AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on: 03/07/2020

Judgment Delivered on : 14/08/2020

M.A. (C) No. 182 of 2013

{Arising out of Award dated 29.11.2012 passed in Claim Case No. 122 of 2010 by the 1st Additional Motor Accident Claims Tribunal, Raipur}

United India Insurance Company Limited, through its Divisional Manager, Divisional Office, Kutchery Chowk, Raipur, PO Raipur, PS Moudhapara, Tahsil and District Raipur, Pin Code No. 492001

---- Appellant

Versus

1. Smt. Rahi Solanki Wd/o Ashok Singh Solanki, aged 38 years.
2. Ranjeet Singh S/o Late Ashok Singh Solanki, aged 16 years.
3. Hemendra Singh S/o Late Ashok Singh Solanki, aged 13 years.
4. Ku. Puja D/o Late Ashok Singh Solanki, aged 10 years.
5. Makhchan Singh S/o Late Ashok Singh Solanki, aged 05 year.
6. Dharmendra Singh S/o Late Ashok Singh Solanki, aged 04 years.

   Respondent No. 2 to 6 are minor, through their mother-Smt. Rahi Solanki.

   Respondent No. 1 to 6 all are R/o Near Abhanpur Dhaba, Abhanpur, PS Abhanpur, District Raipur, Chhattisgarh.
7. Santu @ Sant Ram Dhruv S/o Sakharam Dhruv, aged 37 years, R/o Indira Colony, Mandir Hasaud, PS Mandir Hasaud, District Raipur, Chhattisgarh.
8. Dilip Singh Hora S/o Amrik Singh Hora, R/o Fafadih, PS Fafadih, Tahsil and District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondents No. 1 to 6	:	Shri Shivendu Pandya, Advocate
For Respondent No. 8	:	Shri S.S.Rajput, Advocate

M.A. (C) No. 183 of 2013

{Arising out of Award dated 29.11.2012 passed in Claim Case No. 67 of 2009 by the 1st Additional Motor Accident Claims Tribunal, Raipur}

United India Insurance Company Limited, through its Divisional Manager, Divisional Office, Kutchery Chowk, Raipur, PO Raipur, PS Moudhapara, Tahsil and District Raipur, Pin Code No. 492001

---- Appellant

Versus

1. Smt. Girija Devi Jaiswal Wd/o Ram Sevak Jaiswal, aged 30 years.
2. Ramashish Jaiswal S/o Late Ram Sewak Jaiswal, aged 13 years.
3. Sonu @ Satish Kumar S/o Late Ram Sevak Jaiswal, aged 10 years.
4. Ku. Arti D/o Late Ram Sevak Jaiswal, aged 09 years.

   Respondent No. 2 to 4 are minor- through their mother - Smt. Girija Devi Jaiswal.
5. Smt. Lakhraji Jaiswal Wd/o Late Ram Dev Jaiswal, aged 50 years.

   Respondent No. 1 to 5 all are R/o village Afalipur, PS. Shraykhaja, District Jaunpur, Uttar Pradesh. Hall Mukam Village Chhatauna, PS. Mandir Hasaud, District Raipur, Chhattisgarh.
6. Santu @ Sant Ram Dhruv S/o Sakharam Dhruv, aged 37 years, R/o Indira Colony, Mandir Hasaud, PS Mandir Hasaud, District Raipur, Chhattisgarh.
7. Dilip Singh Hora S/o Amarik Singh Hora, R/o Fafadih, PS Fafadih, Tahsil and District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondents No. 1 to 5	:	Shri Shivendu Pandya, Advocate
For Respondent No. 7	:	Shri S.S.Rajput, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. Whether the brutal killing of two persons by the 7th Respondent/Driver (who has been found guilty of murder under Section 302 IPC and has been convicted and sentenced to life imprisonment by the Trial Court) using the Truck as a weapon and crushing them down, could be treated as an ‘accident’ or as ‘out of the use of a motor vehicle’ so as to award compensation to the legal representatives of the deceased, on the strength of a policy issued by the Appellant-Insurer? The finding of the Tribunal that the said incident is an accident and the Appellant/Insurer is liable to pay the compensation, is put to challenge in these appeals.

2. Heard Shri Dashrath Gupta, the learned counsel appearing for the Appellant/Insurer, Shri Shivendu Pandya, the learned counsel appearing for the Respondents/Claimants and Shri S.S.Rajput, the learned counsel representing the Respondent/Owner.

3. The bare minimum facts involved in these appeals are that on 21.12.2008 at about 09.15 pm, there occurred some altercation between the driver of the Truck bearing CG 07 J 1169 and the deceased, Ashok Singh, who was standing with his friend Ram Sewak Jaiswal. On getting provoked, the 7th Respondent took the vehicle and crushed down the deceased Ashok Singh and his friend Ram Sewak Jaiswal; pursuant to which the Police registered a crime against the 7th Respondent under Section 302 of the Indian Penal Code.

4. With reference to the loss of life of the deceased, the legal representatives filed two separate claim petitions under Section 163-A of the Motor Vehicles Act, 1988 (*for short 'the MV Act'*) before the Tribunal claiming compensation. The claim was resisted by the Respondent-Driver and owner of the Truck contending that no such incident had ever taken place with involvement of their vehicle, simultaneously adding that the vehicle was covered under a valid policy and if at all any liability is found, it shall be shifted to the shoulders of the Insurance Company.

5. The Appellant-Insurer took up a specific contention that the incident was not an 'accident' coming within the purview of the MV Act so as to award any compensation in terms of the policy issued under Section 147 of the MV Act. It was pointed out as an instance of murder, using the vehicle as a weapon and as such, no liability could be fastened on the Insurer. Evidence was adduced from both the sides before the Tribunal. On conclusion of the Trial, the Tribunal arrived at a finding that the death

of the persons concerned was due to an 'accident' because of the use of the offending motor vehicle and that the Claimants were entitled to get compensation under the policy. It was accordingly, that a total sum of Rs. 4,24,000/- was awarded with interest as specified in the case of the Claimants in Claim Case No. 122 of 2010, forming the subject matter of MA(C) No. 182 of 2013 and a sum of Rs. 4,43,000/- in the case of the Claimants in Claim Case No. 67 of 2009, forming the subject matter of MA(C) No. 183 of 2013. The amount due was directed to be satisfied by the Appellant-Insurer in view of the valid policy existing as on date, the correctness of which is put to challenge in these appeals as mentioned already.

6. According to the learned counsel appearing for the Appellant-Insurer, the incident is nothing short of 'murder simplicitor' which can never be treated as an accident so as to fix the liability upon the Insurer of the vehicle, as it was used as a weapon to meet the task. The learned counsel sought to place reliance on the verdict passed by the Apex Court in ***Rita Devi & Others v. New India Assurance Company Limited & another***; {2000 ACJ 801 SC}, to contend that the '**dominant intention**' was to kill the deceased and the loss of life is not incidental to any other felonious act. Reference is also made to the course and proceedings in respect of the case registered against the Driver/Respondent by the Police for the offence under Section 302 of the IPC; adding that he has already been found guilty of the offence and has been convicted and sentenced to life imprisonment, who is undergoing the same.

7. It is contended from the part of the Respondents No. 1 to 6 that the terminology used under the statutory provision dealing with the claim petitions under Section 163-A of the MV Act are quite specific. By virtue of the law declared by the Apex Court; it is pointed out that the Claimants

need not prove the negligence of either the Owner or the Driver. If the accident is caused because of the use of a motor vehicle, the claim is liable to be paid, more so since no wrongful act was committed by the deceased. Reliance is sought to be placed on the verdicts reported in ***National Insurance Co. Ltd. v. Presiding Officer, Labour Court & Others***; {*2000* ACJ 343} and ***Saurabh Gupta & Another v. Hasrati & Another***; {2018 ACC 47 (DB) (All)}.

8. The learned counsel appearing for the Owner of the Truck further submits that, if the incident is not an accident as contended by the Appellant/Insurer, no claim is maintainable and hence there cannot be liability upon the Owner of the vehicle. If it is found that the claim is maintainable, then it has to be noted that there is no violation of any of the policy/statutory conditions and as such, it shall be for the Appellant/Insurer to satisfy the liability. Even if the Driver is found as liable, treating the case as a murder, the liability to compensate the legal representatives of the victims is not liable to be shifted to the shoulders of the Insured.

9. When the matter came up for admission before this Court on 13.02.2013, interim stay was granted subject to satisfaction of 50% of the amount due as per the award; also making it clear that the statutory deposit effected by the Appellant so as to file the appeal in terms of the first proviso to Section 173(1) of the MV Act could be adjusted against the deposit of 50% to be made, as aforesaid. It was further made clear by this Court that, on effecting the deposit as above, it would be open for the Claimants to have it withdrawn. The learned counsel for the Appellant submits that the condition imposed by this Court has already been satisfied and the Appellant is enjoying the benefit of interim stay only in respect of the balance amount.

10. The term 'accident' is not defined under the MV Act or the Rules made thereunder. Same is the position under the Employee's Compensation Act, 1923 (earlier 'the Workmen's Compensation Act, 1923) as well. However, the said term appears under Section 163A and also under Section 166 of the MV Act (dealing with the application for compensation), besides under Section 140 (dealing with the no fault liability) and elsewhere. Going by the common meaning of the term 'accident', it could be said that it denotes something which was not planned, foreseen or organised, but came as a bolt from the blue. Meaning of the such term has been given in the *Black's Law Dictionary* as follows:

> "**1**. An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated. **2**. *Equity practice*. An unforeseen and injurious occurrence not attributable to mistake, negligence, neglect, or misconduct."

The Law Lexicon refers to the term 'accident' as follows:

> "An occurrence can only be said to be accidental when it is due neither to design nor to negligence. In this narrow sense of the word, an accident must be "nobody's fault".

The *Corpus Juris Secundum* describes the term 'accident' as noted below:

> "**Broad Etymological Sense**
>
> The word "accident" is derived from the Latin verb "accidere," signifying "fall upon, befall, happen, chance." In an etymological sense anything that happens may be said to be an accident; and in this sense, the word has been defined as a befalling; a change; a happening; and incident; an occurrence or event."

From the above, it is quite clear that, if the incident is a planned one or actuated by motive/intent, it cannot be called an accident.

11. Coming to the scope for payment of compensation under the MV Act and the coverage of third party risk, Chapter XI has been provided for insurance of the motor vehicles against the third party risk. Section 146 speaks about the necessity for insurance against third party risk to the effect that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of the said Chapter. The requirements of policy and limits of liability have been mentioned under Section 147 of the MV Act; whereas the duty of the insurers to satisfy judgments against persons insured in respect of third party risk has been dealt with under Section 149 of the MV Act.

12. As mentioned already, on occurrence of an accident involving use of a motor vehicle, compensation can be claimed either under Section 163A of the MV Act on the basis of a structured formula (where it is not necessary for the Claimants to plead or prove negligence on the part of the Driver or the Owner) or under Section 166 of the MV Act by proving the negligence on the part of the Driver of the offending vehicle. It is quite possible that in a given case, 'murder' can be an 'accident'. If only it amounts to an 'accident', can it lead to a claim petition, to be filed by the Claimants, seeking compensation in respect of such accident because of the use of the motor vehicle either under Section 163A or under Section 166 of the MV Act. The Claims Tribunal envisaged under Section 165 of the MV Act names the Tribunal as '**Motor Accidents Claims Tribunal**' and if it is not an accident, no such claim can be held as maintainable, to be entertained by the Tribunal.

13. The question whether a murder can be an accident in a given case had come up for consideration before the Apex Court in ***Rita Devi*** (supra). It was a case where some unknown passengers hired an Autorickshaw from an autostand at Dimapur and later, the vehicle was reported stolen and the dead body of the Driver was recovered by the Police on the next day. The Autorickshaw was never recovered and the claim of the owner for the loss of Autorickshaw was considered and sanctioned by the Insurer, satisfying the amount for which it was settled. A claim petition was filed by the legal representatives of the deceased Driver under Section 163A of the MV Act, claiming compensation for the death as having arisen out of and in the course of his employment. The Tribunal held that it was caused by 'accident' coming within the purview of the MV Act and the owner and the Insurer were liable. The Insurance Company took up the matter before the High Court where it was held that there was no motor accident as contemplated under the MV Act and that it was an act of murder. Accordingly, the appeal was allowed and the award passed by the Tribunal was set aside. This led to the proceedings before the Apex Court where the question was subjected to a threadbare analysis; particularly on the point of 'dominant intention'. The Apex Court observed that there are instances where murder can be by accident on a given set of facts and that the difference between a murder 'which is not an accident' and a murder 'which is an accident' depends upon the proximity of the cause of murder. The Apex Court held that if the '**dominant intention**' of the act of felony is to kill any particular person, then such killing is not an accidental murder but a '**murder simplicitor**'; whereas, in a case where act of murder was originally not intended and the same was caused in furtherance of any other felonious act, then such murder is an '**accidental murder**'.

14. Applying the law as above to the given set of facts and circumstances, the Apex Court concluded that the deceased Driver of the Autorickshaw was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the Autorickshaw and in furtherance to the said object of stealing the Autorickshaw, they had to eliminate the Driver of the Autorickshaw, then it cannot but be said that the death so caused to the Driver of the Autorickshaw was an 'accidental murder'. The stealing of the Autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the Autorickshaw was only '**incidental**' to the act of stealing the autorickshaw. It was accordingly held that, in the given set of facts and circumstances, the death of the Driver of the Autorickshaw was caused accidentally in the process of committing the theft of the Autorickshaw, thus, declaring that it had arisen out of the use of the motor vehicle. The verdict passed by the High Court was set aside and the award passed by the Tribunal was restored (besides holding that the appeal preferred by the Insurance Company before the High Court was not maintainable for not satisfying the requirements under Section 170 of the MV Act) by the Apex Court.

15. ***National Insurance Co. Ltd***. (supra), cited by the learned counsel for the Respondents No. 1 to 6, to sustain the finding of the Tribunal to fix the liability upon the Appellant-Insurer was a case decided by a learned Single Judge of the High Court of Judicature at Patna, Ranchi Bench. It was a case filed under the Workmen's Compensation Act, 1923 (*for short 'the Act, 1923*). The Driver and the Cleaner of the Truck were transporting petroleum product as part of their duty and on their way, a dacoity took place, whereby they were murdered by the miscreants. Considering the

employer's liability for compensation under Section 3(1) of the Act, 1923, and also the verdict passed by the Allahabad High Court in ***Abida Khatun v. General Manager, Diesel Locomotive, Varanasi***; {1972 ACJ 489 (Allahabad)} and such other precedents, it was held by the learned Judge that the word 'accident' excluded the idea of wilful and intentional acts but it includes murder as it was an accidental happening so far as the workman was concerned; thus declaring that the incident happened "out of and in the course of" employment of such workers, coming within the purview of the Act, 1923.

16. In ***Saurabh Gupta & Another*** (supra) cited by the learned counsel for the Respondents No. 1 to 6, also, there is a discussion with regard to the term 'accident' and use of the motor vehicle as envisaged under Section 163A of the MV Act. Placing reliance on the judgment rendered in ***Rita Devi*** (supra), it was held that if the 'dominant intention' of the act of felony was to kill any person, then such killing was not an accidental murder, but a 'murder simplicitor', while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act, then such murder is an 'accidental murder'. The Bench also dealt with various other issues as to the negligence/contributory negligence in the collision between the Car involved and the Truck parked by the Driver on the wrong side without indicator, parking light *etc*; with reference to Rule 15 of the Rules of the Road Regulations, 1989 as to the parking of the vehicles and a finding was rendered to deal with the fact situation therein.

17. Coming back to the case in hand, it is to be considered whether the loss of life of the deceased was because of the 'dominant intention' of the Driver/Accused to cause death. Admittedly, there was an altercation on the relevant date at about 9:15 pm between the Respondent-Driver and

the deceased by name Ashok Singh who was standing with his friend (Ram Sewak Jaiswal, deceased in the connected case). It was on getting provoked that the Respondent Driver took the Truck and crushed both the persons to death, using the vehicle. Thus, this is a case where the vehicle was taken used as a tool/weapon to kill the persons concerned in furtherance to the sole intention. No other instance is involved to consider whether it was incidental to some other felonious act as observed by the Apex Court in ***Rita Devi*** (supra). The 'dominant intention' on the part of the Respondent-Driver is clearly discernible and the prosecution has succeeded in establishing the crime registered against the Driver-Respondent; ultimately leading to conviction and sentence for the offence punishable under Section 302 IPC, who is undergoing life imprisonment. Since the 'dominant intention' is substantiated as above, it is a case of "murder simplicitor" and not an incidental murder, as explained by the Apex Court in ***Rita Devi*** (supra). As it stands so, it is not a case coming within the purview of the insurance policy issued by the Appellant to meet the statutory requirements under Section 147 of the MV Act towards the third party and hence, no liability can be mulcted on the Appellant-Insurer where the Tribunal has gone wrong.

18. In the said circumstance, both the appeals filed by the Appellant/Insurance Company are allowed and the awards passed by the Tribunal against the Appellant in both the cases are set aside.

19. As mentioned already, when the appeals were admitted on 13.02.2013, an interim stay was granted subject to satisfaction of 50% of the liability under the award and the Claimants were permitted to have the said amount withdrawn. If the amount deposited by the Appellant-Company are still available at the hands of the Tribunal, it shall be caused

to be returned to the Appellant forthwith. The amount withdrawn by the Claimant will not be recovered from them.

20. This is without prejudice to the right of the Claimants {Respondents No. 1 to 6 in MA(C) No. 182 of 2012 and Respondents No. 1 to 5 in MA(C) No. 183 of 2013} to pursue other appropriate remedy in accordance with law. We also make it clear that, if the finding and reasoning given by the Sessions Court as to the conviction and sentence of the Driver/Accused {7th Respondent in MA(C) No. 182 of 2013 and 6th Respondent in MA(C) No. 183 of 2013) in respect of the offence under Section 302 of the IPC gets set aside by the appellate Court, the liability already fixed as per the Awards will fall back on the Appellant/Insurer.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE

Amit