ample of material and evidence showing that death of deceased took place due to accidental injuries and accident took place while deceased was driving offending vehicle as driver, owned by appellant herein and he came under tractor owned by appellant.

18. Motor Vehicle Act, 1988 is a beneficial piece of legislation for welfare and for awarding amount of compensation for accidental injuries or death suffered by any person. Any claim application could not be dismissed only on account of not reporting death immediately after accident or not conducting post-mortem of dead body saying that death of deceased did not take place due to accidental injuries. Whether death is on account of accident or otherwise, is to be evaluated on the basis of evidence and material placed on record by the claimants and to be decided on the basis of preponderance of probabilities. In the case at hand, claimants have successfully proved the fact of accident and motor accidental death of deceased Veerendra Kumar Patel by examining about three villagers in support of their claim, who have specifically stated that death of deceased took place due to motor accidental injuries suffered by him in an accident by offending vehicle.

19. In view of above discussion, I do not find any error in impugned award passed by learned Claims Tribunal.

20. Appeal being devoid of merits, which is liable to be and is hereby dismissed.

21. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma