

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 722 of 2013**

1. Manoj Kumar Yadav S/o Shyamlal Yadav, aged about 40 years, Occupation-Vehicle Driver, R/o Raja Talab, Raipur, Post Office-Raipur, Police Station-Civil Lines, Raipur, District Raipur C.G. **(Non-applicant 1-Driver)**
2. Jahur Singh Dhruv S/o Umend Singh Dhruv, aged about 41 years, R/o Village- Dhangaon Para, Tumgaon, Tahsil & District Mahasamund C.G. **(Non-applicant 2- Owner)**
-----Appellants

VERSUS

1. Smt. Mankibai Dhruv, W/o late Setram Dhruv, aged about 25 years, Occupation-Housewife.
 2. Minor Drond Kumar Dhruv, S/o Setram Dhruv, aged about 01 month
 3. Bedram Dhruv, S/o late Rajansingh Dhruv, aged about 45 years
 4. Smt. Dheliya Bai Dhruv W/o Bedram Dhruv, aged about 42 years
- Respondent 2 being minor on behalf of through his legal guardian mother Smt. Mankibai Dhruv (respondent 1)
- All are R/o Village Bhawa, Police Station Tumgaon, Post/Chowki- Patewa, Tahsil & District- Mahasamund C.G.

-----Respondents

For Appellants	:	Mr. Shivendu Pandya, Advocate
For Respondent 1 to 4	:	Mr. A.D. Kuldeep, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****20/07/2020**

1. This appeal is preferred by the driver and owner of the offending tractor trolley (CG 04DA 5893 & 5894), challenging the impugned award dated 01-05-2013 passed in claim case number 20/2011, wherein the learned Claims Tribunal allowed the claim application in part and awarded sum of Rs. 4,86,000/- as compensation in a death case.
2. Facts relevant for disposal of this appeal are, that on 06-05-2010, Setram Dhruv while traveling on motor cycle bearing Registration No. CG 04CB 0772 along with Revaram on his own side from village Chhaporadeeh to

Mungasher to attend a marriage ceremony, while so, he met with an accident with a stationary tractor (offending tractor) parked on road, the tractor could not be seen on account of flash light of one truck coming from opposite direction. In the aforementioned accident, Setram suffered grievous injuries over his person and succumbed to those injuries on spot. Respondent 1 to 4/ claimants who are widow, minor child and parents of the deceased Setram filed claim application under Section 166 and 140 of the Motor Vehicles Act, 1988 mentioning therein that the deceased Setram was working as Sales Manager in G-Sales and earning Rs. 3,000/- per month and the claimants were dependents wholly on the income of the deceased. They have claimed Rs. 19,50,000/- in total as compensation on account of untimely death of late Setram due to motor accident.

3. Appellants/ Non-applicant 1 and 2 denied all the adverse pleadings made against them in the claim application, they have denied that there is no material to show that Respondent 1/ Non-applicant 1 was driver of the offending tractor and further that the accident was on account of rash and negligent driving of motor cycle by the deceased himself. They have also pleaded that at the time of accident, four persons were traveling on motor cycle along with the deceased Setram, offending tractor was parked on the side of the road and the deceased while driving the motor cycle dashed the stationary tractor.
4. Upon appreciation of the pleadings and evidence placed on record, learned Claims Tribunal held that the accident was on account of rash and negligent driving of the offending vehicle by Respondent 1/ Non-applicant 1 and in the said accident Setram died and awarded sum of Rs. 4,86,000/- as compensation.
5. Mr. Shivendu Pandya, learned counsel for the appellants/ driver and owner of the offending vehicle submits, that the finding recorded by the learned Claims Tribunal that the accident was on account of negligence on

the part of Appellant 1/ Non-applicant 1 is erroneous as it is contrary to the material available on record. He submits that as per the pleadings made in the claim application itself, it is evident that the offending tractor was not running but it was parked on the road side and the motor cycle dashed with the stationary tractor from its back side. It is also pointed out that in the F.I.R. also, it is mentioned that the motor cycle dashed with the stationary tractor from its back side and, therefore, the finding recorded by the learned Claims Tribunal is not sustainable. He also referred the evidence of Manoj Kumar Yadav who is driver of the offending tractor, who in his evidence has stated that the tractor and trolley were parked down the road and by putting the branches of tree, the marking was made to indicate that offending tractor trolley was parked on the road side. It is further argued that on perusal of copy of the documents of the criminal case, pleadings and evidence of Manoj Kumar Yadav, there is ample material available on record to show that the driver of the offending tractor has parked the tractor down the road by taking all care and put marking and sign to show that the tractor was standing stationary, but even then due to rash and negligent driving of the motor cycle of the deceased, the accident took place for which, the appellants cannot be held liable in any manner. He submits that the application is filed under Section 166 and 140 of the Motor Vehicles Act, in which the negligence on the part of other vehicle or the offending vehicle is to be proved and if the negligence is solely of the deceased then no amount of compensation can be awarded under the provisions of Section 166 and 140 of the Act. Learned counsel places reliance on judgments passed by the Division Bench of this Court reported in **Satibai Markandeya and another v. Dhirendra Kumar Patel and others** reported in 2011(1) D.M.P. 87 (Chhattisgarh) and **Gita Devi (Smt.) and others v. Oriental Insurance Company** reported in 2010(3) M.P.H.T. 52 (CG) in support of his submission.

6. Per contra, Mr. A.D. Kuldeep, learned counsel appearing for Respondent 1

to 4 submits, that there is specific pleading in the claim application that the offending tractor was parked on the road in night without there being any indicators or sign. The accident took place because of the bright light of the truck coming from opposite side reflected on the rider of motor cycle, due to which, nothing was visible on front side of the road. He submits that even in the evidence of Respondent 1/ Non-applicant 1, he has not made any statement that there was parking light on of the offending tractor and trolley when it was parked on the road in night. He submits that learned Claims Tribunal taking note of the materials and evidence available on record has rightly held the owner and driver of the offending vehicle to be negligent in the accident.

7. We have heard learned counsel for the respective parties and also perused the record.
8. Perusal of copy of F.I.R. would show that the accident took place on 06-05-2010 at about 10:30 p.m., the F.I.R. was lodged against the deceased. In closure report and in the F.I.R. the deceased has been shown to be an accused person. On perusal of the pleadings made in the claim application in paragraph 3(3), it has been very specifically pleaded that the accident took place at about 10:30 in the night when the tractor trolley were parked on road, the accident was on account of negligence act on the part of Appellant 1/ Non-applicant 1 because “**puncture**” tractor trolley were parked without there being any sign or signal. It is also very specifically pleaded that at the time of accident, one truck with bright lights coming from opposite direction crossed due to which nothing could be seen behind it and accident took place. By going through the reply filed by the appellants to the claim application, they have only pleaded that the offending tractor was parked on the side of the road and the motor cycle dashed the trolley from its back side. There is no specific pleadings with regard to putting of any sign/ indication or any of the indicators of the

offending tractor were turned on. The claimants in support of their claim application have examined one Om Narayan Dhruv AW-2 as witness, who in his evidence has stated that at the time of accident, he was also one the occupants of the motor cycle. In cross examination this witness in very specific terms has stated that due to crossing of the truck with bright light coming from opposite direction, nothing in front of the motor cycle was visible and due to which the accident took place. The appellants/ Non-applicant 1 and 2 in support of their claim/ pleadings in reply have examined Manoj Kumar Yadav, driver of the offending tractor as NAW-1, in his affidavit under Order 18 Rule 4 of CPC has stated that he has parked the offending tractor and trolley down the road and also put the branches of the tree in front side and back side of the tractor. The learned Claims Tribunal has considered the evidence placed on record by respective parties in paragraphs 7 to 11 and in paragraph 9 of the award, learned Claims Tribunal has considered the evidence of NAW-1 and disbelieved the same to the extent that he has put branches of the tree in front side and back side of the offending tractor as a sign or signal of stationary vehicle on the ground that no such pleading has been made in reply to claim application. Learned Claims Tribunal further considered the time of accident at night, even if the offending tractor was parked on the side of the road, then also some indicating lights is to be turned on or any indication to make it visible at the time of parking of the vehicle on road side for any reason but there was no such evidence placed on record and the learned Claims Tribunal held Appellant 1/ Non-applicant 1 to be negligent in parking the offending tractor on road.

9. As per the aforementioned discussions, the pleadings and evidence and other materials available on record, it is clear that the accident took place at about 10:30 p.m., the tractor was parked on side of the road without any indication and more so, without visible indicator lights and further in view of the evidence of AW-2, in his statement has specifically stated that due to

bright light of crossing truck nothing was visible in front of the motor cycle which was the cause of accident. This fact is also in the pleadings of the claim application specifically. In view of the aforementioned facts and evidence, it cannot be said that accident is on account of sole negligence of the driver of the offending tractor or sole negligence of the driver of the motor cycle as argued by the learned counsel for the Appellants. Under the Rules of Road Regulations, 1989 which stood amended in the year 2017 provides the regulation 15 under the head parking of vehicle, Rule 15(1) of the said Rules reads as under:

“15. Parking of the vehicle.”-(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

10. As per the pleadings, the road on which the accident took place is National Highway-6 (old number), which is road carrying fast traffic. In these circumstances, it is evident from the materials and evidence placed on record that there is negligence on the part of Appellant 1- driver of the offending tractor, as he has not put any mark/ sign or indication which could be visible in the night.
11. Now coming to the alternate argument raised by the learned counsel for the appellants that even if this Court comes to conclusion that at the time of accident, there was negligence on the part of Appellant 1, in the facts and circumstances of the case when the motor cycle dashed with a stationary tractor from its back side, whole negligent act for the accident cannot be attributed solely upon the driver of the offending tractor. There is some force in the submission made by the learned counsel for the appellants because there is duty on the part of the person driving a vehicle on main road to be cautious and to drive the vehicle with a speed on which

he could be in a position to control the vehicle.

12. By going through the pleadings in claim application and evidence placed on record by the claimants that the cause of accident is on account of bright flash light of the crossing truck which made them unable to see in front side of the motor cycle on road which caused the accident, this evidence remained uncontroverted and NAW-1 driver of the offending tractor who was examined before the Tribunal had not made any statement that no such incident took place prior to the accident. The pleadings and evidence placed on record by the claimants appears to be possible when as per the material available on record, the place of accident in the night at 10:30, on a National Highway road. Non-applicant 1 has not put on indicators, not made any mark or sign to show that some vehicle is parked. In the aforementioned facts and circumstances of the case, we find it appropriate to hold the driver of the motor cycle is also negligent in the accident.

13. So far as, the case law of **Satibai Markandeya (supra)** relied upon by the learned counsel for the appellants. It is a case of head on collision of two vehicles and on the basis of peculiar facts of that case, the Division Bench has held that the accident was result of the negligence on the part of deceased driver of Jeep and held that dismissal of the claim application by the learned Claims Tribunal is based on the evidence available on record and dismissed the appeal. The other case law which was relied upon by the learned counsel for the appellants in support of his argument in **Gita Devi (Smt.) (supra)** which is a case where the driver-cum-owner of the Jeep who succumbed to death in an accident and in claim application filed by the legal representatives of the deceased owner-cum-driver of the Jeep against the Insurance Company of the Jeep, it is held that proceedings under Section 166 of the Motor Vehicles Act, is negligency based claim proceedings and, therefore, for his own negligence, the claim application

against the Insurance Company of the Jeep driven by the owner himself would not be maintainable and further it is also considered that no risk of owner-cum-driver covered under the policy of said Jeep. In view of the aforementioned facts of the case relied upon by the learned counsel for the appellants, they are distinguishable on facts and will not be applicable to the fact of this case.

14. The Hon'ble Supreme Court in the case of **Pramodkumar Rasikbhai Jhaveri vs Karmasey Kunvargi Tak & Ors** reported in **(2002) 6 SCC 455** has held thus:

“8. ... The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as “negligence”. Negligence ordinarily means breach of a legal duty to care, but when used in the expression “contributory negligence” it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an “author of his own wrong”.

15. The Hon'ble Supreme Court in the matter of **Raj Rani and others v. Oriental Insurance Company Limited and others** reported in **2009 (13) SCC 654** considering its earlier judgment of **Usha Rajkhowa v. Paramount Industries** reported in **(2009) 14 SCC 71** and further in the case of **Pramod Kumar Rashikbhai (supra)** has held in a case of dashing of a car with stationary truck, the deceased driver of the car to be negligent to the accident to the extent of 50%. As far as, the facts of this case are concerned, the evidence showing cause of accident i.e. bright flash lights of truck coming from opposite direction remained uncontroverted. In these facts and circumstances of the case, instead of holding the deceased to be negligent to the extent of 50%, we find it appropriate to hold the deceased negligent to the extent of 30%. Learned Claims Tribunal has assessed the amount of compensation as Rs.

4,86,000/- in its award. In view of the apportionment of the contributory negligence to the extent of 30% on the deceased himself, the claimants/ Respondent 1 to 4 will be entitled for 70% of the assessed amount of the compensation only.

16. Now in view of the aforementioned discussion, the claimants will be entitled for Rs. 3,40,200/- (70% of the amount Rs.4,86,000, awarded by the Claims Tribunal). The amount of compensation will carry interest @ 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.
17. The appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge