

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 931 of 2015**

Shanti Bai W/o Late Ghanshyam Baghel, Aged about 45 years, R/o Village Chulgahan, Post Office Ranitarai, P.S.- Ranitarai, Tahsil-Patan, District- Durg (C.G.).

---- Appellant**Versus**

1. Daneshwar Singh Raghuvanshi S/o Chain Singh Raghuvanshi, R/o Village – Chulgahan, P.S. - Ranitarai, Tahsil – Patan, District – Durg (C.G.).

----Owner and Driver---

2. Branch Manager, Bajaj Alliance General Insurance Company R/o Shiv Mohan, Vidhan Sabha Road, Pandri, Raipur Tahsil & District – Raipur- (C.G.).

----Insurer----

3. Smt. Bisahin Bai W/o Late Ghanshyam Baghel, R/o Village – Gujra, Tahsil – Patan, District – Durg (C.G.).

4. Smt. Bodhnibai W/o Late Barsan Das Baghel, Aged about 70 years, R/o Village – Chulgahan Post Office Ranitarai, P.S. - Ranitarai, Tahsil – Patan, District – Durg (C.G.).

----Claimant--

5. Smt. Maltibai W/o Amonakdas Manikpuri, R/o Village Chulgahan, Post Office Ranitarai, P.S. Ranitarai, Tahsil – Patan, District- Durg (C.G.).

---Claimant--**---- Respondents**

For Appellant	:	Shri P. R. Patankar, Advocate
For respondent No.1	:	None
For Respondent No.2	:	Shri D. L. Dewangan, Advocate
For Respondents No.3 to 5	:	None

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****03.11.2020**

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 19.03.2015 passed by the Second Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.22 of 2015 whereby learned Claims Tribunal dismissed the application filed under Section 166 of the M.V. Act.

2. Facts of the case in nutshell, are that, on 25.01.2010, at about 7.30 AM, when Ghanshyam Baghel was carrying bag of seeds on his head from the field of Kanhaiya and going to his house, on the way, near turn towards Sunder Dera, one Pickup Bolero Jeep bearing No.CG-05/D/0581 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently dashed Ghanshyam Baghel and caused accident. In the aforementioned accident, Ghanshyam Baghel suffered grievous injuries over his head, right eye, right hand and both the knees. He succumbed to the injuries suffered by him. The accident was reported to concerned Police Station, based upon which, Crime No.20 of 2010 was registered against non-applicant No.1. After completion of investigation, Police submitted charge-sheet/Final Report before the Court of Judicial Magistrate First Class, Patan, District Durg.
3. Claimants who are widow and mother of deceased filed an application under Section 166 of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.9,80,000/- on the grounds mentioned therein.
4. Non-applicant No.1 submitted reply to claim application, while denying the contents of claim application, pleaded that deceased on account of his own negligence came and dashed with offending vehicle and suffered injuries. Non-applicant No.1 is not liable in any manner for any amount of compensation, false and fabricated complaint has been lodged against him.

Charge-sheet was filed against him, which he will prove to be false. On the date of accident, offending vehicle was insured with non-applicant No.2/Insurance Company for a period for 04.01.2010 to 03.01.2011, as such, liability, if any, to pay the amount of compensation would be upon Insurance Company.

5. Non-applicant No.2/Insurance Company submitted reply to claim application, while denying the pleadings made in claim application, pleaded that information of accident was not given by owner of offending vehicle to Insurance Company, which is mandatory under the M.V. Act. There was no negligence on the part of driver of offending vehicle because in First Information Report (Ex.P/1), it is mentioned that deceased suffered injuries on account of he fell down on road. There was no valid permit, valid and effective driving licence with non-applicant No.1, which is breach of policy conditions, hence, Insurance Company is not liable for payment of any amount of compensation.
6. On appreciation of pleadings, evidence and material placed on record by respective parties, learned Claims Tribunal held that claimants failed to prove motor accidental injuries suffered by deceased Ghanshyam Baghel on account of rash and negligent driving of offending vehicle by non-applicant No.1; there was no breach of policy conditions and dismissed the claim application by impugned order.

7. Shri P. R. Patankar, learned counsel for the appellant submits that learned Claims Tribunal erred in dismissing the claim only on the basis of contents of First Information Report (Ex.P/1) and not considering the entire documents and evidence placed on record. He further submits that after completion of investigation, Police submitted Final Report (Ex.P/2) against non-applicant No.1 before the Court of Judicial Magistrate First Class, Patan, District Durg. Referring to the statement recorded by Police under Section 161 of Cr.P.C during the course of investigation of one Bholaram, who was travelling on the offending vehicle in front seat, stated that Daneshwar while driving offending vehicle rashly and negligently, dashed Ghanshyam Baghel and caused accident. Learned Claims Tribunal also erred in taking into consideration one of the documents amongst many and arrived at an erroneous finding that claimants have failed to prove rash and negligent act on the part of non-applicant No.1 and involvement of offending vehicle in the accident, which is not sustainable. It is contended that case requires reconsideration at the end of learned Claims Tribunal and prays for remand of the case.
8. Per contra, Shri D.L. Dewangan, learned counsel for respondent No.2/Insurance Company submits that learned Claims Tribunal has rightly taken into consideration the contents of First Information Report (Ex.P/1), which has been lodged immediately after the accident wherein it is specifically mentioned that deceased while carrying bag of seeds fell down

on road and suffered injuries. He supports the impugned award and submits that there is no merit in appeal and the same is liable to be dismissed.

9. I have heard learned counsel for the respective parties and perused the record carefully.
10. In claim application filed under Section 166 of the M.V. Act, it was pleaded that on 25.01.2010 at about 7.30 AM, when the deceased was carrying bag of seeds on his head, at that relevant time, offending vehicle dashed Ghanshyam Baghel and caused accident. In the said accident, Ghanshyam Baghel suffered grievous injuries and succumbed to the same. It was further pleaded in claim application that accident was reported to Police Station Ranitarai. The claimants in support of their pleadings have placed on record copy of First Information Report (Ex.P/1) and copy of Final Report (Ex.P/2). Perusal of First Information Report (Ex.P/1) would show that it was lodged by one Dashrath Lal Sahu, who was an employee of Police Department and not by claimants or any other villagers. It further mentions that it was lodged on 08.02.2010 whereas accident took place on 25.01.2010 and reason assigned for delay was after merg enquiry. The Investigating Officer who is Head Constable, by name, Dev Kumar Kurram after completion of investigation, submitted Final Report (Ex.P/2) before the Court of Judicial Magistrate, First Class, Patan, District Durg against non-applicant No.1 for offence under

Section 304A of IPC. In the record of claim case, statement of Bholaram under Section 161 of Cr.P.C. recorded by the Investigating Agency is available. Bholaram in his statement stated that driver of offending vehicle i.e. Daneshwar while driving the vehicle rashly and negligently dashed Ghanshyam Baghel and caused accident.

11. Learned Claims Tribunal while dismissing the claim application has considered the contents of First Information Report (Ex.P/1) and further that in Crime Detail Form, there is no mention of offending vehicle on the place of accident and offending vehicle was seized on 09.02.2010. Learned Claims Tribunal further considering postmortem memo written by the Police wherein it is mentioned that injuries suffered by deceased due to sudden fall of his own and held that claimants have failed to prove involvement of offending vehicle in the accident/motor accidental injuries suffered by deceased with offending vehicle.
12. In *Naksha Panchayatnama* (Ex.P/7), it is specifically mentioned that Ghanshyam Baghel fell down as offending vehicle came from its back side. Postmortem report has been placed on record as Ex.P/8, the application for conducting postmortem is again written by said Police Official mentioning therein that deceased fell down on account of tremble (**Chamakkar**), but the doctor conducting postmortem has mentioned the cause of death to be accidental injuries. In the

postmortem report (Ex.P/8), it is mentions as “multiple lacerations, abrasions over face, neck, back and knees, fracture of sternum along with other injuries”. The injuries mentioned in postmortem report may not be possible if a person fell down on the road while walking. There was fracture of sternum bone, which itself shows that there is something more than of felling of a person while walking. Learned Claims Tribunal has not taken into consideration the entire material available on record and nature of proof, which is required to be brought by the claimants before Claims Tribunal to prove their case in the proceeding under Section 166 of the M.V. Act.

13. The claim cases are required to be decided on the basis of preponderance of probabilities. Before Claims Tribunal, most of the documents of criminal case and charge-sheet submitted by Investigating Agency before the Criminal Court was available on record. Learned Claims Tribunal has not considered the statement of Bholaram recorded under Section 161 of Cr.P.C. and arrived at an erroneous finding. The cases of civil nature are not required to be proved beyond doubt, but it is to be decided on preponderance of probabilities.
14. While considering doctrine of 'preponderance of probabilities', the Hon'ble Supreme Court in case of **Postgraduate Institute of Medical Education and Research, Chandigarh v. Jaspal Singh and Others**, reported in **(2009) 7 SCC 330** held thus :

“17. In *Syad Akbar v. State of Karnataka* (1980) 1 SCC 30 this Court dealt with in

details the distinction between negligence in civil law and in criminal law. It has been held that there is a marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man, beyond all reasonable doubt.”

15. The Hon’ble Supreme Court in the matter of **Bimla Devi and Others v. Himachal Road Transport Corporation and Others** reported in **(2009) 13 SCC 530** while dealing with the issue has held that the Tribunal *stricto sensu* is not bound by the pleadings of the parties and its function to determine the amount of fair compensation and held as under:

“11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that

would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition.

* * *

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

16. In case of **Parmeshwari v. Amir Chand and Others** reported in **(2011) 11 SCC 635**, the Hon'ble Supreme Court has held thus:

“4. The material facts are that on 22.01.2003 at about 12.00 noon the appellant herein, the claimant before the Tribunal, respondent No.1 before the High Court, was going from Baganwala to Tosham on a Motor Cycle (No.HR 16C-

8379), driven by Balwan with the claimant on the pillion seat. When the Motor Cycle was half a kilometer away from Baganwala, Suresh - respondent No.2 herein, came from the other direction in another scooter (No.HR 20-5793) from the wrong side and hit the right leg of the appellant as a result of which she fell down and her right leg was fractured and she received multiple injuries.

6. The Tribunal in its judgment considered the evidence of PW.1-Umed Singh as also the evidence of Dr. Parveen Chawla-PW.2, Dr. R.S. Dalal as PW.5 apart from examining the appellant-PW.4 and also one Satbir Singh as PW.3. It has come on evidence of PW.2-Dr. Parveen Chawla that on 22.1.2003 the appellant was admitted with diagnosis of fracture of tibia. Plating and bone grafting was done by P.W.2-Dr. Parveen Chawla and the appellant was discharged on 6.2.2003. The discharge card was also proved. PW.3-Satbir Singh deposed that the appellant moved a complaint in the office of SSP Hisar on 11.3.2003 and the same was sent in original on 2.4.2003 by SSP Hisar to SSP Hanumangarh.

13. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly

perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in *Bimla Devi (supra)* are very pertinent: (SCC p.534, para 15)

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

17. In the matter of **N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal and Others** reported in **(1980) 3 SCC 457**, the Hon'ble Supreme Court observed as under:

"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability

merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their 'neighbour'.....”

18. Learned Claims Tribunal has further not conducted an enquiry as provided under Section 168 of the M.V. Act and Rule 226 of the Chhattisgarh Motor Vehicle Rules, 1994. Taking into consideration the entire material available on record as well as looking to the object of M.V. Act and the provisions made thereunder, learned Claims Tribunal could have called eyewitness Bholaram for examination before the Claims Tribunal, in which, it failed.
19. For the foregoing reasons, in the considered opinion of this Court, learned Claims Tribunal erred in dismissing the entire claim application based on one of the documents i.e. contents of First Information Report (Ex.P/1), which was lodged by one of the Police Officials while overlooking the other material and

documents of charge-sheet. Taking into consideration the entire facts and circumstances of the case, I find it appropriate to set aside the impugned award and to remit back the case to learned Claims Tribunal for deciding the claim application afresh. It goes without saying that parties to claim application will be at liberty to amend their pleadings, led further additional evidence in support of their claim and learned Claims Tribunal will decide the claim application afresh after affording an opportunity of hearing to all the respective parties.

20. In the result, appeal is allowed. Impugned award is set aside and the matter is remitted back to the Court of Second Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh in aforementioned terms. Since the accident is of the year 2010, it is directed that Second Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh to decide the Motor Accident Claim Case No.22 of 2015 as expeditiously as possible preferably within a period of four months from the date of receipt of copy of this judgment.
21. Original record of Motor Accident Claim Case No.22 of 2015 be sent back forthwith along with copy of this judgment.

Sd/-
(Parth Prateem Sahu)
Judge