

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 725 of 2018**

1. Smt. Mamta Rajput Wd/o G. K. Rajput Aged About 35 Years
2. Aniket S/o Late G. K. Rajput Aged About 13 Years
3. Sarthak S/o Late G. K. Rajput Aged About 7 Years

Appellant nos. 2 & 3 being minor Through Their Natural Guardian
Mother Smt. Mamta Rajput.

All are R/o Devika Vihar, Bilaspur, District Bilaspur, Chhattisgarh.

---Appellants

Versus

1. Narendra Yadav S/o Lalsingh Yadav, R/o Railway Protection Force, Bhatapara, Post Office And Thana Bhatapara, District Baludabazar, Chhattisgarh.
2. Sunil Kumar S/o Ramlal Agrawal R/o Sanjay Ward, Bhatapara, Post Office And Thana Bhatapara, District Baludabazar, Chhattisgarh.
3. The Oriental Insurance Company Limited, Through Divisional Manager (Division No. 1), The Oriental Insurance Co. Ltd. Jail Road, Raipur, District- Raipur, Chhattisgarh.

---- Respondents

For Appellants	Shri Arvind Shrivastava, Advocate.
For Respondent No.3	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

11/02/2019

1. This is claimants' appeal against the award dated 30.01.2018 passed by learned 6th Additional Motor Accident claims Tribunal, Raipur, District Raipur, C.G. (for short 'the Tribunal) in claim case no. 337/2014, where by the claim petition has been dismissed.

2. As per averments in the claim petition on 25.11.2011, G.K. Rajput, Inspector in RPF took the vehicle bearing registration No. CG04-HC-1118 of non-applicant no.2 free of cost for going to Baikunthpur, Railway Station in connection with some official work. Driver of non-applicant no.2 was not available on the said date, therefore, non-applicant no.1 Narendra Kumar Yadav was driving the said vehicle in which G.K. Rajput was sitting. However, on the way due to sudden bursting/puncture of the vehicle, the vehicle got uncontrolled and dashed against the tree. As a result of which, G.K. Rajput suffered grievous injuries and ultimately succumbed to the same. At the time of accident, deceased was 40 years of age, earning Rs.52,000/- per month as Inspector in RPF.
3. Learned counsel for the appellants submits that as per the pleading from the beginning the claimants pleaded and proved this fact that deceased G.K. Rajput was not driving the vehicle at the time of accident and it is the non-applicant no.1 Narendra Kumar Yadav, Driver/Constable in RPF, who was driving the vehicle CG04-HC-1118. He submits that when driver was available, the question of driving the vehicle by the deceased, who was higher in rank/Officer, does not arise. Learned Counsel for the appellants also submits that mere intimation is lodged by Narendra Kumar Yadav non-applicant witness no.2 (non-applicant no.1) for saving himself from liability and criminal consequences concealing this fact he was driving the vehicle at the time of accident. As per statement of Narendra Kumar Yadav, non-applicant witness no.2 and as per the AW-3 D.P. Sharma,

this fact is also proved that vehicle dashed against a tree and turned on the conductor side but no any injury sustained by Narendra Kumar Yadav driver of the vehicle and since G.K. Rajput was sitting on the conductor side, he sustained injuries on head and other parts of the body resulting in his death. Therefore, considering the facts and circumstances of the case, the over all evidence available on record, it is clear that non-applicant no.1 was driving the vehicle in question on the date of accident and the Tribunal was not justified in dismissing the claim petition of the claimants. He submits that in view of the evidence available on record, this Court may assess the compensation or the matter may be remanded to the Tribunal for deciding the claim petition afresh in accordance with law taking into consideration the evidence of the claimants, eyewitness, conduct of non-applicant no.1 and other relevant aspects of the matter.

4. Learned counsel for the respondent no.3 supports the impugned award. However, he submits that if ultimately this Court remands the matter to the Tribunal, opportunity of hearing and of leading evidence may also be granted to the Insurance Company before the Tribunal.
5. As per merg intimation lodged by non-applicant no.1 Narendra Kumar Yadav Ex.P-4 the vehicle in question was being driven by the deceased at the time of accident. In his evidence, he has also stated so. On the contrary, the evidence examined by the claimants i.e. D.P. Verma NAW-3 eye witness to the accident has stated it is non-applicant no.1 who was driving the said vehicle at

the time of accident and when this witness asked non-applicant no.1 about the name of the person sitting on the conductor side, non-applicant no.1, Driver of the Vehicle replied that he is his Superior Officer. In cross-examination also this witness has stated that the vehicle in question was being driven by non-applicant no.1. AW-1 Mamta Rajput wife of the deceased has stated that on the date of accident her husband was on duty, he was going in the vehicle in question along with driver. She has stated in cross-examination that her husband had informed her telephonically that he is going by the said vehicle along with his driver Narendra Kumar Yadav. The said statement is not rebutted by the non-applicants. NAW-1 Ram Kishore Sahu has stated that the report was lodged by non-applicant no.1 Narendra Kumar Yadav that the vehicle in question was being driven by the deceased. He has stated that during merg inquiry it was informed by Head Constable No. 773 Tirath Das Narang that due to rash and negligent driver of the vehicle by the deceased accident occurred and he died. However, Tirath Das Narang has not been examined before the Tribunal. It has come in the evidence of the parties that the accident occurred due to mechanical break down of the vehicle. However, no report of mechanical break down is produced before the Tribunal. Except the evidence of non-applicant no.1 Narendra Kumar Yadav, there is no evidence to show that the deceased was driving the vehicle. In the merg intimation, it is nowhere mentioned that non-applicant no.1 was also present in the vehicle. In cross-examination he has admitted that neither he was present at the time of accident nor did he

conduct any investigation. He has further stated that he cannot say whether Narendra Kumar Yadav has stated the real facts of the accident or not.

6. Thus, considering the over all facts and circumstances of the case, pleadings of the respective parties, the nature and quality of evidence adduced by them, the principle of preponderance of probability, it appears that on the date of accident the vehicle in question was being driven by non-applicant no.1 and not the deceased and without proper inquiry the closure report was filed by the Police. In these circumstances, the Tribunal was not justified in dismissing the claim of the claimants without proper appreciation of the evidence, keeping in view the benevolent provisions of the Motor Vehicles Act, 1988. The matter needs to be remanded to the Tribunal for decision afresh in accordance with law.
7. In the result, the appeal is allowed, the award impugned is set aside and the matter is remitted back to the concerned Tribunal to decide the claim petition afresh on its own merits, after affording full opportunity of hearing to the parties, as expeditiously as possible, preferably within a period of 6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on 11.03.2019.
8. Needless to mention the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.

9. Record of the Tribunal be sent back forthwith.

10. With the aforesaid observations, the appeal stands disposed of. It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal shall decide the claim petition on its own merits in accordance with law.

Sd/-
Gautam Chourdiya
Judge

Akhilesh