

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 292 of 2014

- Smt. Balmati W/o Late Ghasi, R/o Chindakbadha, District Bastar, (C.G.) Civil & Revenue District Bastar

---- Appellant/Claimant

Versus

1. Govind Mourya, S/o Late Dhansingh, Non-applicant, Aged about 25 years, R/o Village Negiguda, Jagdalpur, District Bastar (C.G.)- Driver
2. Ishwar Kashyap, S/o Late Balram Kashyap, R/o Village Negiguda, Jagdalpur, District Bastar (C.G.) - Owner
3. The United India Insurance Company Ltd., Branch Office- Jagdalpur, District Bastar (C.G.) - Insurer

---- Respondents

For Appellant	:	Shri Vikas A. Shrivastava, Advocate
For Respondent 1	:	None
For Respondent No.2	:	Ms. Rajkumari Yadav, Advocate
For Respondent No.3	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

28.01.2019

1. The instant appeal is directed against the dismissal of the Appellant's claim petition vide award dated 03.10.2013 by the Motor Accident Claims Tribunal, Place Baster at Jagdalpur (C.G.) in Claim Case No. 54 of 2012.
2. Facts of the case, in brief, are that as per claimant, on 24.12.2011, deceased- Fulldhar was going with his friends to take manure by Tractor bearing registration No. CG-17/G/2413, when they reached at Dharampura road, Respondent No.1, driver of the offending Tractor, driving the said vehicle in a rash and negligent manner, turned turtle the said Tractor and as a result thereof, Fulldhar sustained grievous injuries on his head, face and hands. Later on Fulldhar died.
3. Learned counsel for the Claimant submits that the Tribunal has erred in holding that the accident did not occur due to rash and negligent driving of the offending vehicle by its driver and not allowing any amount for loss of Claimant's son. He further submits that the Claimant has proved Ex.-A/8 – charge-sheet under

Section 304A of IPC against the driver of the offending vehicle and other documents i.e. Ex.-A/1 dehati-nalish, Ex.-A/2 FIR, Ex.-A/3 seizure memo & Ex.-A/4 spot map which show that the deceased died due to rash and negligent driving of the Tractor by its driver. But the Tribunal only on the ground that trial against the driver is yet to be concluded and that no any witness of the accident has been examined by the Claimant, did not consider the aforesaid documents and dismissed the claim petition of the Claimant. Therefore, it is prayed that the award impugned may be set aside and the matter may be remitted back to the Tribunal for decision afresh.

4. In the instant appeal, an application under Order 41 Rule 27 of CPC for taking additional document i.e. insurance policy as evidence on record has been filed by the Insurance Company/Respondent No.3.

5. The driver and owner of the Tractor, by filing written statement, have not denied the involvement of the Tractor in the accident but has denied the rash and negligent driving of the Tractor by its driver.

6. The Tribunal, holding the Claimant failed to prove involvement of the Tractor in the said accident, the Claimant has not adduced any evidence to prove that the accident occurred on account of rash and negligent driving of the Tractor by its driver and also her relation with the deceased, dismissed the claim petition. Hence, this appeal.

7. I have heard learned counsel for the parties and perused the record of the Tribunal.

8. On the face of the record, it is seen that the Claimant/Appellant has not examined any eye witness who saw the accident and the investigating officer (I.O.).

9. In **National Insurance Co. Ltd. Vs. Pushpa Rana and Others, 2009 ACJ 287**, the Delhi High Court observed in para-13 as under:

“13. The last contention of the appellant insurance company is that the respondents-Claimants should have proved negligence on the part of the driver and in this regard the counsel has

placed reliance on the judgment of the Hon'ble Apex Court in *Oriental Insurance Co. Ltd. v. Meena Variyal*, 2007 ACJ 1284 (SC). On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced: (i) certified copy of the criminal records of criminal case in F.I.R. No. 955 of 2004, pertaining to involvement of the offending vehicle; (ii) criminal record showing completion of investigation of police and issue of charge-sheet under sections 279/304-A, *Indian Penal Code* against the driver; (iii) certified copy of F.I.R., wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under the *Motor Vehicles Act* are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver."

10. In **Ranu Bala Paul and Others Vs. Bani Chakraborty and Others, 1999 ACJ 634**, the Gauhati High Court, Agartala Bench observed in para-8 as under:

"8. Learned Tribunal in deciding the matter took into consideration certain documents from another case, i.e., T.S. (MAC) No. 36 of 1995 that was a case under section 140 of the *Motor Vehicles Act* for no fault liability. Without going to decide that aspect whether court can look to these documents or can take judicial notice, this case can be disposed of on another ground. There is no evidence before the learned Tribunal to come to a finding that Babul Paul died because of bullet injury, rather the deposition of PW 1, the wife of the deceased, will show that there were head injuries, injury in the chest and other parts of the body because of accident. In deciding a matter Tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be proved beyond

reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim before the Motor Accidents Claims Tribunal the standard of proof is much below that what is required in a criminal case as well as in a civil case. No doubt before the Tribunal, there must be some material on the basis of which the Tribunal can arrive or decide things necessary to be decided for awarding compensation. But the Tribunal is not expected to take or to adopt the nicety of a civil or of a criminal case. After all, it is a summary enquiry and this a legislation for the welfare of the society. In *N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal*, 1980 ACJ 435 (SC), the Supreme Court pointed out that the Accidents Claims Tribunals must take special care to see that innocent victims do not suffer and persons liable do not escape liability merely because of some doubt here and some obscurity there. The Court should not succumb to niceties, technicalities and mystic maybes. The court is bound to take broad view of the whole matter that is what was not done in the instant case."

11. In the present case, the Claimant is merely to establish her case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. None of the parties have specifically denied the factum of accident, record of the criminal case instituted against the driver of the offending Tractor was with the Tribunal and therefore, as per Sections 158(6) and 166(4) of the Motor Vehicles Act, the Tribunal was not required to go into any further technicality by directing the Claimant to still prove that the offending vehicle was involved in the accident unless, of course, the party opposing the petition specifically denies the involvement of such vehicle. The criminal case papers also show that the accident occurred due to involvement of the offending Tractor. However, the Tribunal has recorded a finding that the documents filed and proved by the Claimant of the criminal case against the driver of the offending vehicle cannot be taken into consideration for the purpose of deciding the claim petition as trial against the driver has not yet to been concluded.

Considering the facts and circumstances of the case, the nature and quality of evidence adduced by the Claimant, the provisions of the Motor Vehicles Act, the summary nature of trial, the finding so recorded by the Tribunal is not sustainable and this Court is of the opinion that matter needs to be decided afresh on merits by the Tribunal in accordance with law.

12. Accordingly, 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, in the light of observations made hereinabove, after affording full opportunity of hearing to the parties.

13. 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.

14. Record of the Tribunal be sent back forthwith. Parties are directed to appear before the concerned Claims Tribunal on 22nd February, 2019.

15. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge