

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 962 of 2014

1. Mathura Bai widow of Sakirtan Khadiya, Aged about 38 years,
2. Minor Meena D/o Late Sakirtan, Aged about 17 years, being minor through appellant No.1.
3. Ku. Rina D/o Late Sakirtan Aged about 09 years, being minor through appellant No. 1.

All Resident of Village Loeig, Thana Chakradhar Nagar, Civil and Revenue District Raigarh (C.G.).

---- Appellants

Versus

1. Sudarshan Pradhan S/o of Shri Shasibhusan Pradhan, Aged about 40 years, Resident of Village Loeig, Thana Chakradhar Nagar, Civil and Revenue District Raigarh (C.G.).
2. The New India Insurance Company Limited, Itwari Bazar, Raigarh, Civil and Revenue District Raigarh (C.G.).

---- Respondents

For Appellants	: Mr. Kalpesh Ruparel, Advocate on behalf of Mr. Punit Ruparel, Advocate
For Respondent No. 1	: None
For Respondent No. 2	: Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

26/06/2019

1. This appeal has been filed by appellants/claimants under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 19/07/2013 passed by Motor Accident Claims Tribunal, Raigarh (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case

No.116/2009, whereby learned Claims Tribunal dismissed the claim application on the ground that claimants failed to prove negligence of driver of Tractor bearing registration No.CG-13-A/4485 and Trolley bearing registration No.CG-13-A/4486 (hereinafter referred to as 'offending vehicle').

2. Brief facts relevant for disposal of this appeal are that on 05/05/2009, at about 1.00 P.M., Kishore Khadiya who was travelling on offending vehicle, met with an accident due to rash and negligent driving of Punilal Khadiya, driver of offending vehicle. In the aforementioned accident, Kishore Khadiya suffered grievous injuries over his person and later on, succumbed to those injuries.
3. Matter was reported to concerned police station based on which, crime No.155/2009, for offence punishable under Section 304-A of IPC was registered against non-applicant No.1. After completion of investigation, charge-sheet was filed before the competent criminal Court and criminal case was registered bearing Criminal Case No. 709/2009. Offending vehicle was owned by non-applicant No.1 and it was insured with non-applicant No.2/Insurance Company.
4. Claimants who are widow mother and two minor sisters filed claim application before the concerned Claims Tribunal claiming Rs.12,81,500/- as compensation on account of death of Kishore Khadiya in a motor accident.
5. Non-applicant No.1 submitted reply to claim application and denied all the pleadings made in the claim application except the fact that on

the date of accident, offending vehicle was insured with non-applicant No.2.

6. Non-applicant No.2 submitted reply to claim application and denied all the adverse pleadings made in the claim application. It was pleaded that on the date of accident, Punilal Khadiya was not possessing valid and effective driving licence to drive offending vehicle, therefore, there was violation of conditions of insurance policy. It was further pleaded that Punilal Khadiya is not impleaded as one of the non-applicants in the claim application nor it has been pleaded the act of Punilal Khadiya in claim application and thereby they have suppressed the material fact.
7. Learned Claims Tribunal on appreciation of pleadings and evidence available on record held that claimants failed to prove accident on account of rash and negligent driving of non-applicant No.1, there was violation of conditions of insurance policy, but while passing the award, dismissed the claim application on the ground that the claimants have failed to prove rash and negligent act on the part of non-applicant No.1.
8. Learned counsel appearing for appellants submitted that though in the claim application, Punilal Khadiya was not impleaded as one of the non-applicants and no specific pleading has been made in the claim application as on the date of accident, who was driving offending vehicle, but from perusal of documents available on record, which are documents of criminal case wherein it has been specifically

mentioned that on the date of accident, Punilal Khadiya drove offending vehicle in rash and negligent manner, causing accident and death of Kishore Khadiya. He further submitted that Nakul Prasad Sao (AW-2), Kotwar of village has stated in his statement that on the date of accident, offending vehicle was driven rashly and negligently by driver of offending vehicle i.e. Punilal Khadiya. He further submitted that non-impleadment of Punilal Khadiya as driver of offending vehicle in the claim application would be a fault on the part of counsel engaged by claimants and not on the part of claimants. He further submitted that they are poor villagers and not much literate, therefore, they were not aware about what their Advocates pleaded and what are requirements of law. He further submitted that the name of non-applicant No.1 has been mentioned in the claim application only on account of that he was owner of offending vehicle. They have neither pleaded in claim application nor made any statement that there was rash and negligent act on the part of non-applicant No.1 at any point of time.

9. Notice was issued to non-applicant No.1 who is owner of offending vehicle and as per service report, notice has been served to him but he chose not to appear before this Court.
10. Learned counsel appearing for respondent No.2/Insurance Company submitted that learned Claims Tribunal has rightly dismissed the claim application as claimants failed to prove rash and negligent act

of driver of offending vehicle because driver of offending vehicle himself has not been arrayed as one of the non-applicants.

11. I have heard learned counsel appearing for parties and perused the record carefully.
12. From perusal of record, it would show that immediately after the accident, i.e. on 05/05/2009 at about 5.25 p.m., Merg intimation was lodged in concerned police station by one Bhagwano Khadiya, son of Ghunu Khadiya, who is resident of same village. In Merg intimation (Ex. P-2) date and time of accident has been mentioned as "05/05/2009 at about 1.00 P.M."
13. From perusal of Merg intimation (Ex. P-2), it would reveal that death of Kishore Khadiya has been shown to be accidental death. In the body of Merg intimation, it has been specifically mentioned that deceased was working in Kosabadi of Shashi Pradhan i.e. father of non-applicant No.1 and offending vehicle was being driven by Punilal Khadiya, who after the accident came to Bhagwano Khadiya and informed the fact of accident. When Bhagwano Khadiya reached on spot, he saw that both thighs/legs were amputated from the waist of deceased.
14. Based on Merg intimation (Ex. P-2), police conducted investigation and submitted charge-sheet against non-applicant No.1. Statement under Section 161 of Cr.PC. was also recorded of Bhagwano Khadiya and Chaitram Nishad. Bhagwano Khadiya has specifically stated in his statement that at the time of accident, offending vehicle

was driven by Punilal Khadiya, but other persons, namely, Chaitram Nishad, Hari Siddar, Shashi Bhushan Pradhan and Punilal Khadiya made their statement under Section 161 of Cr.P.C., in which, they have stated that offending vehicle was being driven by Sudhir @ Sudarshan Pradhan at the time of accident.

15. From perusal of evidence recorded before learned Claims Tribunal as well as from the documents of criminal case, it is apparent that death of Kishore Khadiya took place due to rash and negligent driving of offending vehicle by its driver.
16. Mathura Bai (AW-1), who is mother of deceased was not an eyewitness to the accident. Non-applicant No.2 was also not an eyewitness, but he is a hearsay witness and made statement on the basis of intimation which he received from Punilal Khadiya.
17. It appears that in claim application, non-applicant No.1 has been shown to be driver on the basis of charge-sheet submitted by police against non-applicant No.1.
18. The Motor Vehicles Act is a beneficial piece of legislation. Object of the Act is to provide reasonable amount of compensation to injured or in case of death to claimants/legal representatives of deceased when the injuries suffered in the motor accident or death occurred in a motor accident.
19. Section 168 of M.V. Act provides that the award to be made by Claims Tribunal and holding of an inquiry into claim by Claims Tribunal. Section 226 of the Chhattisgarh Motor Vehicles Rules, 1994

provides for obtaining of information and documents necessary for awarding compensation under Section 140 and Section 234 of the Chhattisgarh Motor Vehicles Rules, 1994 empowers the Tribunal for holding summary examination of any person on oath. The amount of compensation is to be awarded on the basis of inquiry to be conducted by Claims Tribunal. It is not expected from the Claims Tribunal to sit and watch the proceedings as spectator, but Claims Tribunal is duty bound to take active part in the proceeding and to reach at a finding in view of achieving the object of Act.

20. In the instant case as held earlier, accidental death of deceased in a motor accident is not in dispute. Learned Claims Tribunal has dismissed the application looking to the contradictory statements made by witnesses in their statements with respect to driver of offending vehicle and filing charge-sheet against non-applicant No.1 holding him to be driver of offending vehicle at the time of accident.
21. In the facts and circumstances of the case, in the considered opinion of this Court, learned Claims Tribunal ought to have granted an opportunity to implead the so-called Punilal Khadiya as driver also as one of the non-applicants looking to the contents of Merg intimation (Ex. P-2) lodged by one Bhagwano Khadiya and in his statement under Section 161 of Cr.P.C., he has narrated the same fact.
22. The claim of claimants in a death case cannot be frustrated on a technical ground when it was proved that death of deceased Kishore Khadiya took place in a motor accident.

23. Considering the overall facts and circumstances of case and in larger interest of justice, I allow this appeal, set-aside the impugned award passed by learned Claims Tribunal, remand back the matter to the Court of Motor Accident Claims Tribunal, Raigarh (C.G.) for deciding the claim application afresh after affording an opportunity to all the parties to amend their pleadings, lead evidence in support thereof and thereafter to decide the claim application in accordance with law.
24. Parties are directed to appear before the Court of Motor Accident Claims Tribunal, Raigarh (C.G.) on 26/08/2019 and if any party fails to appear, appropriate steps may be taken for their presence in accordance with law.
25. Records be sent back forthwith to concerned Claims Tribunal.

Sd/-

(Parth Prateem Sahu)
Judge