

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1152 of 2012

1. Smt. Seema Pandey, W/o Late Yogendra Pandey Aged About 40 Years
2. Shubham Pandey S/o Late Yogendra Pandey Aged About 12 Years
3. Satyam Pandey S/o Late Yogendra Pandey Aged About 10 Years

Appellants No.2 & 3 are minor, through their natural guardian mother Smt. Seema Pandey, all appellants are resident of Bouripara, Beside Heera Hardware's Street, Ambikapur, Post Office Ambikapur, Police Station and Tahsil Ambikapur, District Surguja (Chhattisgarh).

---- Appellants

Versus

1. Agrawal Infrabuild Private Limited, Shop No. 13, Basheer Ahmad Complex, Link Road, Bilaspur, Post, Police Station & Tahsil Bilaspur, Branch Office at Bhaiyathan Road, Surajpur, Post, Police Station & Tahsil Surajpur, District Surajpur, (Chhattisgarh)
2. Devnarayan Manikpuri S/o Bharat Panika Aged About 24 Years, Occupation-Driver, resident of Silphili, Post Office-Karsi, Police Station & Tahsil Pratappur, District Surguja (Chhattisgarh).
3. Bajaj Alliance General Insurance Company Limited, through Its Branch Manager, Branch Office- Shivmohan Bhawan, Vidhansabha Road, Post- Pandri, Raipur, District Raipur (Chhattisgarh)
4. Vidyadhar Pandey S/o Late Madhav Pandey Aged About 83 Years
5. Smt. Mankali Devi W/o Vidyadhar Pandey Aged About 78 Years

Both are residents of Pathariya, P.S. Kandi, P.O. Kusaha,
District Garhwa (Jharkhand)

---- Respondents

For Appellants	:	Shri V.K. Pandey, Advocate
For Respondent No.3	:	Shri Ghanshyam Patel, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

09/05/2019

1. Appellants-claimants have challenged award dated 6.11.2012 passed by learned 3rd Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja (for short 'the Claims Tribunal') in Claim Case No.64/12 whereby the Claims Tribunal has dismissed claim application of claimants.
2. Facts of the case, in brief, are that on 3.5.2008 at about 2.30 p.m. respondent No.2 herein, driver of Dumper bearing registration number CG15-A-6528 (henceforth 'the offending vehicle'), drove it in a rash and negligent manner and gave dash to motorcycle of Yogendra Pandey from behind as a result of which he sustained grievous injuries on various parts of his body and died instantaneously. Accident was reported to Police Station Rajpur based on which offence under Section 304A of the Indian Penal Code was registered against respondent No.2-driver. Claimants/appellants herein, who are widow & children of deceased respectively, have filed a claim application claiming compensation to the tune of Rs.31,28,120/- under various heads.
3. Respondent No.1 & 2, owner & driver of offending vehicle, filed their reply to claim application denying that accident was

caused by their vehicle. They have pleaded that on the date of accident, deceased Yogendra Pandey was driving his motorcycle rashly & negligently as a result of which he lost control over it, dashed against stone lying on road side and sustained grievous injuries which resulted into his death. They also pleaded that Police Station Rajpur initially registered Crime No.56/18 against Yogendra Pandey himself and during the course of investigation the police did not find involvement of any other vehicle in accident in question. Deceased Yogendra Pandey was not having valid & effective driving license to drive motorcycle. Respondent No.2-driver of offending vehicle was possessing valid & effective driving license and offending vehicle was fully insured with respondent No.3-insurance company, therefore, the insurance company is liable to indemnify owner in case any compensation is awarded by the Claims Tribunal to claimants.

4. Respondent No.3 Insurance Company filed its separate reply denying averments made in claim application and stating that no accident was caused by alleged offending vehicle. It was contended that accident in question occurred due to negligence on the part of driver of motorcycle himself, which is evident from the contents of FIR also, and therefore claimants are not entitled to get any compensation.
5. The Claims Tribunal after appreciating the pleadings and evidence placed on record (oral and documentary both) by the respective parties dismissed claim application of claimants by holding that they failed to prove that deceased Yogendra

Pandey died due to accident caused by the offending vehicle.

6. Learned counsel for claimants/appellants submits that lodger of FIR (Ex.P-2) was not an eyewitness to accident and therefore FIR is immaterial in this case in which it has been mentioned that accident took place due to rash & negligent driving of deceased himself. He further argued that during the course of investigation, police recorded statements of Rajesh Pandey & Kamta Singh under Section 161 of CrPC, who were present on the spot at the time of accident, and both these witnesses have stated in categorical term that after causing accident, the offending truck stopped little far from the spot and they have asked driver of offending truck to take injured to a nearby hospital. As they were going to Tahsil Office, therefore, they did not lodge report immediately in nearby police station. However, the Claims Tribunal disbelieved evidence of aforesaid witnesses examined as AW-2 & AW-3 and dismissed the claim.
7. Per contra, learned counsel appearing on behalf of respondent No.3- Insurance Company submits that FIR has been lodged within half-an hour of accident by one Parshuram Bhagat, a government servant working as Patwari. Non-applicants have examined Anand (NAW-3) & Siyabali (NAW-4) as eyewitnesses to accident. Harinarayan (NAW-2), Supervisor of non-applicant No.2, has stated that alleged offending truck was engaged in some other work i.e. for transportation of *murrum* & stones for construction of road and in support thereof he also produced log book of offending

vehicle, which is marked as Ex.D-2. He further argued that supplementary statements of Rajesh Pandey & Kamta Singh recorded under Section 161 CrPC by the police was a belated attempt of claimants to get compensation by falsely implicating vehicle of respondent No.1 & 2 in the accident. He further submits that finding recorded by Claims Tribunal that there is no involvement of any other vehicle in accident and the deceased met with accident due to his own negligence is based on proper appreciation of evidence available on record and the same does not call for any interference.

8. I have heard learned counsel for the parties and perused the record.
9. Perusal of FIR (Ex.P-2) shows that it was lodged within half-an hour of accident, that is to say, accident occurred on 3.5.2008 at 2.30 p.m. and report was lodged at 3.35 p.m. by Parshuram Bhagat, who was working as Patwari. He has specifically mentioned in report that he was told by one of Peons of Tahsil Office, Rajpur namely Geeta Pandey that due to rash and negligent driving of his motorcycle, Yogendra Pandey has met with an accident . He has further mentioned in FIR that due to rash and negligent driving of motorcycle, the deceased lost control over motorcycle and met with accident. Statement of Parshuram Bhagat under Section 161 CrPC was also recorded, which is marked as Ex.P-3, wherein also he has made similar statement as has been made by him in FIR.
10. Though Parshuram, who lodged FIR, is also a Patwari working in the same office but claimants, for the reasons best known to

them, have not examined him as witness before the Claims Tribunal. Copy of final report (Ex.P-1) also mentions that offending truck as well as motorcycle were examined by an expert but the examination report of motorcycle or offending truck has not been made part of records by claimants.

11. Perusal of supplementary statement would show that statement of Rajesh Pandey & Kamta Singh were recorded on 5.8.2005 & 13.8.2005 respectively i.e. after about more than three months from the date of accident. Both these witnesses are government servants and though they claimed to have seen accident but they did not make any effort to immediately lodge report of accident in police station, which was situated at a distance of about one & half kilometer from the place of accident, as admitted by them. According to Rajesh Pandey (AW-2), in the fateful evening itself he came to know that person met with accident was Yogendra Pandey. According to Kamta Prasad (AW-3), after 3-4 days of accident, he came to know that that deceased motorcycle rider was brother of Virendra Pandey. However, they have not disclosed to anyone for months that they have witnessed the accident in question and this casts a serious doubt about their presence on spot at the time of accident.

12. In view of above material on record, statements of Rajesh Pandey & Kamta Singh do not inspire confidence that they could not get knowledge about accident of their co-employee though they themselves have stated in their statement that after the accident they visited Tahsil Office and from there they

went to Shankargarh. Conduct of these witnesses in not immediately giving intimation to the family members of deceased regarding accident and narration of incident to brother of deceased after about one month of the accident makes them unreliable and untrustworthy.

13. Non-applicants have infact examined two persons, who were present on spot, as NAW-3 & NAW-4 and they have specifically deposed that on the date of accident they were working as Mason nearby spot and accident occurred at the time when they were taking their lunch under a tree. Both these witnesses have not stated about presence of Rajesh Pandey and Kamta Singh. These witnesses do not appear to be interested witnesses of any of the parties and therefore, in my opinion, the Claims Tribunal has not committed any error in relying on the evidence of these witnesses.

14. Learned Claims Tribunal has discussed all the material evidence in detail and has rightly recorded finding that the claimants have tried to create a false story to give colour to accident of self-negligence of an accident of motorcycle with other motor vehicle for filing claim application. Hence, I do not find any good ground calling interference in impugned award.

15. For the foregoing reasons, the appeal being devoid of substance is liable to be and is hereby dismissed.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-.