NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 8.3.2019
Order Delivered on19/03/2019

MAC No. 1030 of 2014

1. Royal Sundaram Alliance Insurance Co. Ltd. Branch Office- Rabha Trade Center, Opposite Rajiv Plaza, Near Bus Stand, Distt. Bilaspur, At Present- Near Over Bridge, Mova Pandri, P.S. Pandri, Civil and Revenue Distt. Raipur (CG)

---- Appellant

Versus

1. Asha Patel, W/o Late Dayaram Patel Aged About 48 Years
2. Prince Bhai Patel S/o Late Dayaram Patel Aged About 18 Years
3. Kumari Akansha Patel D/o Late Dayaram Patel Aged About 22 Years

   All R/o Maheva, Tahsil Wadrafnagar, P.S. Wadrafnagar, Tahsil Wadrafnagar, Civil & Revenue District Balrampur (C.G.).

4. Nagendra Prasad Jaiswal S/o Krishndev Prasad Jaiswal R/o Village and Post- Mandri, Tah. Wadrafnagar, P.S. Wadrafnagar, civil and revenue District : Balrampur (CG)
5. Jamal Ahmad S/o Mahboob Ahmad C/o Nagendra Prasad Jaiswal, R/o Village And Post- Mandri, Tahsil Wadrafnagar, PS Wadrafnagar, Civil and Revenue Distt. Balrampur C.G., District : Balrampur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate on behalf of Shri Bhaskar Payasi, Advocate
For Respondent No.4	:	Shri Shakti Singh Thakur, Advocate on behalf of Shri Vinay Pandey, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

C A V Order

19/03/2019

1. Appellant Insurance Company has preferred this appeal challenging the award dated 16.5.2014 passed by the learned Additional Motor Accident Claims Tribunal, Pratappur (for short 'the Claims Tribunal') in Claim Case No.23/13 whereby the Claims Tribunal has awarded total compensation of

Rs.14,45,160/- to the claimants/respondents No.1 to 3 herein on account of accidental death of Dayaram and made the appellant insurance company liable to satisfy the award.

2. Facts of the case, in brief, are that on 24.1.2013 at about 10.30 a.m. Dayaram Patel (since deceased) was going on his motorcycle bearing registration number CG15-CA-6604 to his house situated in village Mahewa, DIstrict Balrampur (CG). Ramayan Patel of village Mahewa was travelling as pillion rider. When they reached near Primary School, Mahewa, one vehicle Tractor bearing registration number CG15-AE-2077, which was coming from opposite direction and driven by respondent No.5, dashed against motorcycle of said Dayaram Patel as a result of which both the motorcycle riders sustained grievous injuries on various parts of the body. They were immediately taken to the hospital where they succumbed to their injuries during the course of treatment. Report of this accident was lodged in the Police Station Basantpur, District Balrampur based on which offence under Sections 279, 337 & 304A of the Indian Penal Code was registered vide Crime No.67/213. Claimants/ respondents No.1 to 3 herein, who are widow & children of the deceased respectively, have filed a claim application claiming compensation to the tune of Rs.14,70,672/- under various heads on the ground that they were dependent on the earning of the deceased and due to his untimely death, they have been deprived of the dependency. In the claim application, they have pleaded that on the date of accident, the deceased was 57 years old, he was a government servant posted in the Forest Department and getting monthly salary of Rs.22,190/-. Therefore, they are entitled to get compensation, as claimed by them, from the non-applicants, jointly and severally.

3. Non-applicant No.1 & 2, owner & driver of offending vehicle, filed their

reply to the claim application stating that the accident in question occurred due to negligence on the part of deceased Dayaram Patel himself as he lost control over the motorcycle and dashed against the tractor from behind. It was further pleaded that the on the date of accident the driver was having valid and effective driving license to drive the offending vehicle. Lastly, it was pleaded that on the date of accident, the offending vehicle was fully insured and therefore the Insurance Company is liable to pay compensation, if any awarded by the Claims Tribunal.

4. Non-applicant No.3 Insurance Company/appellant herein also filed its separate reply and denied the involvement of offending vehicle in the accident in question and that the story as narrated in the claim application is false and fabricated. It has been further pleaded that deceased was not having license to drive the motorcycle. There was contributory negligence on the part of the deceased which resulted in the accident. The trolley was attached with the tractor at the time of accident which is suggestive of the fact that the tractor was being used for non-agricultural purpose. Thus, it is clear that the offending vehicle was being plied in violation of the conditions of insurance policy and therefore the insurance company is not liable for making payment of compensation, if any, to the claimants.

5. The Claims Tribunal after considering the pleadings and evidence placed on record (oral and documentary both) by the respective parties has partly allowed the claim of claimants/respondents No.1 to 3, awarded compensation of Rs.14,45,160/-/- along with interest @ 7.5% p.a. and held the insurance company liable to satisfy the award by holding that there was no violation of any of the conditions of the insurance policy.

6. Learned counsel for the appellant submits that FIR (Ex.P-22) which has been lodged by one Vinod, mentions the number of offending vehicle as

'CG15-AE-2077' and name of driver as 'Kuldeep Bansod son of Sudama Bansod' but the claim application has been filed by arraying one 'Jamal Ahmed' as driver of offending vehicle. He further argued that the Claims Tribunal has not considered the ground of contributory negligence as pleaded by the insurance company because at the time of accident the deceased was riding the motorcycle with two pillion riders in violation of Section 128 of the Act, 1988 and thus contributed in causing the accident. He further submitted that while calculating the compensation the Claims Tribunal has not deducted the amount of income tax from the income of the deceased and thus committed an error which requires correction from this Hon'ble Court.

7. Learned counsel appearing for respondent No.4 has adopted the arguments advanced by learned counsel for the appellant Insurance Company.

8. I have heard learned counsel for the parties and perused the record.

9. True it is that the FIR reflects name of one 'Kuldeep Bansod' as the driver of offending vehicle, whereas in the claim application one 'Jamal Ahmed' has been impleaded and shown as driver of offending vehicle on the date of accident. Vinod (AW-2), lodger of FIR, has stated in categorical terms that he knew driver Jamal by face and during investigation when said Jamal was brought before him, he had identified him to be the person who was driving the offending vehicle at the time of accident. He had denied the suggestion that he had not witnessed the accident. In Para-15 of the cross-examination he has offered an explanation that after causing accident, the driver ran away from the spot and the persons present there were saying that the offending vehicle belonged to one Nagendra and driver of said vehicle is one Kuldeep Bansod and on this basis, he had

mentioned the name of said Kuldeep Bansod in the FIR as the driver of offending vehicle. This witness has been cross-examined by the appellant Insurance Company but nothing could be elicited in his cross-examination to show that he had not identified driver of the offending vehicle. Furthermore, the appellant Insurance Company neither pleaded in its written statement nor adduced any evidence to show that on the date of accident, the vehicle was being driven by some other person than the person impleaded as driver in the claim application. This apart, non-applicant No.2/respondent No.5-Jamal Ahmed (NAW-2) himself has admitted in his statement that the accident in question was caused by his tractor. In these circumstances, it is very difficult to accept the submission of learned counsel for the appellant that on the date of accident some other person was driving the offending vehicle than the person arrayed as non-applicant No.1 in the claim application by the claimants. The appellant has not brought on record any other reliable evidence to strengthen his ground and argument. He only relies upon the contents of FIR, which was clarified by Vinod (AW-2) in his statement. Hence, the said argument is not sustainable and is hereby repelled.

10. Coming to the next argument regarding contributory negligence. Driver of offending vehicle was examined as non-applicant witness No.1, who has not specifically stated in his evidence that there was contributory negligence on the part of the deceased also. In fact, he has stated a very different story that the deceased-motorcyclist dashed against the tractor from behind, which is contrary to the contents of FIR and evidence of Vinod (AW-2), who has specifically stated that the offending vehicle tractor was coming from opposite direction when it dashed the motorcycle. Merely travelling of three persons in a motorcycle will not by itself lead to a presumption that the deceased was also contributory negligent. The

owner, driver or insurer of the offending vehicle has not brought on record any material or evidence to prove the factum of contributory negligence as raised by them. The law in this regard is well settled that contributory negligence is a question of fact which has to be proved like any other fact by leading cogent and reliable evidence and the burden to prove such a plea lies upon the party which raises it. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the decision of ***Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., 2013 AIR SCW 5375***, dealt with the plea of contributory negligence taken by Insurance Company where neither the driver nor any independent witness was examined to prove the allegation of contributory negligence. The Supreme Court, while setting aside the finding of contributory negligence, held as under:

> "12. --------The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet- Exh. 1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW.2 and PW3 in their cross-examination and placed reliance on them to

> record the finding on issue No. 1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No. 1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law."

In the matter of **Jiji Kuruvila & ors v. Kunjujamma Mohan & ors** reported in **(2013) 9 SCC 166**, the Supreme Court has held as under:-

> "20.5 The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."

11. In the present case, since the plea of contributory negligence has been raised by the appellant - Insurance Company, but it failed to substantiate the same by adducing cogent and clinching evidence and therefore, the same is liable to be rejected.

12. Furthermore, I do not find any force in the submission of learned counsel for the appellant that the Claims Tribunal has committed error in not deducting income tax amount from the assessed income of the deceased. Admittedly, the deceased being a government employee had permanency

of job and stable income and therefore in the light of decision of the Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and looking to the age of the deceased, which was more than 50 years at the time of accident, the claimants were further entitled for atleast addition of 15% towards future prospects, but no amount under this head has been awarded by the Claims Tribunal. Therefore, considering that the Act of 1988 is a beneficial legislation enacted with an object to provide just compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles, I am not inclined to accept this argument advanced by learned counsel for the appellant.

13. For the foregoing discussions, the appeal has no substance, the same is liable to be dismissed and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-