

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 837 of 2014**

United India Insurance Company Limited, through its
Divisional Manager, Divisional Office-2nd Floor Gurukripa
Towers, Vyapar Vihar Road, Bilaspur, Distt. Bilaspur (C.G.).

---- Appellant**Versus**

1. Smt. Joidha Bai Patel, Wd/o Late Kaliram Patel, aged 45 years
 2. Chulguram S/o Late Kaliram Patel, aged 25 years
 3. Rup Singh S/o Late Kaliram Patel, aged 22 years
 4. Dhiya Bai W/o Santram Patel, aged 70 years
- Respondents No.1 to 4 all are R/o Bhilaikhurd, P.O. Manikpur Colliery, Tah. & Distt. Korba (C.G.)
5. Sundardas S/o Dharmam Das, aged 29 years, R/o Vill. Puraina, Tah. & Distt. Korba (C.G.)
 6. Parmeshwar Ram Sahu, S/o Mukhiram Sahu, R/o Vill. Bhelwadih Barpali, Tah. Kartala, Distt. Korba (C.G.)

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate

For Respondents No.2 & 3 : Shri Pushpendra Kumar Patel,
Advocate

For Respondents 1 & 4 to 6 : None

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

03.09.2020

1. Appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 16.05.2014 passed by the Additional Motor Accident Claims

Tribunal (F.T.C.), Korba, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.13 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.17,53,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal, are that, on 16.05.2005, Kaliram Patel went out from his house for performing night duty and while returning from his duty on the next day morning, at about 5.30 am, from SECL Manikpur Colliery to Bhilaikhurd, while so, a Dumper bearing registration No.CG-12/ZC/0806 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1, dashed Kaliram Patel and caused accident. In the said accident, Kaliram Patel suffered grievous injuries over his head and succumbed to the injuries later on. The accident was reported to Police Station, Uрга.
3. The claimants, who are widow, children and mother of deceased Kaliram Patel filed claim application under Section 166 of the M.V. Act before the learned Claims Tribunal claiming a sum of Rs.70,00,000/- as compensation mentioning therein that on the date of accident, deceased Kaliram Patel was earning Rs.30,700/- per month and they were dependent upon him.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application pleading therein that deceased met with an accident due to his own negligence; there was no accident with the vehicle driven by non-applicant No.1 and owned by non-applicant No.2; amount of compensation claimed is highly exaggerated; on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company and the liability, if any, would be upon the Insurance Company.
5. Non-applicant No.3/Insurance Company submitted reply to claim application and while denying the pleading made in the claim application pleaded that claim application was filed on false and fabricated grounds; the accident took place from some unknown vehicle; the vehicle from which, accident took place, was not insured with it. In alternate, they have pleaded that there was no valid and effective driving licence with non-applicant No.1/driver of offending vehicle to drive the vehicle and thereby, there was breach of conditions of insurance policy.
6. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as seven issues for consideration. On appreciation of the pleadings, evidence and material placed on record by the respective parties, held that non-applicant No.1 drove the offending vehicle

rashly and negligently and caused accident, in which, Kaliram Patel died; the death of Kaliram Patel was not on account of his own negligence; there was no breach of conditions of insurance policy as pleaded was not found to be proved and awarded a sum of Rs.17,53,000/- as compensation on account of untimely motor accidental death of Kaliram Patel.

7. Shri Dashrath Gupta, learned counsel for the appellant/Insurance Company submits that false First Information Report was lodged against the offending vehicle and its driver for causing accident. Initially, the report was lodged against unknown vehicle, which is appearing from Ex.P/1 i.e. copy of First Information Report dated 17.05.2005. It is contended that the motor vehicle/Truck as mentioned in the claim application was not involved in the accident. It is further contended that learned Claims Tribunal has not appreciated the evidence of driver and owner of offending vehicle and had arrived at a wrong finding; rash and negligent driving of offending vehicle by non-applicant No.1 was not proved, therefore, the claimants will not entitle for any amount of compensation under Section 166 of the M.V. Act. It is lastly contended that the amount of compensation awarded is on the higher side and deduction towards personal and living expenses ought to have been applied as $\frac{1}{3}^{\text{rd}}$ instead of $\frac{1}{4}^{\text{th}}$.

8. Per contra, Shri Pushpendra Kumar Patel, learned counsel for respondents No.2 and 3/claimants submits that learned Claims Tribunal upon examining the materials and evidence placed before it minutely, passed the impugned award. It is contended that amount of compensation awarded by learned Claims Tribunal is just and proper, which does not call for any interference.
9. We have heard learned counsel for the respective parties and perused the record carefully.
10. Claimants in support of their claim application have placed on record the copy of First Information Report (Ex.P/1) and other documents of criminal case including Final Report (Ex.P/3) submitted before the Chief Judicial Magistrate, Korba, in which, name of non-applicant No.1/driver of offending vehicle has been shown as accused. Final Report (Ex.P/3) has been submitted after completion of investigation by Investigating Officer and also after collecting material and statement of witnesses.
11. Upon asking the learned counsel for the appellant/Insurance Company that whether they have filed any complaint before the higher authorities or before any other Court against false implication of non-applicant No.1 in the accident with the vehicle owned by non-applicant No.2, learned counsel for the appellant/Insurance Company fairly admits that there is

no such copy of any complaint showing that Insurance Company has made complaint to any higher authorities with regard to false implication of offending vehicle insured by the appellant/Insurance Company. He also argued that in support of Insurance Company, they have examined owner and driver of the offending vehicle, who have stated in their evidence that their vehicle was not involved in the accident. The appellant/Insurance Company has also examined Assistant Manager of the Company and Assistant Sub-Inspector of the Police, who at that relevant time, has been posted as Head Constable in Police Station, Uрга.

12. It is further contended that from perusal of evidence of driver and owner would show that they have stated that their vehicle was not involved in the accident, but learned Claims Tribunal has not considered the evidence of witnesses examined on behalf of Insurance Company in its true perspective.
13. To appreciate the submission made by learned counsel for the appellant/Insurance Company, we have perused the record of claim case. Sunder Das, driver of offending vehicle has been examined as NAW-3(2), who stated in his evidence that he has been falsely implicated in the criminal case and no accident was taken place from his vehicle. Parmeshwar Kumar Sahu, owner of offending vehicle has

also been examined as NAW-3(3), who in his evidence stated that Police recorded his statement where he stated that no accident took place from his vehicle. In his evidence, he has admitted that he has not brought attendance register with him though he used to record attendance of his employees. He admitted the fact that on account of accident, his vehicle was seized, driver was arrested and case was going on. Even after registration of false case, he has not made any complaint before any higher Police Officials. Dhaniram Rathore, Assistant Sub-Inspector (Investigating Officer) has been examined as NAW-3(5), who in his evidence very clearly stated that upon First Information Report lodged against the accident, crime was registered and during the course of investigation, it revealed that vehicle bearing No.CG-12/ZC/0806 is the offending vehicle. He further stated that after collecting the materials during the course of investigation, case was registered, non-applicant No.1/driver of offending vehicle was arrested, offending vehicle was seized and non-applicant admitted the guilt.

14. From the aforementioned materials and evidence available on record, particularly, registration of criminal case against the driver of offending vehicle, seizure of offending vehicle by the Police, owner and driver of offending vehicle have not made any complaint or initiated any proceedings before any superior authority alleging that they have been falsely

implicated in criminal case. The Insurance Company after getting knowledge as stated by learned counsel for the appellant/Insurance Company, has not filed any complaint to the Police authorities or filed any case before the appropriate forum. Appellant also failed to point out that learned Claims Tribunal has not considered any evidence and materials available on record favouring their case.

15. For the foregoing reasons, we do not find any infirmity in the finding recorded by learned Claims Tribunal with regard to involvement of offending vehicle in the accident. No other ground is raised before us in this appeal. The appeal being devoid of any substance is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge