

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 518 of 2014****Judgment reserved on 02.01.2020****Judgment delivered on 19.05.2020**

- Branch Manager Tata AIG General Insurance Company Limited, Old Bus Stand Road, Chhattisgarh Complex Near Telephone Exchange office Bilaspur C.G.

----Appellant/Insurer**VERSUS**

1. Kashi Ram Sahu S/o Firan Ram Sahu, aged about 60 years
2. Smt. Fool Bai W/o Kashi Ram Aged about 48 years

Respondent No. 1 and 2 are R/o Village- Hardi Chouk Pachpedi, P.S. Masturi, District Bilaspur C.G.

3. Sona Ram S/o Malik Ram aged about 40 years, R/o Village- Hardi Chouk Pachpedi, P.S. Masturi, District Bilaspur C.G.

(Driver and Owner)**-----Respondents**

For Appellant	:	Mr. Ghanshyam Patel, Advocate
For Respondent No. 3	:	Mr. Suresh Pandey, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**CAV Order**

1. Correctness and sustainability of the impugned award dated 07-02-2014 passed in Motor Accident Claim Case No. 12/12 by Member, Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh is put to challenge in this appeal.
2. Brief facts relevant for disposal of this appeal are that on 19-02-2012, Birbal Sahu was standing on the road side for returning his home after completion of his masonry work of laying slab on a under construction building. At that relevant time, one Tractor bearing registration number CG 10 D 6764

(hereinafter referred to as “offending vehicle”) driven by respondent No. 3/ non-applicant No. 1 dashed Birbal Sahu, in which he suffered grievous injuries over his person and succumbed to those injuries on spot. The accident was reported to concerned police station, based on which crime was registered against respondent No. 3/ non-applicant No. 1 who is the driver-cum-owner of the offending vehicle.

3. The claimants/respondent No. 1 & 2 who are parents of the deceased Birbal Sahu filed claim application before the competent claims tribunal mentioning therein that on the date of accident, deceased Birbal Sahu was aged about 19 years and earning Rs. 250/- per day from his engagement as Mason. The claimants/ respondent No. 1 & 2 have claimed Rs. 19,45,000/- as compensation on account of accidental death of Birbal Sahu.
4. Non-applicant No. 1/ respondent No. 3 submitted his reply to the claim application and pleaded that the claimants are not dependent upon the deceased Birbal Sahu, deceased was not working as Mason and the accident took place on account of negligence on the part of the deceased Birbal Sahu himself. Non-applicant No. 1/ respondent No. 3 was acquitted from the charges levelled against him, he was possessing valid and effective driving licence on the date of accident, the offending vehicle was insured with non-applicant No. 2/ appellant-Insurance Company.
5. Non-applicant No. 2/ appellant-Insurance Company submitted its reply to the claim application and denied all the adverse pleadings made in the claim application and further pleaded that non-applicant No. 1/ respondent No. 3- Driver of the offending vehicle was not possessing valid and effective driving license on the date of accident and the offending vehicle is being used for the purpose other than agricultural purpose, deceased Birbal Sahu was not working

as Mason and there was violation of conditions of insurance policy and pleaded that non-applicant No. 2- Insurance Company is not liable to pay any amount of compensation.

6. During the course of enquiry before the learned Claims Tribunal, the claimants/ respondent No. 1 & 2 have examined respondent No. 1- Kashi Ram Sahu as AW-1, Jawaharlal as AW-2. Appellant/ Non-applicant No. 2-Insurance Company also examined one Shubhayu Majumdar as NAW-1 and respondent No. 3/ non-applicant No. 1 examined himself as NAW-2 and one Chandram as NAW-3.
7. The learned claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties arrived at a finding that the claimants/ respondent No. 1 & 2 were dependents on the deceased Birbal Sahu; the accident took place on account of rash and negligent driving of the offending vehicle driven by respondent No. 3/ non-applicant No. 1 resulting in death of deceased Birbal Sahu. The learned Claims Tribunal further recorded that there was no violation of conditions of insurance policy and while fixing the liability jointly and severally upon non-applicant No. 1 & 2 driver-cum-owner and Insurer of offending vehicle respectively, awarded Rs. 6,58,000/- as compensation, which is under challenge in this appeal by non-applicant No. 2-Insurance Company.
8. The learned counsel for the appellant submits that the learned Claims Tribunal has erred in fastening liability upon the Insurance Company overlooking the fact that there was violation of conditions of insurance policy because deceased Birbal was traveling on engine of the offending vehicle, the offending vehicle was not being used for agricultural purpose but it was carrying mixture machine to be used for construction of building. Learned counsel also

submitted that the claimants placed reliance upon the documents of criminal case as Exh. A-2 (F.I.R.) wherein it is specifically mentioned that at the time of accident, deceased Birbal Sahu was sitting on offending vehicle (Tractor). He fell down while traveling on Tractor and came under the wheel of the mixture machine which was attached with the offending vehicle, but this was not considered. It is also pointed out that the F.I.R. was lodged by none other than the Brother of the deceased Birbal Sahu within 3 hours from the time of accident in which it was informed to the police station that deceased Birbal Sahu was sitting on the engine of the offending vehicle and from where he fell down and came under the wheel of mixture machine attached in place of trolley. The Merg Intimation has been marked as Exh. A-3 and F.I.R. as Exh. A-2. He submits that when the claimants have pleaded in the claim application about lodging of F.I.R. and also placed it on record and also the Merg Intimation Report, then the claimants cannot revert back from the contents of the F.I.R. which was relied upon by them to proof the accident. He also points out that Merg (accident) intimated to the concerned police station on the very same date of the accident after few hours was by brother of the deceased Birbal Sahu but for the reasons best known to the claimants, the informant namely Nirmal Sahu S/o Kashi Ram Sahu was not produced as witness before the learned Claims Tribunal. He also submits that under the law when any party to the case/ proceedings relies upon any document, marked them as exhibit and places on record as evidence in support of their case then the entire content of the document is to be looked into and read into as evidence and not the part of the document of their own choice. He places reliance on in the matter of **Oriental Insurance Company Limited v. Premlata Shukla and others** reported in **(2007) 13 SCC 476**.

9. Per contra learned counsel appearing for respondent No. 3 owner of the

offending vehicle submits that the claimants in their claim application have very specifically pleaded that on the date of accident, deceased Birbal Sahu was standing on the road side and at that relevant time accident took place, in which Birbal Sahu died. Appellant Insurance Company has not examined the author of the documents or any police officials to prove the contents of the F.I.R. (Exh. A-2), Merg Intimation Report (Exh. A-3) as well as the Final Report (Exh.A-1). He also submits that merely placing on record any document, the contents of the same could not be proved automatically, but it is required to be proved in accordance with the provisions of Evidence Act, 1872. While supporting the impugned award, it is submitted by the learned counsel for respondent No. 3 that in absence of any proof of documents (Exh. A-1 to A-3) by the appellant, the learned Claims Tribunal rightly held liable the Insurance Company for the payment of the amount of compensation as on the date of accident, the offending vehicle was insured with the appellant-Insurance Company.

10. I have heard learned counsel for the respective parties and also perused the record of the case.
11. The documents of criminal case i.e. copy of the Final Report (Exh. A-1), copy of the F.I.R.(Exh. A-2), Merg Intimation Report(Exh. A-3), Naksha Panchayatnama(Exh. A-4), Post Mortem Report(Exh. A-6), Property Seizure Memo(Exh. A-7) are placed on record by the respondent No. 1 & 2/ Claimants themselves and they have been marked exhibits by the witness AW-1 who is respondent/claimant No. 1 himself. On going through the contents of Exh. A-2 and A-3 would show that the F.I.R. has been lodged by one Nirmal Sahu S/o Kashi Ram Sahu, aged about 30 years on 19-02-2012 at about 18:15 O'Clock i.e. within 2:45 hours from the time of accident. Reading of the contents of the aforementioned two documents also reveal that deceased Birbal Sahu was son

of second wife of Kashi Ram Sahu and the informant Nirmal Sahu is also son of Kashi Ram Sahu from his first wife, thereby they were step brothers. The contents of aforementioned documents further show that as per the information given by Nirmal Sahu, at the time of accident, deceased Birbal Sahu was sitting on the offending vehicle from which he fell down and came under the wheel of mixture machine attached with the offending vehicle. Respondent No. 1 & 2 Claimants have not brought Nirmal Sahu in the witness box before the learned Claims Tribunal, further, in their pleading they have mentioned that the accident was reported. Under the aforementioned facts and circumstances of the case, particularly, looking to the fact that the informant (lodger of F.I.R. and Merg Intimation) was brother of the deceased Birbal Sahu and son of respondent No. 1, he was not examined as witness if they wanted to take another ground as pleaded in the claim application different from the contents of F.I.R. Once the claimants have relied upon the documents to show that the accident took place in which late Birbal died then the documents placed on record and marked exhibits by the claimants themselves to prove the documents then the documents are to be read as a whole and not in part. It is not the case of the claimants that the facts mentioned in exhibits A-2 and A-3 are incorrectly recorded, therefore, in the opinion of this Court, the learned Claims Tribunal erred in not taking into consideration the contents of F.I.R. as well as Merg Intimation Report available on record.

12. The Hon'ble Supreme Court has dealt with the issue with respect to prove the contents of the documents and that too in a case of Motor Accident Claim Case in the matter of **Premlata Shukla (supra)** and held thus:

“11. The learned counsel appearing on behalf of the respondent contended that first information report was brought on record for the purpose of proving the accident and not for fixing the liability on the part of

driver of the vehicle involved therein.

12. In *Narbada Devi*, (2003) 8 SCC 745 whereupon reliance has been placed, this Court held that contents of a document are not automatically proved only because the same is marked as an exhibit. There is no dispute with regard to the said legal proposition.

13. However, the factum of an accident could also be proved from the first information report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an exhibit as both the parties intended to rely upon them.

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document having been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.”

13. The claimants have not objected the contents of Exhibits A-2 and A-3 though relied upon by them by showing that they have been relied upon for the particular purpose and not for other purposes. In the case of **Premlata Shukla (supra)** the Hon'ble Supreme Court further held as under:

“15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon. In *Hukum Singh*, 1969 PLR 908 (P&H) the law was correctly been laid down by the Punjab and Haryana High Court stating: (PLR p. 911, para 8)

'8. Mr. G.C. Mittal, learned counsel for the respondents contended that Ram Partap had produced only his former deposition and gave no evidence in court which could be considered by the Additional District Judge. I am afraid there is

no merit in this contention. The trial court had discussed the evidence of Ram Partap in the light of the report Exhibit D-1 produced by him. The Additional District Judge while hearing the appeal could have commented on that evidence and held it to be inadmissible if law so permitted. But he did not at all have this evidence before his mind. It was not a case of inadmissible evidence either. No doubt the procedure adopted by the trial court in letting in a certified copy of the previous deposition of Ram Partap made in the criminal proceedings and allowing the same to be proved by Ram Partap himself was not correct and he should have been examined again in regard to all that he had stated earlier in the statement made by him in the committing court. It appears that the counsel for the parties in order to save time did not object to the previous deposition being proved by Ram Partap himself who was only cross-examined. It is not a case where irrelevant evidence had been let in with the consent of the parties but the only objection is that the procedure followed in the matter of giving evidence in court was not correct. When the parties themselves have allowed certain statements to be placed on the record as a part of their evidence, it is not open to them to urge later either in the same court or in a court of appeal that the evidence produced was inadmissible. To allow them to do so would indeed be permitting them both to approbate and reprobate.' "

14. Perusal of copy of insurance policy (Exh. NA-1) issued by the Appellant-Insurance Company would show that the offending vehicle was insured for agricultural purposes wherein the seating capacity has been shown as only 'one', including driver, but at the time of accident, as mentioned in the Exhibits A-2 and A-3, the offending vehicle was attached with mixture machine which shows that the offending vehicle was being used for the purpose other than agricultural purpose. Further the document also shows that the deceased Birbal Sahu was traveling on the offending vehicle (Tractor) where there was no place of sitting for any other person than that of the Driver. For the aforementioned reasons, there is violation of conditions of insurance policy.

15. For the foregoing reasons and in the light of the law laid down by the Hon'ble

Supreme Court in the case of **Premlata Shukla (supra)**, in the considered opinion of this Court, the learned Claims Tribunal erred in holding that there was no violation of conditions of insurance policy, the said finding recorded in issue no. 5 by the learned claims Tribunal is set aside. The Insurance Company is exonerated from the liability for payment of amount of compensation.

16. The Motor Vehicles Act is a beneficial piece of legislation under which the claimants have filed application for compensation on account of accidental death of their son and further taking into consideration of the fact that *vide* order dated 23-07-2014, this Court had directed for depositing sum of Rs. 5,00,000/- with the Tribunal while passing an interim order of stay, whether the direction for pay and recover can be issued or not is the second point to be considered in this case. The offending vehicle was insured by the Insurance Company. Undisputedly, the policy was live on the date of accident as the period of policy was from 14-03-2011 to 13-03-2012.

17. Recently, the Hon'ble Supreme Court in the matter of **Manuara Khatun v. Rajesh Kumar Singh** reported in **(2017) 4 SCC 796**, after taking into consideration its earlier judgment in the cases of **National Insurance Company limited v. Baljit Kaur** reported in **(2004) 2 SCC 1** and **National Insurance Co. Ltd. v. Saju P. Paul** reported in **(2013) 2 SCC 41** has held as under:

“21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (Respondent 3) -- they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. Respondent 3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) Respondent 1 in execution proceedings arising in this very case as per the law laid down in para 26 of *Saju P. Paul* case, (2013) 2 SCC 41 quoted

supra.

22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that Respondent 3 United India Insurance Co. Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter Respondent 3 United India Insurance Co. Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending vehicle (Tata Sumo) Respondent 1 in these very proceedings by filing execution application against the insured."

18. In view of the aforementioned facts and circumstances of the case and taking into consideration the law laid down by the Hon'ble Supreme Court, though the Insurance Company is not having any liability to satisfy the impugned award under law, but in the peculiar facts and circumstances of the case, the appellant-Insurance Company will deposit the entire amount of compensation as awarded by the learned Claims Tribunal at the first instance and thereafter the Appellant-Insurance Company will be at liberty to recover the same from respondent No. 3- Owner of the offending vehicle, in this very proceedings by filing execution application against the insurer.

19. Consequently, the appeal filed by the Insurance Company is allowed and the impugned award passed by the Claims Tribunal is modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge