

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 117 of 2013**

(Arising out of order dated 09.11.2012 passed in Motor Accident Claim Case No.42 of 2009 by the Additional Motor Accident Claim Tribunal Link Dongargarh District Rajnandgaon (C.G.)

1. Ram Singh Dhruv S/o Sada Singh Dhruv, aged about 47 Years, Caste: Gond.
2. Parniya Bai W/o Ram Singh, aged about 42 Years, Caste: Gond.
3. Shanti Bai W/o Netram, aged about 23 Years, Caste: Gond.
4. Pawan Kumar S/o Nettram, aged about 4 Years, Caste: Gond.
5. Yogesh Kumar S/o Netram, aged about 10 days, Caste: Gond.
Respondent No. 4 & 5 are minor through their nature mother Shanti Bai Wd/o Netram, aged about 23 years.
6. Ravindra Kumar S/o Ram Singh, aged about 20 Years, Caste: Gond.
7. Vijay Kumar S/o Ram Singh, aged about 18 Years, Caste: Gond.
8. Panch Ram S/o Ram Singh, aged about 16 Years, Caste: Gond.
9. Chhabi Kumar S/o Ram Singh, aged about 14 Years, Caste: Gond.

Respondent No.8 & 9 are minor through their nature father Ram Singh Dhruv S/o Sada Singh Dhruv, aged about 47 years, Caste: Gond.

All are R/o Village: Bhurwa Tola Ward No. 18, Dongargarh, Police Station & Tahsil Dongargarh, District Rajnandgaon (C.G.)

---- Appellants

Versus

1. Moh. Shahid S/o Moh. Mushkil, aged about 26 Years, R/o Village: Kanwas, Police Station: Kanwas, District Surat (Gujarat).
(Driver of the vehicle bearing registration No. GJ 5 UU 6181, i.e. Trailer)
2. Suresh Kumar C Sharma Through: Shri Shyam Trailer Sarvice, At and Post: Para, Street Tal Olpad Surat, P.S. & District Surat-394110 (Gujrat).
(Owner of the vehicle bearing registration No. GJ 5 UU 6181, i.e. Trailer)
3. Manager, Reliance General Insurance Company Limited, (Anil Dhuru Bhai Ambani Group Reliance Center 19 Walchand Hirachand Marg Balard State Mumbai 400001), Branch - Ravi Market, Jay Stambh Chowk, G.E. Road, Raipur, District : Raipur,

(C.G.).

(Insurer of the vehicle bearing registration No. GJ 5 UU 6181, i.e. Trailer).

4. Mohammad Gous S/o Moh. Bisra, aged about 55 Years R/o Bhagat Singh Chowk, Dongargarh, Police Station & Tahsil: Dongargarh, District : Rajnandgaon, (C.G.).

(Owner of the vehicle bearing registration No. CG 04 JA 2860, i.e. Tata 709).

5. Branch Manager, New India Insurance Company Limited, Kamthi Line, Rajnandgaon, District : Rajnandgaon, (C.G.).

(Insurer of the vehicle bearing registration No. CG 04 JA 2860, i.e. Tata 709).

---- Respondents

For Appellants	: None
For Respondents 1 & 2	: None
For Respondent No.3	: Mr. Sourabh Sharma, Advocate
For Respondents No.4 & 5	: 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

10.06.2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the correctness and sustainability of impugned award dated 09.11.2012 passed by Additional Motor Accident Claim Tribunal Link Dongargarh District Rajnandgaon (C.G.), (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.42 of 2009, whereby learned Claims Tribunal awarded a total sum of Rs.2,00,000/- as compensation to the claimants fastening liability

upon non-applicant No.5/respondent No.5 to satisfy the amount of compensation.

2. Brief facts relevant for disposal of this appeal, are that, on 07.11.2009, at about 12.20 AM (midnight), one Netram while driving the vehicle bearing registration No.CG-04/JA/2860 was going towards Raipur from Dongargarh, on the way, it met with an accident with a Trailer bearing registration No.GJ-5/UU/6181 standing on the road in front of Laxmi Saw Mill (G.E. Road, Rajnandgaon). In the aforementioned accident, Netram who is driving the goods vehicle bearing No.CG-04/JA/2860 and cleaner suffered injuries and succumbed to the accidental injuries suffered by them.
3. Appellants who are parents, widow, two minor children and four siblings of the deceased Netram filed application under Section 166 of M.V. Act before the Claims Tribunal claiming Rs.32,96,000/- as compensation against motor accidental death of Netram.
4. Non-applicants No.1 and 2, who are driver and owner of the Trailer did not choose to appear even after service of notice and were proceeded *ex parte*.
5. Non-applicant No.4 participated in the proceeding, but did not submit reply to claim application.
6. Non-applicant No.3/Insurance Company of Trailer No.GJ-5/UU/6181 submitted reply to claim application and pleaded that for the accident, Netram i.e. driver of the vehicle No.CG-04/JA/2860 was negligent and further there was no valid and effective driving license,

no valid permit and fitness of the Trailer on the date of accident. It was further pleaded that as the accident took place on account of rash and negligent driving of the goods vehicle driven by deceased Netram (CG-04/JA/2860), the owner, driver and Insurance Company of that vehicle is liable for the payment of amount of compensation.

7. Non-applicant No.5/Insurance Company of vehicle No.CG-04/JA/2860 submitted reply to claim application and pleaded that it is negligence on the part of driver of Trailer No.GJ-5/UU/6181 and even if, Netram, driver of vehicle No.CG-04/JA/2860 is held liable then also his negligency comes within the purview of contributory negligence.
8. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, framed as many as six issues for consideration and after recording the evidence of witnesses and hearing the submissions, held that driver of vehicle No.CG-04/JA/2860 drove his vehicle rashly and negligently and dashed other vehicle No.GJ-5/UU/6181 from its back side. There was no contributory negligence on the part of driver of the Trailer, Netram (driver of vehicle No.CG-04/JA/2860) died on account of motor accident, there was no violation of conditions of insurance policy and awarded a total sum of Rs.2,00,000/- as compensation considering the premium paid covering personal risk of driver in the Insurance policy of the vehicle No.CG-04/JA/2860.
9. Perusal of the record would show that appellants have taken

ground with regard to the finding recorded by learned Claims Tribunal that there was no negligence on the part of driver of Trailer to be erroneous though it has been parked on the road without showing any sign-board or marking on the road or lighting the indicators. The appellants have also taken a ground that parking of vehicle on the road without showing any indicator or marking any sign or placing sign-board is in contravention of the Central Motor Vehicles Rules, 1989.

10. The Claims Tribunal failed to consider the spot-map available on record while deciding the issue whether there was any negligence on the part of driver of Trailer No.GJ-5/UU/6181 and erroneously arrived at a finding that the accident is a result of sole negligence of deceased.
11. From perusal of the memo of appeal, it is apparent that the challenge in this appeal is to the quantum of award and holding the driver of Trailer No.GJ-5/UU/6181 not to be negligent.
12. Shri Sourabh Sharma, learned counsel for respondent No.3/Insurance Company of Trailer submits that learned Claims Tribunal based upon the pleadings and material available on record has rightly arrived at a finding that there was no negligence on the part of driver of Trailer No.GJ-5/UU/6181 and there was sole negligency on the part of deceased Netram, driver of vehicle No.CG-04/JA/2860 and exonerated the owner, driver and insurer (respondent No.3) of Trailer No.GJ-5/UU/6181. The finding recorded

by the Tribunal is based on the pleadings and evidence available on record, therefore, the said finding do not call for any interference.

13. So far as the ground taken by the appellants in their memo of appeal with regard to the finding of negligence recorded by learned Claims Tribunal is concerned, we have perused the documents placed on record by the claimants before the learned Claims Tribunal. The claimants have submitted the documents of criminal case as Ex.P/1, in which, spot-map is also filed showing the place of accident. Perusal of the First Information Report would show that it was lodged by one Sarfaraz Musalman after about 6 hours of the accident, but on the same day. As per First Information Report, he is shown to be the owner of the vehicle driven by Netram, in which, it is mentioned that the deceased Netram while driving the vehicle rashly and negligently, dashed the Trailer standing on the road from its back side. On the basis of contents of the First Information Report, driver of vehicle No.CG-04/JA/2860 i.e. late Netram has been shown to be accused and after the death of Netram, Police has filed closer report. The Investigating Agency has prepared spot-map, in which, Truck has been shown to be parked on middle of the road near the divider of the road. The road on which accident took place in the midnight at about 12.20 AM is a National Highway, on which, vehicles move with speed in the night. The law prohibits for parking of any motor vehicle on road, particularly, when it is a National Highway Road. The claimants in their claim application have very specifically pleaded that the Trailer was parked on the road in the

night without lighting the indicators or sign-board of any marking on the road. The witnesses examined on behalf of the claimants have stated the similar facts. This evidence has not been controverted by the other side.

14. The learned Claims Tribunal while holding that there was no negligence of driver of Trailer has taken into consideration contents of the First Information Report only. Perusal of contents of First Information Report do not show that whether the complainant Sarfaraz Musalman was present on the spot or not. One Shiekh Abdullah was examined as witness who is said to be son of owner of vehicle driven by deceased Netram. He in his evidence has not stated as to how Sarfaraz came to know about the accident. He also do not say that Sarfaraz was travelling in same vehicle in fact, all two persons who were travelling in vehicle No.CG-04/JA/2860 died. In view of above, one thing is clear that the First Information Report lodged by Sarfaraz cannot be treated an information of an eyewitness. This document solely cannot be used as an evidence to hold the deceased Netram driver to have driven his vehicle rashly and negligently.
15. The witness examined by the claimants was Shiekh Abdullah, who in his evidence has stated that he was following the vehicle driven by deceased Netram to supervise it and reached on spot in few minutes of accident. He further stated that indicator lights of the Trailer was not on/glowing, there was no other marking or sign and

parked the vehicle on road. He also stated that his father was owner of the vehicle No.CG-04/JA/2860. The learned Claims Tribunal has not considered the entire material and evidence available on record including the spot-map, which was prepared by the Police and decided the issue very superficially.

16. Perusal of the spot map which is part of Ex.P/1 prepared by the Investigating Agency shows the place of accident. The accident was on account of dash of the vehicle driven by deceased Netram with a stationary Trailer No.GJ-5/UU/6181 on it back. The place of accident has been shown on middle of the road meaning thereby that the Trailer was parked on the middle of the road. There is specific evidence brought on record by the claimants and their witnesses that at the place of accident, there was no marking, no sign-board and even indicators of the Trailer was not turned on. The time and date of accident have been shown as 00.30 Hrs. i.e. 12.30 am in the midnight of 07.11.2009.
17. The place of accident appearing from the spot map is the middle of the road meaning thereby that the Trailer was parked on the middle of the road and parking of vehicle on National Highway road is not permitted under law. The road, on which, accident took place is a National Highway known as 'Bombay-Calcutta Highway Road'. National Highway roads are busy roads even in the night, number of vehicles travel on both sides of the road and sometimes visibility of drivers reduces due to the light of crossing of vehicles of opposite

direction. The negligence of other vehicle cannot be ruled out when the other vehicle i.e. Trailer is parked on middle of the road as is evident from the spot map. The evidence brought on record that there was no sign-board, no marking and indicators of the Trailer was not in 'on' condition, was not controverted by any witness.

18. The Hon'ble Supreme Court has considered the issue of vehicle parked on the middle of the road and its negligence in the matter of **Archit Saini and another v. Oriental Insurance Company Limited and Others** reported in **(2018) 3 SCC 365** and held thus :

“8. After having perused the evidence of PW7, Site Map (Ext. P-45) and the detailed analysis undertaken by the Tribunal, we have no hesitation in taking the view that the approach of the High Court in reversing the conclusion arrived at by the Tribunal on issue 1 has been very casual, if not cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to casually overturn the finding of fact recorded by the Tribunal. As is evident from the analysis done by the Tribunal, it is a well-considered opinion and a plausible view. The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which

must be beyond any reasonable doubts. The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW7 as being unreliable nor has it discarded his version that the driver of the Maruti Car could not spot the parked Gas Tanker due to the flash lights of the oncoming traffic from the front side. Further, the Tribunal also adverted to the legal presumption against the driver of the Gas Tanker of having parked his vehicle in a negligent manner in the middle of the road. The Site Plan (Ext. P-45) reinforces the version of PW7 that the Truck (Gas Tanker) was parked in the middle of the road but the High Court opined to the contrary without assigning any reason whatsoever. In our view, the Site Plan (Ext. P-45) filed along with the charge-sheet does not support the finding recorded by the High Court that the Gas Tanker was not parked in the middle of the road. Notably, the High Court has also not doubted the claimant's plea that the Gas Tanker/offending vehicle was parked without any indicator or parking lights. The fact that PW 7 who was standing on the opposite side of the road at a distance of about 70 feet, could see the Gas Tanker parked on the other side of the road does not discredit his version that the Maruti Car coming from the opposite side could not spot the Gas Tanker due to flash lights of the oncoming traffic from the front side. It is not in dispute that the road is a busy road. In the cross-examination, neither

has any attempt been made to discredit the version of PW 7 nor has any suggestion been made that no vehicle with flash lights on was coming from the opposite direction of the parked Gas Tanker at the relevant time.”

19. When the driver of the other vehicle acted contrary to the Rules of the Road Regulations, 1989, then it cannot be held that there is no negligence on the part of the driver of that vehicle. Learned Claims Tribunal only on the basis of contents of First Information Report has held deceased Netram to be solely negligent for the accident as discussed in preceding paragraphs. The First Information Report was not lodged by an eyewitness, in fact, there was no eyewitness to the accident, which appears from perusal of entire documents of the criminal case, therefore, the claim case filed under Section 166 of the M.V. Act, which is a beneficial piece of legislation, is required to be decided on the basis of touchstone of the preponderance of probabilities.
20. In the matter of **Archit Saini** (supra), Hon'ble Supreme Court has affirmed the finding recorded by Claims Tribunal that there is no negligence on the part of the driver of the car, who dashed the Trailer from its back. Taking into consideration that due to flashlight, it may not be possible to view the vehicle parked on road without indicator and held the driver of stationary vehicle solely negligent for the accident.
21. In exercise of the powers conferred under Section 118 of the M.V.

Act, Central Government has framed Rules of the Road Regulations, 1989 for the purpose of regulating road traffic in a safe manner. Regulation 15 prescribes about the parking of the vehicles. Relevant portion of which is reproduced below for ready reference :

“15. Parking of the vehicle.—(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:—

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
- (ii) on a foot-path;
- (iii) near a traffic light or pedestrian crossing;
- (iv) in a main road or one carrying fast traffic;
- (v) opposite another parked vehicle or as obstruction to other vehicle;
- (vi) alongside another parked vehicle;
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
- (ix) on the wrong side of the road;
- (x) where parking is prohibited;

(xi) away from the edge of the footpath.”

22. In view of above discussions, particularly, the provisions of Regulation 15 of the Regulations, 1989 and spot-map as well as the law laid down by Hon'ble Supreme Court, we are of the considered opinion that the finding recorded by Claims Tribunal holding the deceased driver of the other vehicle to be solely negligent is not sustainable and is hereby set aside. Consequently, the impugned award passed by learned Claims Tribunal is set aside.
23. Accordingly, the appeal is allowed. Impugned award is set aside and the matter is remanded back to the Claims Tribunal with a direction to decide the case afresh in accordance with law, after providing adequate opportunity of hearing to the parties. The parties will be at liberty to adduce additional evidence, if any, in support of their respective cases. Since the accident is of the year 2009, we direct the Claims Tribunal to decide the Motor Accident Claim Case No.42 of 2009 as expeditiously as possible, preferably within four months, from the date of receipt of certified copy of this judgment.
24. Original record of Motor Accident Claim Case No.42 of 2009 be sent back forthwith along with copy of this order.

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

Sd/-
(Parth Prateem Sahu)
Judge