

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No.826 of 2013**

1. Ramkumar Sahu, S/o Late Bhagwani Sahu Aged About 40 Years R/o Dhaurabhatha, Kargi Road, Kota, Tah. And P.S. Kota, Distt. Bilaspur C.G.,
2. Smt. Ashwani Sahu W/o Ram Kumar Sahu Aged About 35 Years R/o Dhaurabhatha, Kargi Road, Kota, Tah. And P.S. Kota, Distt. Bilaspur C.G.,
3. Dhananjay Kumar Sahu S/o Ram Kumar Sahu Aged About 13 Years Minor, Thru- Father Ram Kumar Sahu, R/o Dhaurabhatha, Kargi Road, Kota, Tah. And P.S. Kota, Distt. Bilaspur C.G., **(Claimants)**

--- Appellants**Versus**

1. Shyam Narayan Binjhwar, S/o Shriram Binjhwar Aged About 22 Years R/o Dhaurabhatha, Kargi Road, Kota, Tah. And P.S. Kota, Distt. Bilaspur C.G.,
2. Shriram Binjhwar S/o Mitthuram Binjhwar Aged About 50 Years R/o Dhaurabhatha, Kargi Road, Kota, Tah. And P.S. Kota, Distt. Bilaspur C.G.,

---- Respondents

For Appellants:	Shri Avinash Chand Sahu, Advocate.
For Respondents:	Shri Ravindra Sharma laong with Shri Ravish Verma, Advocates.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Award On Board

30.07.2019

1. Heard on IA No.02/2018, an application filed by the Respondents for taking the copy of judgment dated 21.12.2017 passed in Criminal Case No.665/2011 by the Judicial Magistrate, First Class, Kota, on record.
2. On due consideration, the same is allowed. The document annexed with the said application is hereby taken on record.
3. With the consent of learned Counsel for the parties, this matter is heard finally.
4. This Miscellaneous Appeal has been preferred under Section 173 of the

Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') by the Claimants questioning the legality and propriety of the award dated 25.02.2013 passed by the 4th Additional Member to the 1st Additional Motor Accidents Claims Tribunal, Bilaspur (CG) (for short 'the Claims Tribunal') in Claim Case No.01/2012 by which, the Claims Tribunal has dismissed the claim. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

5. Briefly stated, the facts of the case are that on 31.10.2011, deceased Pushpalata Sahu was returning from Pali with her friend Shyamnarayan Armo on his motorcycle and as soon as they reached in between the village Bagdeva and Beltara, said Shyamnarayan Armo lost his control over the said vehicle, as a result of which, she (Pushpalata Sahu) fell down and sustained injuries and expired. At the relevant point of time, the vehicle in question (motorcycle) bearing its Registration No.CG 10 EE 7760, owned by Non-Applicant No.2-Sriram Binjhar was being driven in a rash and negligent manner by his son Shyamnarayan Armo while returning along with the deceased Pushpalata Sahu. On account of the said accident, the Claimants have filed the Claim Petition under Section 166 of the Act of 1988 claiming total amount of compensation to the tune of Rs,18,40,000/- as their daughter, aged 20 years, used to earn Rs.3,000/- per month out of her embroidery business.

6. While disputing the alleged accident, it was stated by Non-Applicants No.1 & 2 that the vehicle in question was not involved in the alleged accident occurred on 31.10.2011. It is contested further on the ground that since the deceased was in love with Shyamnarayan, which was against the will of her parents, they have been falsely implicated in relation to the alleged accident

and/or crime.

7. After considering the evidence led by the parties, the Claims Tribunal arrived at a conclusion that the Claimants have failed to prove that the vehicle in question was either involved in the alleged accident or was being driven in a rash and negligent manner by said Shyamnarayan. As a consequence, the Claim Petition made by the Claimants has been dismissed.

8. Being aggrieved, the Claimants have preferred this Appeal. Shri Avinash Chand Sahu, learned Counsel for the Claimants (Appellants) submits that the award impugned as passed by the Claims Tribunal holding that the vehicle in question was neither involved in the alleged accident nor the driver of it was found negligent in driving the same in a rash and negligent manner, is apparently contrary to law. While inviting attention of this Court to the First Information Report as well as the charge sheet along with the judgment delivered in the said criminal case, it is submitted by him that though said Shyamnarayan was acquitted from the alleged offence, but it was only on the ground that the vehicle in question was not found to be driven in a rash and negligent manner. It was, however, not found there that the vehicle in question was not involved in the alleged accident. Without considering all the material facts in its proper perspective, the Claims Tribunal has committed an illegality in dismissing the Claim Petition as such.

9. On the other hand, Shri Ravish Verma, learned Counsel for the Respondents, while supporting the award impugned, submits that the Claims Tribunal has not committed any illegality in holding that the vehicle in question was neither involved in the alleged accident nor the driver of it was found negligent in driving the same. He submits further while furnishing the copy of judgment dated 21.12.2017 passed in Criminal Case No.665/2011 by the

Judicial Magistrate First Class, Kota that since said Shyam Narayan (Non-Applicant No.1) has already been acquitted in the alleged offence, therefore, no interference is required to be made in the award impugned.

10. I have heard learned Counsel for the parties and perused the entire record carefully.

11. Based upon the aforesaid facts and circumstances of the case and the findings arrived therein by the Claims Tribunal vide its award impugned, the question which arises for consideration in this Appeal is about the factum of involvement of the alleged motorcycle bearing its Registration No.CG 10 EE 7760 in the accident occurred on 31.10.2011 and also on the factum of negligence of the driver of the said offending vehicle causing the accident in question.

12. It appears from perusal of the record that the offence punishable under Section 304-A IPC has been registered apart from Section 493 IPC against said Shyamnarayan. The said offence has been registered on the basis of the First Information Report (Ex.A-2) lodged by father of the deceased Ram Kumar Sahu. According to the said report, he received the information from Shyamnarayan himself that his daughter had met with an accident near Khutaghat and while lodging the report, it has been submitted by him that he was not aware as to where and how Shyamnarayan took his daughter. It appears further from perusal of the seizure memo (Ex.A-6) that immediately after the next day of the alleged accident, i.e. 01.11.2011, the vehicle in question was seized from said Shyamnarayan by the concerned Station House Officer and after investigating the matter, charge sheet was submitted before the concerned Judicial Magistrate, First Class while registering the offences punishable under Sections 493 and 304-A IPC against him.

13. After passing of the award impugned, said Non-Applicant No.1-Shyamnarayan was acquitted vide judgment dated 21.12.2017 by the Judicial Magistrate, First Class, Kota in Criminal Case No.665/2011. Although, he is acquitted from the alleged crime, but perusal of the said judgment would show that he was acquitted because of failure of the prosecution to establish the fact that he was driving the alleged vehicle in a rash and negligent manner. Mere acquittal of him as such would not be sufficient to hold that he was falsely implicated in connection with the alleged crime registered against him for the offence punishable under Sections 304-A and 493 IPC. In any case, in absence of cogent and reliable evidence led by Non-Applicants, I do not find any reason to disagree with the opinion of the Investigating Agency in filing the said charge sheet against him. That apart, a bare perusal of the documentary evidence like Ex.A-1 to Ex.A-8 coupled with the statement of the father of the deceased Ramkumar Sahu vis-a-vis the statement of one Kaushal Prasad (N.A.W-2) examined by the Non-Applicants themselves, would lead to an irresistible conclusion that said Shyamnarayan was present at the place of occurrence of the alleged accident, who not only brought the deceased to the hospital but carried her by Tata Magic (*chota hathi*) to the concerned police station and has failed to offer any explanation as to how he was present there and the vehicle in question was seized from him. All these material facts leading to filing of charge sheet are sufficient to hold that the vehicle in question was not only involved in the alleged accident but was driven by him in a rash and negligent manner.

14. At this juncture, the principles laid down by the Supreme Court in the matter of **Dulcina Fernandes and Others vs. Joaquim Xavier Cruz and Another** reported in (2013) 10 Supreme Court Cases 646 dealing with the

similar situation are to be noted. In the said matter, the evidence of Claimants' eyewitnesses was discarded by the Tribunal and the Respondent in that case was acquitted in the criminal case. Based upon this factual scenario, it was opined therein at paragraph-12, which is relevant for the purpose, is reproduced as under:-

12. "xxxxxxx. Though it is submitted at the Bar that the first respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, *prima facie*, materials showing negligence were found to put him on trial."

15. Yet, in the matter of **Bimla Devi and Others vs. Himachal Road Transport Corporation and Others** reported in (2009) 13 Supreme Court Cases 530 are to be seen where it has been observed by the Supreme Court while dealing with the Claim Petition in terms of Section 166 of the Act of 1988 that the Tribunal *stricto sensu* is not bound by the pleadings of the parties and its function is to determine the amount of fair compensation. In paragraphs 11 and 13 to 15, it has been observed as under:-

11. "While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition."

13. "The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate

Respondents 2 and 3. The claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.”

14. “Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.”

15. “In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

16. In view of the principles laid down in the aforesaid case laws, it is evident that the key of negligence on the part of the driver of the offending vehicle as set up by the Claimants was required to be decided by the Claims Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt.

17. Reverting back to the case in hand while keeping the aforesaid principles in mind, it is evident that based upon the First Information Report as well as the seizure memo (Ex.P-6) leading to filing of the charge sheet against Non-Applicant No.1-Shyam Nayarayan Binjhwar under Sections 493 and 304-A of IPC, vis-a-vis the evidence of the father of the deceased, it establishes a

prima facie case towards his complicity in driving the vehicle in question negligently and his acquittal in the said criminal case would not be of any effect on the assessment of the liability as required in respect of motor accident cases.

18. It, therefore, appears as visualized from the facts and circumstances of the case that the vehicle in question was not only involved in the alleged accident but Non-Applicant No.1 was found to be driving the same in a rash and negligent manner. Initial burden was, thus, discharged by the Claimant in order to establish the alleged factum of accident as well as the rash and negligent driving by him. However, the Non-Applicants have failed to prove that it was neither involved nor was it being driven rashly and negligently by said Shyama Narayan. As such, the findings of the Tribunal dismissing the Claim Petition by holding as such deserves to be and is hereby set aside and it is held that alleged accident occurred on 31.10.2011 due to rash and negligent driving of the offending vehicle by its driver namely Shyam Narayan resulting into the said demise of Pushpalata Sahu.

19. Consequently, the award impugned passed by the Claims Tribunal in Claim Case No.01/2012 is hereby set aside and the matter is accordingly remitted back to the concerned Claims Tribunal with a direction to decide the same after providing sufficient and reasonable opportunity of hearing to the parties in accordance with law. Needless to mention here further that the parties shall be allowed to amend their pleadings and adduce further evidence again in support of their pleadings and may file further documents, verified thereafter and the decision shall be made by the concerned Claims Tribunal as soon as possible. Both the parties are hereby directed to remain present before the concerned Claims Tribunal on 11.09.2019.

20. The Appeal is allowed with the aforesaid observation. No order as to costs.

21. Registry is directed to transmit the entire record to the concerned Claims Tribunal forthwith.

Sd/-
(Sanjay Agrawal)
Judge

Priya