

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 490 of 2013

1. Shatruhan Prasad Yadav S/o Chunaku Yadav Aged About 54 Years R/o Village - Dharashiv, Tah. Nawagarh, Civil And Revenue Distt. Janjgir-Champa C.G.
2. Surendra Pal @ Surendra Rathia S/o Chandram Suryavanshi Aged About 26 Years R/o Sewai, Post- Kutra, P.S. And Tah. Pamgarh, Civil And Revenue Distt. Janjgir-Champa C.G.

---- Appellants

Versus

1. Hanuman Prasad Agrawal S/o Late Tarachand Agrawal Aged About 60 Years R/o. Sarkho, P.S. And Tah. Janjgir, Civil And Revenue Distt. Janjgir-Champa C.G.
2. United India Insu. Co. Ltd. Thru- The Regional Manager, United India Insu. Co. Ltd., Regional Office- R.B. Traders, 1st Floor, Stadium Road, T.P. Nagar, Korba, Civil And Revenue Distt. Korba C.G.

---- Respondents

For Appellants	:	Shrt Vivek Shrivastava, Advocate.
For Respondent No.2	:	Ms. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

18/06/2019

- 1 By the instant appeal, appellants, who are driver and owner of Tractor & Trolley bearing registration No.CG11-A-1463 & CG11-A-1464 respectively (hereinafter shall be referred to as "offending vehicle"), have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging legality and validity of impugned award dated 19.2.2013 passed by learned Principal Motor Accident

Claims Tribunal, Janjgir Champa, C.G (for short 'the Tribunal') in Claim Case No.45/2011, whereby the Tribunal allowed claim application in part, awarded total sum of Rs.3,18,059/- as compensation in an injury case alongwith interest @ 7% p.a. and fastened liability upon non-applicants No.1 & 2/appellants - herein to pay amount of compensation. The Tribunal has exonerated insurance company on the ground that on the date of accident driver of offending vehicle was not possessing valid and effective driving license.

- 2 Brief facts necessary for disposal of this appeal are that on 17.10.2009, when respondent No.1 Hanuman Prasad Agrawal (injured) was returning to his house from his saw mill, on the way Tractor & Trolley bearing registration No.CG11-A-1463 & CG11-A-1464 respectively, which was being driven by Non-applicant No.2/appellant No.2 -herein dashed, him. As a result, said Hanuman Prasad Agrawal suffered grievous injuries on various parts of body including both his both legs which were badly injured. He took treatment in Budhiya Hospital, Bilaspur & Khemka Hospital, Raipur and during the course of treatment his right leg was operated and a rod was inserted in his leg.
- 3 On account of injuries sustained in motor accident, Respondent No.1/ claimant filed claim application under Section 166 of the Act of 1988 and claimed Rs.6,89,186/- as compensation under all heads on the grounds mentioned therein.
- 4 Non-applicant Nos.1 & 2/ appellants herein, owner & driver of offending vehicle, submitted reply to claim application and pleaded that on the date

of accident non-applicant No.2 Surendra Pal @ Surendra Rathia was not driving offending vehicle. They further pleaded that on the date of accident driver of offending vehicle ran away from the spot after causing accident. They also pleaded that appellant No.1 herein i.e. erstwhile owner of offending vehicle, had sold the vehicle to other person much prior to the accident and therefore, they are not liable to pay any amount of compensation.

5 Respondent No.3/Insurance Company separately submitted reply to claim application and pleaded that offending vehicle was not involved in any manner in alleged accident. It was further pleaded that on the date of accident deceased was running on road carelessly due to which he met with accident. It was further pleaded that driver of offending vehicle was not having valid & effective driving license to drive offending vehicle; it was insured with respondent No.3/Insurance Company for agricultural purpose but on the date of accident it was used for some other purpose and as such, there was breach of condition of insurance policy and therefore, insurance company is not liable to pay any amount of compensation.

6 Learned Claims Tribunal after appreciating pleadings and evidence placed on record by respective parties held that owner of offending vehicle i.e. appellant No.1 failed to prove transfer of his vehicle in favour of some other person. It has also been recorded that sale letter of offending vehicle does not bear signature of Panchyram Yadav, alleged purchase of offending vehicle, and even on the date of accident

offending vehicle was registered in the name of non-applicant No.1/appellant No.1 herein, therefore, he will be treated as registered owner of offending vehicle. With respect to involvement of offending vehicle in alleged accident, the Tribunal has recorded finding that defence taken by appellants that driver of offending vehicle was not driving said vehicle on the date of accident could not be proved by leading cogent and reliable piece of evidence. On the contrary, FIR, which was lodged immediately after the accident, also bears name of appellant No.2 as driver of offending vehicle. The Tribunal after recording aforesaid finding allowed claim application in part and awarded a total sum of Rs.3,18,056/- as compensation including medical expenses of Rs.2,43,536/-.

- 7 Learned counsel for the appellant submits that the Tribunal committed error in not taking into consideration the fact that on the date of accident offending vehicle itself has been transferred by way of sale letter to Panchram Yadav. He further submits that Non-applicant No.2/ appellant No.2 herein was not driving offending vehicle on the date of accident and one Chamru Yadav was driving offending vehicle and he fled away from the spot after the accident and as appellant No.2 was present on the spot, he was made accused. He further submits that the Tribunal committed error in not considering judgment dated 22.10.2011 passed by JMFC, Janjgir in Crime Case No.463/11, which is marked as Ex. NAW1-5, in which the learned Magistrate has held that prosecution failed to prove that on the date of accident, non-applicant No.2 / appellant No.2 was driving offending vehicle.

- 8 Per contra learned counsel for respondent No.3/Insurance Company has supported the impugned award and pleaded that the Tribunal has rightly passed the impugned award on the basis of material available on record. He further argued that appellants failed to produce any legal and reliable piece of evidence in support of their pleadings and therefore the Tribunal has rightly disbelieved defence taken by them.
- 9 So far as, first ground raised by learned counsel for appellants that appellant No.1-Shatruhan Prasad Yadav has transferred the offending vehicle to one Panchram Yadav is concerned, perusal of Ex.A-12 & Ex.A-13 i.e. certificates of registration of offending vehicle, reveals that in both these documents appellant No.1 Shatruhan Prasad Yadav has been shown as registered owner. Likewise, name of appellant No.1 has also been mentioned in insurance policy which was effective on the date of accident filed as Ex.A-14.
- 10 True it is that appellant No.1 in his examination-in-chief filed in the shape of affidavit under Order 18 Rule 4 CPC has stated that he has sold the offending vehicle to one Panchram Yadav and in support thereof filed a receipt in which name of appellant No.1 is mentioned as seller and name of said Panchram Yadav is mentioned as purchaser of offending vehicle. However, this receipt bears signature of appellant No.1 only and not of alleged purchase of offending vehicle namely Panchram Yadav. This apart, appellants have not examined any independent witness in support of their case to prove transfer/sale of offending vehicle.

11 Section 2 (30) of the Act of 1988 defines the word 'owner' which reads as under :-

“owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement*, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;”

A bare perusal of above quoted definition of 'owner' makes it clear that any person whose name is registered in records of registering authority will be the owner of motor vehicle.

12 Section 50 (1) (b) of the Act of 1988 reads as under :-

50. Transfer of Ownership--(1).

“(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

13 In the case at hand, admittedly there is nothing to show that appellant No.1 has sent any intimation to concerned registering authority, within prescribed period, about transfer/sale of his vehicle in favour of said Panchram Yadav and therefore, name of alleged purchaser i.e. Panchram Yadav, could not be recorded in record by Registering Authority.

14 In view of above, it is evident that appellants failed to prove sale/transfer of offending vehicle by producing cogent and reliable piece of evidence

and this being the position, the Tribunal by treating appellant No.1 to be registered owner of offending vehicle has rightly held him liable to pay amount of compensation.

15 Now coming to next ground raised by learned counsel for appellants that appellant No.2 was not driving offending vehicle on the date of accident. Appellants failed to produce any reliable piece of evidence in this regard and even in their pleadings they have not mentioned name of driver of offending vehicle who was allegedly driving offending vehicle on the date of accident. Name of Chamru Yadav brought in evidence by the appellants on record is not admissible.

16 In view of non-availability of specific pleadings, it prima facie appears that appellants have made an attempt to involve one Chamru Yadav as driver of offending vehicle by way of an afterthought.

17 Last submission made by learned counsel for appellants that Tribunal failed to see that driver of offending vehicle has been acquitted of the criminal charges on the ground that prosecution failed to prove that on the date of accident, he was driving offending vehicle. The law of evidence is well settled that evidence led by the parties in a criminal case cannot be considered as it is in civil case. It is for the party concerned, who is asserting some facts, to prove the same by producing specific and reliable piece of evidence before the concerned court. In the case at hand, appellants failed to produce any cogent and reliable piece of evidence to show that on the date of accident appellant No.2 was not driving offending vehicle. On the contrary, contents of FIR recorded

within half-an hour of accident bears name of appellant No.2 as driver of offending vehicle. Thus, this Court is of the opinion that this submission made by learned counsel for the appellants also is not sustainable and is hereby rejected.

18 In view of above discussion, it is clear that appellants failed to make out his case on any of grounds raised by them.

19 In the result, appeal being devoid of merit is liable to be and is hereby dismissed.

Sd /-
(Parth Prateem Sahu)

Judge