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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 276 of 2014

1. Paro Devi,aged about 38 years, widow of Late Avlesh Das.
2. Satyam Kumar Das, aged about 15 years, S/o Late Avlesh Das.
3. Rohit Kumar Das, aged about 14 years, S/o Late Avlesh Das.
4. Nandini Kumari, aged about 8 years, D/o Late Avlesh Das.
5. Sundar Kumar, aged about 4 years, S/o Late Avlesh Das.

   Appellants No.2 to 5 are Minors through their natural guardian Mother i.e. appellant No.1 Paro Devi, Wd/o Late Avlesh Das,

   All are resident of Tulsi Awas, Rajkishore Nagar, Police Station Sakanda, District Bilaspur (CG)

---- Appellants

Versus

1. Parmeshwar Paikra, aged about 30 years, S/o Shri Maamnsai Paikra, R/o Village Jagatpur, Police Station Jairam Nagar, District Surajpur (CG)
2. Maheshwar Singh Paikra, S/o Shri Maansai Paikra, aged about 45 years, R/o Village Jagatpur, Police Station Jairam Nagar, District Surajpur (CG)
3. United India Insurance Co. Ltd., Branch Manager, Bramh Road, Ambikapur (CG), United India Insurance Company Limited, through the Divisional Manager, Rajendra Nagar, Chowk, Bilaspur (CG)
4. Director General of Police, Chhattisgarh Police Headquarters, Sector-19, Atal Nagar, Naya Raipur (CG). Pin 492002. [Impleaded in compliance of Court's order dated 26.8.2020]

---- Respondents

MAC No. 305 of 2014

- United India Insurance Company Limited, through its Divisional Manager, Divisional Office, 2nd Floor Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, District Bilaspur (CG)

---- Appellant

Versus

1. Nisha Arun Tupkar, Wd/o Late Arun Shyamrao Tupkar, aged about 46 years.
2. Devyani Tupker D/o Late Arun Shyamrao Tupkar, aged about 17 years, Minor, through mother-Nisha Arun Tupkar (Respondent No.1)
3. Mehul Tupkar S/o Late Arun Shyamrao Tupkar, aged 18 years.
4. Kusum Tupkar Wd/o Late Shyam Rao, aged 85 years.

   Respondent No.1 to 4 all are R/o Rajkishore Nagar, P.S. Sarkanda, Distt. Bilaspur (CG)
5. Suresh Kumar Paikara, S/o Tijna Ram, aged about 38 years, R/o

Patna, P.S. Shankargarh, Distt. Surguja (CG) [Owner and Driver of vehicle No.CG/15/CF/9803]

6. Director General of Police, Chhattisgarh Police Headquarters, Sector-19, Atal Nagar, Naya Raipur Chhattisgarh Pin 492002. [Impleaded in compliance of Court's order dated 26.8.2020]

---- Respondents

MAC No. 585 of 2014

- United India Insurance Company Limited, through its Divisional Manager, Divisional Office, 2nd Floor Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, District Bilaspur (CG)

---- Appellant

Versus

1. Paro Devi, Wd/o Late Awlesh Das, aged 38 years.
2. Satyam Kumar Das S/o Late Awlesh Das, aged 15 years.
3. Rohit Kumar Das S/o Late Awlesh Das, aged 14 years.
4. Nandini Kumari, D/o Late Awlesh Das, aged 8 years.
5. Sundar Kumar S/o Late Awlesh Das, aged about 4 years

   Respondent No.2 to 5 are Minor, through their Mother Paro Devi (Respondent no.1)

   Sarkanda, Distt. Bilaspur (CG).
6. Parmeshwar Paikara, S/o Mansai Paikara, aged 30 years, R/o Vill. Jagatpur, P.S. Jairam Nagar, Distt. Surajpur C.G.
7. Maheshwar Singh Paikara, S/o Mansai Paikara, aged 45 years, R/o Vill. Jagatpur, P.S. Jairam Nagar, Distt. Surajpur C.G.
8. Director General of Police, Chhattisgarh Police Headquarters, Sector-19, Atal Nagar, Naya Raipur Chhattisgarh Pin 492002. [Impleaded as per Court's order dated 26.8.2020]

---- Respondents

MAC No. 586 of 2014

- United India Insurance Company Limited, through its Divisional Manager, Divisional Office, 2nd Floor Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, District Bilaspur (CG)

---- Appellant

Versus

1. Fulkunwar, Wd/o Late Sarju Ram, aged 44 years.
2. Biganram, S/o Late Sarju Ram, aged 29 years.
3. Sigan Ram, S/o Late Sarju Ram, aged 27 years.
4. Ram Kumar, S/o Late Sarju Ram, aged 17 years

   Respondent No.4 is Minor, through - Mother Smt. Fulkunwar,

   Respondent No.1 to 4 are R/o Vill. Amarpur, P.S. Pendra, Distt. Bilaspur (CG)
5. Suresh Kumar Sahu, S/o Hariram Sahu, aged 27 years, R/o Vill. Budhar, P.S. Patna, District Koria (CG) [Rider of Motorcycle

No.CG16-F-0429]

6. Shayam Lal Sahu, S/o Bandhan Ram R/o Vill. Jatasemar, P.O. Patrapali, P.S. Baikunthpur, Distt. Koria (CG) [Owner of Motorcycle No.CG16-F-0429]
7. Director General of Police, Chhattisgarh Police Headquarters, Sector-19, Atal Nagar, Naya Raipur Chhattisgarh. Pin - 492002. [Impleaded as per Court's order dated 26.8.2020]

---- Respondents

MAC No. 672 of 2014

1. Fulkunwar, Wd/o Late Sarju Ram, aged 44 years.
2. Biganram, S/o Late Sarju Ram, aged 29 years.
3. Siganram, S/o Late Sarju Ram, aged 27 years.
4. Ram Kumar, S/o Late Sarju Ram, aged 17 years.

Minor Appellant No.4 through his natural guardian i.e. mother (Appellant No.1).

All are R/o village Amarpur, P.S. Pendra, Distt. Bilaspur (CG)

---- Appellants

Versus

1. Suresh Kumar Sahu, aged about 27 years, son of Shri Hariram Sahu, resident of Village - Budhar, P.S. Patna, Distt. Korea C.G. [Driver of Motorcycle No.CG16-F-0429]
2. Shyamlal Sahu,aged about.... years, son of Shri Bandhan Ram R/o Village Jatasemar, P.O. Patrapali, P.S. Baikunthpur, Distt. Korea (CG) [Owner of Motorcycle No.CG16-F-0429]
3. Branch Manager, United India Insurance Company Limited, Ambikapur, District Surguja (CG) [Insurer of Motorcycle No.CG16-F-0429]
4. Director General of Police, Chhattisgarh Police Headquarters, Sector-19, Atal Nagar, Naya Raipur (CG) Pin- 492002 [Impleaded as per Court's order dated 26.8.2020]

---- Respondents

MAC No.276/2014

For Appellants : Ms. Bhagwati Kashyap, Advocate
For Respondent No.3 : Mr. Dashrath Gupta, Advocate
For Respondent No.4 : Mr. Gagan Tiwari, Dy. Govt. Advocate

MAC No.305/14, 585/14 & 586/14

For Appellant : Mr. Dashrath Gupta, Advocate
For Respondent-claimants: Ms. Bhagwati Kashyap, Advocate
For Respondent-State : Mr.Gagan Tiwari, Dy. Govt. Advocate

&

MAC No.672/2014

For Appellants : Ms.Bhagwati Kashyap, Advocate
For Respondent No.3 : Mr. Dashrath Gupta, Advocate
For Respondent No.4 : Mr. Gagan Tiwari, Dy. Govt. Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J
09/10/2020

1. All the above appeals arise out of the different awards passed by different Motor Accident Claims Tribunal in different Claim Cases wherein claimants have sought for enhancement of the compensation, whereas Insurance Company has questioned its liability to pay amount of compensation.

2. MAC No.276/2014 has been preferred by appellant-claimants seeking enhancement of compensation awarded by the learned 4th Additional Member to the 1st Additional Motor Accident Claims Tribunal, Bilaspur vide award dated 6.2.2014 passed in Claim Case No.22/12, whereas MAC No.585/14 has been preferred by appellant-Insurance Company challenging the liability fastened upon it by the Claims Tribunal in Claim Case No.22/12 *inter alia* on the ground that a false & fabricated case of death of deceased in a road accident involving vehicle insured by Insurance Company has been cooked-up by implanting Indradev Rajwade as an eyewitness of the accident in question.

3. MAC No.305/14 has been filed by Insurance Company challenging the liability fastened upon it to satisfy the award dated 17.12.2013 passed by the 4th Additional Member to the learned 1st Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.21/2012 on the same ground as urged in

MAC No.585/14 i.e. a false & fabricated case of accidental death involving vehicle insured by Insurance Company has been cooked-up by planting Indradev Rajwade as an eyewitness of the accident in question.

4. MAC No.672/14 has been filed by claimants seeking enhancement in the amount of compensation awarded by learned Additional Motor Accident Claims Tribunal, Pendra Road vide award dated 7.3.2014 passed in Claim Case No.19/2011, whereas MAC No.586/14 has been filed by the Insurance Company challenging the liability fastened upon it to satisfy the award dated 7.3.2014 passed in Claim Case No.19/2011 on the similar ground as urged in MAC Nos.376/14 & 585/14.

MAC Nos.276/14 & 585/14

5. Facts of these appeals, in brief, are that on 8.3.2012 Awlesh Das was going on his motorcycle to Ramanujganj from village Ranka. On account of speed breakers constructed near Modi Line Hospital, Awlesh Das slow down speed of his motorcycle. At that time, one another motorcycle bearing registration No.CG15-CF-2134, driven rashly and negligently by non-applicant No.1, dashed motorcycle of Awlesh Das from backside. As a result, said Awlesh Das suffered grievous injuries and died. Report of accident was lodged on 25.3.2012 by Indralal Rajwade, son of Ramlal, resident of Sunderpur, Police Station Surajpur, District Surajpur.

6. Claimants, who are widow & children of deceased, have filed

an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of Rs.50,49,520/-.

7. Non-applicant No.3-Insurance Company filed its reply to application and resisted the claim by raising a ground of collusion between claimants and non-applicants No.1 & 2. Apart from this, the grounds of non-impleadment of owner, driver & insurer of motorcycle of deceased; non-applicant No.1-driver was not having valid and effective driving license causing breach of conditions of insurance policy, have also been raised.

8. The Claims Tribunal taking into consideration the documents of criminal case placed on record, evidence of witness Parobai (applicant No.1), eyewitness Indralal Rajwade (AW-2) & witness Manohardas(AW-3), allowed application in part; awarded Rs.35,53,300/- as compensation and fastened liability to satisfy the award upon the Insurance Company.

9. Appellant-claimants have filed the appeal seeking enhancement of compensation on the ground that the Claims Tribunal has not awarded any amount towards future prospects and the amount awarded under other conventional heads is on lower side.

10. Appellant- Insurance Company in MAC No.585/14 has raised a ground with regard to false implication of vehicle insured by it pleading that Indradev Rajwade examined as eyewitness of accident in three claim cases is a implanted witness. It was also pleaded in the grounds of appeal that it was a case of hit &

run which has been converted into a motor vehicular accident involving vehicle insured by insurance company by fabricated story and implanted witness.

MAC No.305/14;

11. Facts of this appeal, in brief, are that on 10.10.2011 at about 6.30 p.m. when Arun Shyam Rao was standing on road side, one motorcycle bearing registration No.CG15-CF-9803, driven by non-applicant No.1 rashly and negligently, knocked down Arun Shyam Rao as a result he suffered grievous injuries. He was taken to the hospital at Ambikapur where he succumbed to injuries during the course of treatment. FIR was lodged on 14.11.2011 by Pramod Pandey, Assistant Sub Inspector upon receiving merg diary.

12. The Claims Tribunal while deciding claim application filed by legal representatives of deceased Arun Shyam Rao has considered the documents placed on record i.e. documents of criminal case and evidence of eyewitness Indradev Rajwade (AW-2), who in this case had been shown to be resident of 'Jagatpur, Police Station Jainagar, District Surajpur', allowed claim application in part and awarded Rs.52,66,000/- as compensation.

MAC Nos.672/14 & 586/14;

13. Facts of these appeals, in brief, are that on 19.8.2009 Sarjuram was going on his motorcycle and at that time one motorcycle bearing registration No.CG16-F-0429 driven by non-applicant No.1 therein in rash and negligent manner, dashed motorcycle

of Sarjuram from backside. In the said accident, Sarjuram died on spot. Accident was reported to concerned police station upon which criminal case was registered against non-applicant No.1.

14. Claimants, who are widow & children of deceased, have filed application under Section 166 of the Act of 1988 seeking compensation of Rs.50,39,000/- on the grounds mentioned therein. In this case also, claimants have examined Indradev Rajwade as an eyewitness to the accident and his address has been mentioned as 'Jarhi Mod, Police Station Bhatgaon, District Surajpur'.

15. The Claims Tribunal upon examining the pleadings, documents and evidence placed on record has allowed application in part, awarded Rs.33,56,673/- as compensation.

16. Looking to the ground raised by Mr. Dashrath Gupta, learned counsel representing Insurance Company in all these appeals with regard to false implication of vehicle insured by it and examination of one person by name Indradev Rajwade son of Ramlal, to be an eyewitness in all three claim cases, we shall first deal with the ground of false implication raised by Insurance Company in the appeals preferred by it.

17. While considering the ground raised by Mr. Dashrath Gupta, learned counsel for appellant Insurance Company that alleged eyewitness Indradev Rajwade is a implanted witness, we have minutely gone through the records of all three claim cases

including evidence of said Indradev Rajwade and noticed that in all three claim cases three different addresses of said Indradev Rajwade is shown, who claimed himself to be present on spot at the time of each accident. Taking note of the presence of said Indradev Rajwade at the time of three accidents which took place on different time, date and place, which cannot said to be a coincidence rather raises finger of suspicion against said Indradev Rajwade, this Court vide order dated 26.8.2020 ordered for impleadement of the Director General of Police as a party to these appeals and also ordered for an enquiry into the matter by a police officer not below the rank of Inspector General of Police. The order dated 26.8.2020 is extracted below for ready reference:-

> "These appeals arising out of three different claim cases filed before the respective Claims Tribunals, but the Insurance Company in all three claim cases are one and the same.
>
> Shri Dashrath Gupta, the learned counsel appearing for the Insurance Company submits that in all these three cases, one person has been examined as eyewitness, by name, Indralal alias Indradev Rajwade, who is appearing to be implanted witness in all these cases though they have been shown to be motor accident at different places and areas. In all these three motor accidents, FIR has been lodged after considerable delay. He points out that in all the three accidents, the manner of the accident has been mentioned in the FIR is same and in all the cases, Indralal alias Indradev Rajwade was shown to be riding on his motorcycle and travelling on the road, in which, accident took place.
>
> Smt. Bhagwati Kashyap, the learned counsel representing the Claimants submits that there is no inordinate delay in lodging the FIR as these are the accidental cases; the injured were taken to the hospital and it happens that when the relatives approached to concerned Police Station, Police refused to lodge the FIR for want of merg intimation

or merg report and this may be the reason for causing delay in lodging the FIR. She further submits that if the Court comes to the conclusion that the eyewitness examined in all the three claim cases on behalf of the Claimants to be suspicious and implanted witness, then the cases may be remanded back to the concerned Claims Tribunals for proper adjudication, where the Insurance Company will have an opportunity to lead his evidence to bring out the truth.

Based on the submissions of the respective parties, we have perused the records of all the three claim cases. Perusal of the record would show that Indralal alias Indradev Rajwade S/o Shri Ramlal Rajwade has been examined as eyewitness in all the three claim cases, but surprisingly the address shown in all the three claim cases of his is different. In Claim Case No.19 of 2011 filed before the Additional Motor Accident Claims Tribunal, Pendra Road, District Bilaspur, Chhattisgarh, the address of Indradev Rajwade S/o Shri Ramlal Rajwade has been shows as R/o Village Jarhimod, Police Station Bhatgaon, District Surajpur, Chhattisgarh; in Claim Case No.21 of 2012 filed before Fourth Additional Judge to the Court of First Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, the address of Indradev Rajwade S/o Shri Ramlal Rajwade has been as R/o Village Jagatpur, Police Station Jagatpur, District Surajpur, Chhattisgarh, and in Claim Case No.22 of 2012 filed before Fourth Additional Judge to the Court of First Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, the address of Indralal alias Indradev Rajwade S/o Shri Ramlal Rajwade has been shown as R/o Village Sundarpur, Police Station Surajpur, District Surajpur, Chhattisgarh.

Ongoing through the evidence of eyewitness, it is apparent that his address shown in all the three claim cases are of different places. No person if he be the one and the same can reside on three different address within the jurisdiction of different Police Station at one time. This appears that Indralal alias Indradev Rajwade has been purposefully made as an eyewitness to make out the claim case of motor accident as pleaded in the claim applications.

Looking to the facts appearing from the record, we find it appropriate that the issue raised by learned counsel for the Insurance Company requires inquiry in the matter.

We direct the Director General of Police be

impleaded as party Respondent in all these appeals. The Registry is directed to implead the Director General of Police in the array of Respondents in all these appeals.

In view of aforementioned observation made, which is appearing from the records of the claim cases, we direct the Director General of Police to get the issue inquired from some senior officer, not below the rank of Inspector General of Police, and to submit its report before this Court.

Let the inquiry be done and the report be submitted within a period of four weeks from today before this Court. It is also directed that the Registry should supply a copy of this order along with copy of FIR, Final Report, evidence of Indralal alias Indradev Rajwade S/o Ramlal Rajwade in all the three claim cases to the office of the Advocate General so that the office of the Advocate General shall also take necessary steps for compliance of this order.

The Registry is further directed to show the name of Advocate General in the cause-list on the future dates of hearing..."

18. In compliance of direction issued by this Court, the Inspector General of Police, Bilaspur Range, Bilaspur conducted an enquiry and submitted its report dated 01.10.2020 before this Court in a sealed envelope. In the course of enquiry, it is found that said Indradev Rajwade alias Indralal is permanent resident of village Jagatpur, Police Outpost Jainagar and in support thereof, certificate issued by Gram Panchayat Jagatpur has also been attached. The Inspector General of Police arrived at a conclusion that evidence of said Indradev Rajwade is highly suspicious. Findings recorded by the Inspector General of Police, Bilaspur Range, Bilaspur read thus:-

"<u>जॉच निष्कर्ष –</u>

1. संपूर्ण जॉच निष्कर्ष में पाया गया कि गवाह इंद्रलाल उर्फ इंद्रदेव राजवाड़े पिता रामलाल राजवाड़े उम्र 34 वर्ष का स्थायी पता ग्राम जगतपुर चौकी लटोरी थाना जयनगर, जिला–सूरजपूर छ0ग0 है, जिसकी पुष्टि गवाहों के कथनों व दस्तावेजों से

होती है।

2. इंद्रदेव राजवाड़े द्वारा क्लेम प्रकरण 19/11 में शपथ पत्र में घटना का दिनांक 19.08.2009 लेख कराया गाया है जबकि मर्ग इंटिमेशन के आधार पर घटना का दिनांक 20.08.2009 की है। इस तथ्य से क्लेम प्रकरण 19/11 में गवाह द्वारा दिया गया कथन संदिग्ध पाया जाता है।

3.गवाह इंद्रलाल उर्फ इंद्रदेव राजवाड़े के द्वारा क्लेम प्रकरण कमांक 19/11 एवं 21/12 में घटनाकम एक जैसा होना बताया गया है। इसके साथ ही अपने शपथपूर्वक कथन में दुघ र्टिना करने वाले एवं दुर्घटना होने वाले वाहनों के नंबर तथा उनके चालको को जानने के बाद भी प्रकरण में न ही थाना जाकर सूचना देना और न ही घायलों को अस्पताल ले जाने के विषय में कोई प्रयास नहीं किया गया। उक्त प्रकरणो के संबंध में 04–05 साल बाद मृतक के परिजनों के संपर्क करने के पश्चात वकील के माध्यम से माननीय न्यायालय में शपथ पूर्वक कथन कर घटना देखना व अपने पास रखे छोटे से कागज में मोटरसायकल का नंबर और आरोपियों का नाम लिख कर सुरक्षित रखना संदेह के दायरे में है। इन तथ्यों की पुष्टि उसके स्वयं के कथन एवं थाने के उक्त प्रकरण से संबंधित दस्तावेजों से होती है।

4. क्लेम प्रकरण 21/12 में गवाह इंदलाल उर्फ इंद्रदेव राजवाड़े द्वारा अपने शपथपूर्वक कथन में जहां एक्सीडेंट करने वाले मोटर सायकल के चालक का नाम सुरेश कुमार होना बताया है वहीं प्रतिपरीक्षण में एक्सीडेंट करने वाले वाहन चालक का नाम नहीं मालूम होना बताया है। इस तथ्य से क्लेम प्रकरण 21/12 में उसका शपथपूर्वक दिया गया कथन संदिग्ध पाया जाता है।

5. क्लेम प्रकरण कमांक 22/12 के संबंध में जांच पर पाया गया कि इंद्रलाल उर्फ इंद्रदेव राजवाड़े ने स्वयं ही घटना के बारे में मृतक के भाई को सूचना देकर बताया था लेकिन उसके शपथपूर्वक कथन में लेख किया गया है कि मृतक के परिजन उसके घर आकर उससे संपर्क कर थाना रंका जाकर रिपोर्ट करने के लिए कहा था। इंद्रलाल उर्फ इंद्रदेव राजवाड़े अपने कथन में प्रकाश दास को दोस्त होना एवं उसके पुत्र के नामकरण संस्कार में जाना आना बताया है जबकि प्रकाश दास ने घटना के संबंध में किसी भी प्रकार की कोई जानकारी ना होना बताया है साथ ही इंद्रलाल उर्फ इंद्रदेव राजवाड़े के बारे

> में जानना बताया है। इससे पुष्टि होती है कि इंद्रदेव राजवाड़े द्वारा शपथपूर्वक दिया गया कथन और जॉच के दौरान दिया गया कथन गलत है।"

19. In view of above facts and circumstances of case where one person namely Indradev Rajwade has been examined as an eyewitness in respect of three accidents which took place on different dates, time and places showing himself to be resident of three different places, we are of the considered view that evidence of said Indradev Rajwade requires reconsideration minutely at the end of the Claims Tribunal along with the report submitted by the police.

20. Accordingly, without going into merits of cases, we set aside the award passed in all these appeals and remit back the cases to respective Claims Tribunal for considering and deciding all the three claim cases afresh after granting opportunity of hearing to all the parties in respective claim case. It goes without saying that the parties in each claim case will be at liberty to lead further evidence in support of their claim and pleadings. The Claims Tribunal shall decide all the claim cases afresh on the basis of evidence and materials placed on record by respective parties and also taking into consideration the enquiry report of the Police, as early as possible, preferably within a period of four months from the date of receipt of copy of this order.

21. The Registry is directed to forthwith send back records of claim cases along with a copy of this order. The Registry shall also place a copy of enquiry report in sealed cover in record of all

the three claim cases for consideration of the Claims Tribunal.

22. At this stage, Mr. Dashrath Gupta, learned counsel for appellant Insurance Company submits that a direction may be issued for disposal of all the three claim cases by one Motor Accident Claims Tribunal.

23. As these appeals are filed challenging the impugned award on the grounds mentioned therein and we are considering the legality & propriety of the impugned awards, the above submission of Mr. Gupta cannot be allowed in these proceedings. However, the Insurance Company will be at liberty to file appropriate application before appropriate Forum for disposal of all three claim cases by one Motor Accident Claims Tribunal.

24. The Claims Tribunal if after conclusion of proceeding of claim cases arrived at a conclusion that said Indradev has given false evidence, then appropriate proceeding shall be drawn against him in accordance with law.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/