

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 1019 of 2014**

Shri Ram General Insurance Company Limited Through Authorised Officer, Shri Ram General Insurance Company Limited, E/8, E.P.P. RIICO, Industrial Area, Sitapura, Jaipur Rajasthan, 302022 **(Insurer)**

---- Appellant

Versus

1. Uttara Kumar Kashyap, age about 36 years, S/o Late Radheshyam Kashyap,
2. Ku. Vaishali Kashyap, age 6 years, D/o Uttara Kumar Kashyap, Resondent No.2 is minor through her natural guardian father Uttara Kumar Kashyap,
Both are R/o village and Post Beltara, P.S. Ratanpur, District Bilaspur (C.G.).
3. Virbhan Singh @ Bablu, Age 40 years, S/o Late Balram Singh, R/o Nehru Nagar, Near Degree College, Budhar, P.S. Budhar, District-Shahdol (M.P.),
Presently at Govindwada, Mangla Chowk, Bilaspur, District Bilaspur (C.G.). **(Driver)**
4. Gajendra Kumar Chouksey S/o Babulal Chouksey, R/o 27 Kholi, Bilaspur, District Bilaspur (C.G.) **(Registered owner)**.

---- Respondents

For Appellant	: Mr. Sachin Singh Rajput, Advocate
For Respondents No. 1 & 2	: Mr. Goutam Khetrapal, Advocate
For Respondents No. 3 & 4	: None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

12/03/2020

1. This appeal has been filed by the appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 30/06/2014 passed by Second Additional

Member to the First Additional Motor Accident Claims Tribunal Bilaspur (C.G.), (hereinafter referred to as 'Claims Tribunal') in C.T. No.86 of 2013, whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.3,56,300/- after deducting 30% of the total compensation towards contributory negligence.

2. Brief facts relevant for disposal of this appeal are that, on 20/01/2013 Savita Kashyap was travelling on Scooty along with her husband, when they reached near Sonwani pond, at that relevant time, one Bus bearing registration No.CG-10/A/0917 (hereinafter referred to as "offending Bus") dashed the Scooty and caused accident. In the aforementioned accident, Savita Kashyap came under the wheels of the said Bus and died on spot. The aforementioned accident was reported to concerned Police Station by one Ganesh Kashyap, based on which, Crime No.31 of 2013 was registered against Bus bearing No. CG-10/ZA/0326, but after completion of investigation, final report has been submitted by Investigating Agency against the driver of Bus bearing registration No.CG-10/A/0917.
3. Claimants who are husband and daughter of deceased Savita Kashyap filed claim application before the competent Claims Tribunal claiming Rs.21,09,500/- as total compensation on account of motor accidental death of Savita Kashyap.

4. Non-applicants No.1 and 2 who are driver and owner of the offending Bus even after service of notice did not choose to appear and they were proceeded *exparte*.
5. Non-applicant No.3-Insurance Company submitted reply to the claim application and pleaded that accident was not on account of rash and negligent act of non-applicant No.1/driver of the offending Bus, but it was on account of the negligence on the part of claimant No.1, who was driver of Scooty at the time of accident. It was further pleaded that on the date of accident, driver of the offending Bus was not possessing valid and effective driving licence; there was no valid permit and fitness of the offending Bus and the offending Bus was being plied in violation of the conditions of insurance policy. It was also pleaded that initially the report was lodged against Bus bearing No.CG-10/ZA/0326, but subsequently after completion of investigation, the final report has been submitted before the competent Court against non-applicant No.1/driver of offending Bus bearing No. CG-10/A/0917. It was lastly pleaded that the First Information Report has been lodged against Bus No.CG-10/ZA/0326 and final report has been filed against Bus No.CG-10/A/0917, from which it is clear that the offending Bus is not involved in the accident and no liability for payment of any amount of compensation can be fastened upon the Insurance Company.
6. Learned Claims Tribunal based on the pleadings and evidence of the respective parties has framed as many as six issues for

consideration and after conclusion of trial has held that the accident was on account of rash and negligent driving of non-applicant No.1/driver of offending Bus; there was no violation of the conditions of the insurance policy and further that there was contributory negligence on the part of the deceased to the extent of 30% and 70% on the part of driver of offending Bus/non-applicant No.1 and thereby awarded a sum of Rs.3,56,300/- after deducting 30% of the total compensation towards contributory negligence along with interest at the rate of 7% from the date of filing of claim application till its realization.

7. Mr. Sachin Singh Rajput, learned counsel for the appellant submits that learned Claims Tribunal has not taken note of First Information Report, which is lodged within 1½ hours from the time of the accident. He points that in the First Information Report lodged by Ganesh Kashyap the vehicle which was involved in the accident has been shown as CG-10/ZA/0326 and it has been mentioned in the First Information Report that the said Bus bearing No.CG-10/ZA/0326 dashed the Scooty, on which, deceased Savita Kashyap was travelling. He also contended that claimants have not proved the contents of final report by examining any Police Officials or the person who is lodged First Information Report and not brought them as witness before the learned Claims Tribunal so as to prove the involvement of the offending Bus bearing No. CG-10/A/0917 in the accident.

- 8.** Mr. Goutam Khetrapal, learned counsel for respondents No. 1 and 2 submits that the informant is not a person, who accompanied along with deceased. After detailed investigation of the crime, the Police Officials submitted final report before the competent Court showing involvement of offending Bus No.CG-10/A/0917 in the accident. He further points out that appellant/Insurance Company has not proved its case/defence before learned Claims Tribunal by producing any of the witnesses. The learned Claims Tribunal based on the material and evidence available before it, passed the impugned award, which do not call for any interference.
- 9.** I have heard learned counsel appearing for the parties and perused the record carefully.
- 10.** It is not in dispute that immediately after the accident, on the same date, First Information Report has been lodged by one Ganesh Kashyap, a copy of which is produced as Ex. P-2. From perusal of First Information Report (Ex.P-2), it would show that the informant was not a driver of the Scooty or he accompanied along with deceased Savita Kashyap. After investigation to the facts intimated about the accident and death of Savita Kashyap, the Police Officials submitted final report which is filed as Ex. P-8. During the course of investigation, the Police has recorded statement of about 11 persons including Ganesh Kashyap as well as claimant No.1 and other persons, and thereafter, submitted final report showing involvement of driver of offending Bus bearing No.CG-10/A/0917.

Appellant/Insurance Company has not brought any witness into the witness box to prove the defence raised by it except the pleadings in reply to claim application. The pleading cannot take place of evidence to prove the fact unless and until, it was proved by cogent and reliable piece of evidence produced before the Court or Tribunal.

- 11.** In view of the aforementioned fact that the appellant/Insurance Company has failed to examine any of the witnesses on its behalf even informant or any of the Police Officials, who have conducted the investigation and submitted final report before learned Claims Tribunal, the submission made by learned counsel for the appellant that the offending Bus bearing No.CG-10/A/0917 has been falsely implicated, is not sustainable and it is hereby rejected. Apart from this, no other ground has been raised by learned counsel for the appellant.
- 12.** In view of the aforesaid discussions, I do not find any error in the impugned award. The appeal being devoid of merits, is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge