

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 718 of 2014**

1. Neera Bai wife of late Arjun Ram Rajwade aged about 20 years
 2. Hari Narayan Rajwade aged about 07 years son of late Arjun Ram Rajwade minor through mother Neera Bai
 3. Kameshwar Rajwade aged about 05 years son of late Arjun Ram Rajwade minor through mother Neera Bai
- All are by Caste-Rajwar resident of village Dumariya Police Station Patna Tahsil Baikunthpur District Koriya, Chhattisgarh

---- Appellants**Versus**

1. Samay Lal son of Dhansai Caste Bargah resident of village Dumariya Police Station Patna Tahsil Baikunthpur District Koriya, Chhattisgarh
2. Ram Prasad son of Nankuram Caste Rajwar resident of village Patna Police Station Patna Tahsil Baikunthpur District Koriya, Chhattisgarh
3. Shriram General Insurance Company Limited 10003 E-8 Rico Industrial Area Sitapura Jaipur (Rajasthan) 302022
4. Vanshu Ram son of Rupa Rajwade aged about 55 years
5. Lawango Bai wife of Vanshuram aged about 52 years resident of village Dumariya Police Station Patna Tahsil Baikunthpur District Koriya, Chhattisgarh

---- Respondents

For Appellants : Shri Goutam Khetrapal and Shri Avinash Chand Sahu, Advocates

For Respondents No. 1 & 2 : None

For Respondent No. 3 : Shri Utsav Mahiswar, Advocate

For Respondents No.4 & 5 : Shri Pramod Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****12/03/2020**

1. Appellants/claimants have filed this appeal under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the correctness and sustainability of impugned award dated 09.05.2014 passed by Additional Motor Accident Claims Tribunal (F.T.C.), Baikunthpur,

District Koriya (C.G.), (hereinafter referred to as 'Claims Tribunal') in Claim Case No.54 of 2013, whereby learned Claims Tribunal has dismissed the claim application filed by the claimants.

- 2.** Brief facts relevant for disposal of this appeal are that the appellants/claimants have filed claim application before the learned Claims Tribunal mentioning therein that on 02.06.2011, one Arjun Ram Rajwade was returning to village Dumariya on his bicycle from his in-laws village, on the way, at National Highway No.43, when he reached near agricultural field of Vasant at about 10.00 PM, one Tata Sumo bearing registration No.CG16-1369 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.2, dashed the bicycle of Arjun Ram Rajwade from front side and caused accident. In the aforementioned accident, Arjun Ram Rajwade succumbed to the injuries on the spot. The accident was witnessed by one Somar Sai Rajwade (AW-2). The accident was reported to concerned Police Station, but no action or investigation has been conducted by the police. When report was not investigated, an application was forwarded on 14.11.2011 to the Superintendent of Police, Baikunthpur but even then, no action has been taken against non-applicant No.2. The claimants in their claim application filed under Section 166 of the M.V. Act have claimed Rs.41,50,000/- as compensation on account of motor accidental death of Arjun Ram Rajwade.
- 3.** Non-applicants No.1 and 2, who are driver and owner of offending vehicle have filed their reply to claim application and admitted the fact of accident but pleaded that it was on account of negligence on the part of deceased himself. It was further pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company, the

liability, if any, for payment of amount of compensation would be on the Insurance Company.

4. Non-applicant No.3/Insurance Company submitted its separate reply and pleaded that the application for grant of compensation has been filed under Section 166 of the M.V. Act by the claimants in connivance with non-applicants No.1 and 2. The accident of Arjun Ram Rajwade was with unknown vehicle and after lapse of 5 months, present vehicle bearing No.CG16-1369 has been involved. It was also pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence and offending vehicle was being driven in violation of conditions of insurance policy, the Insurance Company is not liable for payment of any amount of compensation.
5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, framed as many as four issues for consideration and after recording the evidence of witnesses and hearing the submissions, dismissed the claim application by recording a finding that it could not be proved that the accident took place with vehicle No.CG16-1369 driven by non-applicant No.2 as one of the ground.
6. Shri Goutam Khetrapal, learned counsel for the appellants submits that in the claim application, it has been specifically pleaded that Somar Sai Rajwade (AW-2) was an eyewitness of the accident. The application/complaint made to Superintendent of Police for not conducting the investigation upon the First Information Report (Ex.P/1) bearing Crime No.142 of 2011. He further submits that in the claim application, the claimants have specifically pleaded the number of vehicle, from which, the

accident took place; driver and owner of the alleged offending vehicle admitted the fact of accident in their reply and claimant No.1 Neera Bai and one Somar Sai Rajwade were examined as AW-1 and AW-2 to prove the case, but even then, the learned Claims Tribunal dismissed the claim application. He also submits that the learned Claims Tribunal also not taken into consideration the admission of accident made by non-applicants No.1 and 2 i.e. driver and owner of offending vehicle in their reply to claim application. He placed reliance on the verdict passed by Hon'ble Supreme Court in the matters of **Vimla Devi and Others v. National Insurance Company Limited and another** reported in **(2019) 2 SCC 186**, **Mangla Ram v. Oriental Insurance Company Limited and Others** reported in **(2018) 5 SCC 656**, the judgment passed by High Court of Punjab and Haryana at Chandigarh in the matter of **IFFCO Tokio General Insurance Company Limited v. Asha Devi and Others** reported in **2019 SCC Online P&H 1403** and the judgment passed by this High Court in **MAC No.1201 of 2015 decided on 26.08.2016** parties being **Smt. M. Vijay Laxmi and another v. Laxmi Prasad Yadav and Others**.

7. Per contra, Shri Utsav Mahiswar, learned counsel for respondent No.3/Insurance Company submits that time of accident is 10.00 PM and First Information Report (Ex.P/1) was not lodged by eyewitness of the accident, but by third person, namely, Vanshuram against the driver of unknown vehicle. The First Information Report (Ex.P/1) was lodged on next day i.e. 03.06.2011 at about 7.00 AM. He further submits that the claimants have not filed any document to show that charge-sheet has been filed by the police after completion of investigation against non-applicant No.2 i.e. driver of offending vehicle. He also submits that Somar

Sai Rajwade (AW-2) who is said to be an eyewitness has stated in his evidence that he reached to the spot after the accident. He further pointed out that evidence of Somar Sai Rajwade (AW-2) is not reliable and learned Claims Tribunal has rightly done so. When he saw the accident, he did not intimate the fact of accident to any person nor intimated the police and lodged First Information Report. He lastly submits that though non-applicants No.1 and 2 have submitted their reply to claim application accepting the accident of deceased Arjum Ram Rajwade with offending vehicle, but they have not entered into the witness box to prove their pleadings.

8. Shri Pramod Shrivastava, learned counsel for respondents No.4 and 5 supports the arguments raised by learned counsel for the appellants.
9. I have heard learned counsel appearing for the respective parties and perused the record carefully.
10. Perusal of First Information Report (Ex.P/1) would show that the date of accident has been shown as 02.06.2011 at about 22.00-23.00 hours and First Information Report was lodged on 03.06.2011 at about 7.00 AM against driver of unknown vehicle. From perusal of contents of the First Information Report, it would reveal that the complainant received the intimation from the wife of Mehangu at about 6.00 AM on 03.06.2011 and on that basis, he lodged the First Information Report (Ex.P/1).
11. The claimants have filed *Naksha Panchayatnama* (Ex.P/2) and postmortem report (Ex.P/3) along with First Information Report and not other documents i.e. final report and evidence of witnesses recorded by the police is placed on record in support of their case.

- 12.** The claimants in support of their claim have filed one application addressed to the Superintendent of Police, Baikunthpur dated 14.11.2011 as Ex.P/4. As per the contents of said application, it is mentioned that when claimant No.1-Neera Bai along with Shambhu Lal went to village Urchumma, Police Station Surajpur, District Surguja, they have met with Somar Sai Rajwade, son of Narayan Prasad Rajwade, who is resident of village Latma and intimated that on 01.11.2011 when he was returning from his in-laws house, at that time, one Tata Sumo of white color bearing No.CG16-1369, which was running in front of his motorcycle, caused accident of one person coming on bicycle in front of house of Vasant Rajwade, resident of Dumariya.
- 13.** To appreciate the submissions made by learned counsel for the appellants, the evidence led by appellants will be of significance. Claimant No.1-Neera Bai is examined as AW-1. In her statement, she has stated that she is not an eyewitness, but it was intimated to her by Somar Sai Rajwade and Somar Sai Rajwade is maternal uncle of her. This statement was narrated by her during her cross-examination in paragraph-7.
- 14.** Somar Sai Rajwade (AW-2) who is said to be an eyewitness of the accident has stated in his evidence that he reached to the spot of accident little later, he found alleged offending vehicle standing on the road and driver of the vehicle intimated him that one person met with an accident from his vehicle. In cross-examination, he admitted in paragraph-6 that he has not seen the accident himself, he reached to the spot after the accident. He denied the fact that claimant No.1-Neera Bai is his nephew. He further stated that as he was scared and also getting late he did not

make any complaint. Subsequently also, he has not made complaint to anybody or police about the fact of accident.

15. To evaluate the truthfulness of evidence of Somar Sai Rajwade (AW-2), the pleadings, contents of the documents as also the evidence of witnesses required to be considered minutely. As per evidence of Neera Bai (AW-1) in paragraph-7, she admitted that Somar Sai Rajwade (AW-2) is maternal uncle of her in relation. The conduct of Somar Sai Rajwade (AW-2) appears to be suspicious when contents of First Information Report (Ex.P/1) and evidence of Somar Sai Rajwade (AW-2) read together. Somar Sai Rajwade (AW-2) in paragraph-4 stated before the Court that he stopped at the place of accident for about 20 minutes, the villagers came there and took the injured. From perusal of First Information Report (Ex.P/1), which is lodged by one Vanshuram against the driver of unknown vehicle, it would show that in the morning of 03.06.2011, at about 6.00 AM, he was intimated by wife of Mehangu about accident and upon which he went to spot i.e. near road side near the agricultural field of Vasant. Somar Sai Rajwade (AW-2) eyewitness has made statement contrary to the contents of First Information Report. Somar Sai Rajwade (AW-2) specifically stated in his evidence that the villagers came there and took the injured from the spot. He did not state as to when he informed the claimants and how they came into contact when they are resident of different village, even then, Neera Bai (AW-1) has not stated that as to how she got the knowledge about the vehicle, from which, the accident took place and the complaint (Ex.P/4), which has been made to the Superintendent of Police has been filed after about 5 months from the date of accident. The claimants have not filed final report before learned Claims

Tribunal even when the award has been passed after about more than 2 years from the date of filing of the claim application. These all things make the credibility of Somar Sai Rajwade (AW-2) suspicious that he is an eyewitness to the accident.

16. So far as the submission made by learned counsel for the appellants that non-applicants No.1 and 2 in their reply to claim application had admitted the fact of accident is concerned, the pleadings as it is cannot be accepted as an evidence when non-applicants No.1 and 2 did not choose to enter into the witness box for proving their pleadings. The pleadings are required to be proved by placing cogent and reliable piece of oral and documentary evidence before the Court or Tribunal. The claimants would not get any benefit from the reply submitted by non-applicants No.1 and 2 as it remains unproved.
17. The case laws relied upon by learned counsel for the appellants are on different facts. In case of **Vimla Devi** (supra), the deceased was travelling in a bus, First Information Report was lodged and charge-sheet was submitted against the driver of bus for offence punishable under Section 304-A of the IPC. True it is that the Motor Vehicles Act, under which, an application for grant of compensation is filed is a beneficial piece of legislation. In that case, the documents were placed on record, but the same could not be marked as exhibits. The claimants therein have adduced sufficient evidence to prove the accident. In case of **Mangla Ram** (supra), the Tribunal allowed the claim application, but the High Court reversed the award on the ground that negligence on the part of deceased could not be proved and on that count only, award passed by the Claims Tribunal was reversed. In case of **Asha Devi** (supra), on the date of

accident itself, First Information Report was registered, Statement of eyewitness was also recorded by the police immediately on the next day, driver of the offending vehicle was proceeded and final report under Section 173 of the Cr.P.C. was filed against him. In case of **Smt. M. Vijay Laxmi** (supra), the Insurance Company took the plea of contributory negligence and has not specifically denied the fact of accident. It is true that the nature of proof required under motor accident claim case is not that of the evidence required in civil case or criminal but even then, at least involvement of the vehicle in the accident is required to be proved by the claimants.

- 18.** In the facts of the case at hand, First Information Report (Ex.P/1) is lodged against unknown vehicle, Somar Sai Rajwade (AW-2) has been projected as eyewitness though has been shown to be maternal uncle of claimant No.1-Neera Bai (AW-1), but he did not intimate the fact of accident immediately to police, to any other person to his village or even to claimant No.1-Neera Bai. The claimants have not produced final report submitted by the police of Crime No.142 of 2011 involving non-applicant No.2 as accused. As per the material available on record, Neera Bai (AW-1) and Somar Sai Rajwade (AW-2) are resident of different villages, they met in third village, where for the first time, Somar Sai Rajwade (AW-2) brought to the notice of Neera Bai (AW-1) about the fact of accident and involvement of vehicle bearing No.CG16-1369 in the accident and immediately thereafter, application/complaint is made to the Superintendent of Police (Ex.P/4) for not conducting investigation on the First Information Report (Ex.P/1) bearing Crime No.142 of 2011. The non-applicants No.1 and 2

could not able to prove their pleadings made in reply of accepting the accident as they have not entered into the witness box.

- 19.** In view of above, the evidence of Somar Sai Rajwade (AW-2) appears to be suspicious and his evidence in the opinion of this Court is appears to be not reliable. It is painful that the claimants have lost their bread earner, but at the same time, it is also to be seen that whether the claimants have satisfied the requirements of the M.V. Act to get compensation from the non-applicants, to which in the opinion of this Court, they have failed.
- 20.** For the aforementioned reasons, I do not find any illegality or infirmity in the impugned award passed by learned Claims Tribunal. The appeal being devoid of substance, is liable to be and is hereby dismissed.

**Sd/-
(Parth Prateem Sahu)
Judge**