

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 950 of 2015

1. Shivnandan S/o Maniram Aged About 50 Years R/o Village Tara, Chowki-Tar, Police Station-Premnagar, District-Surajpur, Chhattisgarh.
2. Smt. Kalesari W/o Shivnandan Aged About 45 Years R/o Village Tara, Chowki-Tar, Police Station-Premnagar, District- Surajpur, Chhattisgarh.

---- Appellants

Versus

1. Shrawan Pandit S/o Radhika Prasad Aged About 30 Years Occupation-Cultivator, R/o Village Tara, Chowki-Tar, Police Station-Premnagar, District- Surajpur, Chhattisgarh.
2. Sirodhan S/o Bahalsai Aged About 31 Years R/o Village Salhi, R/o Salhi, Tahsil and Police Station-Premnagar, District- Surajpur, Chhattisgarh.
3. Arun Kumar S/o Radhika Prasad Aged About 37 Years R/o Village Tara, Chowki-Tar, Police Station-Premnagar, District- Surajpur, Chhattisgarh.
4. Smt. Chandrawati Mishra W/o Devcharan Aged About 55 Years R/o Village Tara, Chowki-Tar, Police Station-Premnagar, District- Surajpur, Chhattisgarh.
5. Chain Singh S/o Sukhnandan Singh Aged About 30 Years Occupation-Driver, R/o Village Salhi, Post-Dandgaon, P.S. Udaypur, District-Surajpur, Chhattisgarh.
6. Branch Manager, The Oriental Insurance Co. Ltd. Branch-Manendragarh Road, Ambikapur, District- Surguja, Chhattisgarh.

--- Respondents

For Appellants	: Mr. Bishnu Muni, Advocate with Mr. D.N. Prajapati, Advocate.
For Respondent Nos. 1 to 4	: Ms. Shalu Singh, Advocate on behalf of Mr. Sunil Sahu, Advocate.
For Respondent No.6	: Mr. Raj Awasthi, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

19/12/2019

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 24.04.2015 passed by learned Second Additional Motor Accident Claims Tribunal, Surajpur, Distt. Surajpur, C.G (in short 'the Tribunal'), in Claim Case No.72/2010 whereby the claim application filed by the claimants has been dismissed.

2. Brief facts, in nutshell, are that on 30.03.2005, Amar Lal (deceased), Pankaj (injured) alongwith other two labourers had gone to clay mine situated in village-Tara for bringing soil on Tractor & Trolley bearing registration No.CG15-A-3341 & No.CG15-A-3342 respectively (hereinafter referred to as "offending vehicle"), owned by respondent No.3, for the purpose of making roof tiles. When they were digging soil from the pit, suddenly the soil fell over them due to which said Amar Lal & Pankaj suffered grievous injuries over their person. Amar Lal was immediately taken to the hospital at Udaypur, where he was declared brought dead. Matter was intimated to the concerned police station on the same date. On account of accidental death of deceased Amar Lal, claimants/appellants, who are parents of deceased, have filed claim application under Section 166 of the Act of 1988 before the Tribunal claiming amount of Rs.14,40,000/- as compensation on the grounds mentioned therein.
3. In claim application it has been pleaded that when Amar Lal and Pankaj were digging soil from the mines and loading it on tractor (ie offending vehicle), at that relevant time, non-applicants no.1 & 2 came at the end of ditch from where the soil was being dug and due to which surface of pit started falling down and some part of soil fell over Amar Lal & Pankaj.
4. That when the soil started falling from surface of ditch, both Amar Lal & Pankaj tried to come out from it but they came under the offending vehicle and suffered grievous injuries. It has been stated that owner and driver of offending vehicle have intimated the police wrong fact that Amar Lal suffered injuries as he came under the soil which fell down from the surface of pit.

5. The pleadings of claimants are that death of Amar Lal took place as he came under the offending vehicle. It has also been pleaded that as the police have not lodged FIR against driver of offending vehicle, therefore, one complaint case has also been filed before the competent Court at Surajpur.
6. Non-applicants No.1 to 3/respondents No.1 to 3 submitted reply to claim application and denied all the adverse allegations pleaded in claim application including the fact of accident from offending vehicle. They further pleaded that non-applicant No.5 -Chain Singh has been engaged as driver of offending vehicle, who is having valid driving license. There was no violation of any of the conditions of insurance policy and since on the date of accident offending vehicle was insured with the Insurance Company, the liability if any for payment of amount of compensation would be on insurance company.
7. Non-applicant No.4, one of the owners of offending vehicle, and non-applicant No.5, driver of offending vehicle, submitted their separate reply to claim application and denied all the allegations leveled against them. They further pleaded that deceased Amar Lal had not gone to clay mine on offending vehicle alongwith other labourers. He went there for bringing soil for his own use and was digging pit carelessly due to which, soil fell down over him and he suffered grievous injuries and succumbed to the injuries.
8. Non-applicant No.6/respondent No.6-Insurance Company submitted its reply and denied its liability on the ground that accident took place on account of falling of soil from the pit surface and that Amarlal died due to

injuries suffered by him in the said accident. It was also denied that Amar Lal suffered injuries as he came under the offending vehicle. The fact that accident took place from offending vehicle has also been denied. A specific plea has been raised, that claim application has been filed after a lapse of more than five years from the date of accident, which creates doubt with regard to correctness of the fact of accident. It was further pleaded that claim application has been filed on false and fabricated facts. Lastly, it was pleaded that there was breach of condition of insurance policy as on the date of accident driver of offending vehicle was not having valid and effective driving license, the offending vehicle was not used for agricultural purpose, but for commercial purpose. Insurance company is not liable to make payment of any compensation to the claimants.

9. On the basis of pleadings of the parties, learned Tribunal framed as many as five issues for consideration and after appreciation of pleadings and evidence brought on record by the respective parties, the Tribunal dismissed the claim application by holding that claimants failed to prove the fact that death took place on account of a motor accident.
10. Learned counsel for appellants submits that non-applicants No.1 to 4 have deliberately not disclosed the real fact before the police and also in the hospital that Amar Lal suffered injuries on account of coming under the offending vehicle. It is submitted that the appellants being poor persons have not been permitted by non-applicants no.1 to 4 to make police complaint, as when they went to police station to narrate the correct fact, non-applicant nos.1 to 4 came there and restrained the police from lodging report on complaint of the claimants. He further

submits that feeling aggrieved by non-registration of complaint by the concerned police station, they filed a complaint under Section 200 of CrPC before the competent Court, on which the learned Magistrate has taken cognizance of the complaint and ordered for registration of offences under Sections 294, 304A/34 of the Indian Penal Code and during the pendency of said complaint case, the claim application has been filed for grant of compensation. It is also pointed that the Tribunal has not taken into consideration statements of AW-1, AW- 2 & AW- 3 and arrived at a wrong conclusion, AW-2 & AW-3 reached on the spot immediately after occurrence of accident, therefore, they are important witnesses which were discarded by the Tribunal.

11. Per contra, learned counsel for respondents No.1 to 4 submits that claimants neither produced medical examination of deceased nor post-mortem report to prove that deceased Amar Lal suffered injuries on account of motor accident. She further submits that claimants have neither placed on records the documents nor statements recorded before the Criminal Court. They have not examined any witness to prove the same, although preliminary statement of complainant's witness has been recorded in the year 2009 whereas the evidence in claim case has been recorded in the year 2014. She also submits that on the basis of the pleadings and evidence available on record, the Tribunal has rightly dismissed claim application, which does not warrant any interference.

12. Learned counsel appearing for respondent No.6/Insurance Company submits that claimants have not filed the claim application immediately after the accident and death of Amar Lal, but it has been filed after a lapse of about more than 5 years from the date of accident. He also

submits that pleadings in the application have not been proved by the appellants/claimants as the medical documents and post mortem report of the deceased have not been brought on record to prove that death of Amar Lal was on account of a motor accident.

13. I have heard learned counsel for the parties and perused the record.
14. In order to prove their claim application, the claimants have examined AW-1 Shivnandan, father of deceased, AW-2 Shobhit Ram & AW-3 Narendra.
15. AW-1 Shivnandan was not present on spot, however, on coming to know about accident from one Hussain Guruji, he visited the hospital.
16. AW-2 Shobhit Ram has stated in his evidence that he had gone to answer the call of nature and when he reached the spot, he saw that body of Amar Lal was kept over the ghat. He also stated that when he reached the spot, Amar Lal was already dead and some scratch marks were also present on his body which was on account of coming into the contact with the tyre of tractor i.e. offending vehicle.
17. Other witness AW-3 Narendra has stated in his statement that on the fateful day when he was collecting fruits from a tree standing in his field, he saw that deceased alongwith other labourers had come to the mine to take soil. He also stated that there were marks of injuries on the body of deceased, which had come from the tyre of offending vehicle.
18. From the aforementioned evidence of the witnesses examined on behalf of the claimants, it appears that father of deceased was not present on the spot and AW-2 also reached on spot after the accident occurred and

when body of deceased was brought out from the ditch and kept on the ground surface.

19. Other witness AW-3 in his examination-in-chief has stated that surface of the ditch started falling down and to save themselves Pankaj and Amar Lal tried to run away from the ditch but due to falling of soil over them they fell down and came under the offending vehicle. However, this witness has not stated in his statement that the offending vehicle itself fell down into the ditch, rather he has stated that on falling of the soil surface in the ditch, driver of offending vehicle tried to move the vehicle from the spot where it was parked and in that process the deceased had suffered injuries.
20. Although AW-3 has claimed himself to be an eyewitness of the accident, but he has not narrated the entire facts, like as to how the deceased came under the offending vehicle, particularly when the entire case is that the deceased was digging soil in a ditch and offending vehicle was parked above the said ditch. He has not even stated that due to falling of soil surface of ditch, the offending vehicle also fell down and due to which, deceased came under it.
21. Other aspects of the case is that claimants have not filed any documents of criminal case ie merg intimation report or statement of any of witnesses recored by the police, based on the merg intimation. Claimants have also not filed post mortem report though in the evidence of AW-3, it has come that when dead body was taken to the hospital, the body was referred for the post mortem and it was taken by the Surpanch of the said village.

22. Though the learned counsel for the appellants has referred and read out some part of evidence recorded before the criminal Court by the learned Magistrate but that has also not been placed on record before the Tribunal and proved the same by the witnesses whose statements he was reading I.e. of the statement of one Pankaj who also suffered injuries in the same accident. Statement of the Pankaj was also not recorded by the claimants before the Tribunal to prove the manner in which, the accident took-place.
23. All the aforementioned facts and circumstances available on record ie non production of important documents before the Tribunal, non-examination of important witness, who himself was injured in the accident, goes to show that claimants have not been able to prove their claim by adducing cogent and reliable piece of evidence.
24. In view of above, I do not find any perversity or illegality in the impugned award passed by the Tribunal dismissing claim application of appellants. The appeal being devoid of any substance which is liable to be dismissed and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)

Judge