

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 944 of 2013**

1. Akbari Prasad Patel, S/o Gobardhan Prasad Patel, aged about 48 years, Caste Kunbi, Occupation Service, R/o Village Govindpur, Post Govindpur, Police Station Chandora, District Surajpur C.G.
2. Ramlal S/o Rambilas, aged about 30 years, Caste Khairwar, Occupation Driver, R/o Village Gumadand, Police Station Chandora, District Surajpur C.G.

-----Appellants/ Non-applicants 1 and 2

1. Ghurpatiya W/o Late Shri Ramsant, aged about 38 years.
2. Shailesh S/o Late Shri Ramsant, aged about 22 years
3. Kamlesh S/o Late Shri Ramsant aged about 20 years

All the residents of village Dandhkarva, Police Station Chandora, District Surajpur C.G.

-----Respondents/Claimants

For Appellants	:	Mr. Shashi Bhushan Tiwari, Advocate
For Respondents	:	Mr. D.N. Prajapati, Advocate.

Hon'ble Shri Parth Prateem Sahu, Judge**Judgment on Board****16/03/2020**

1. The Appellants who are Non-applicants 1 and 2, owner and driver of the offending vehicle have filed this appeal challenging the impugned award dated 25-07-2013 passed in Motor Accident Claim Case No. 41/2012 by Additional Motor Accident Claims Tribunal, Pratappur whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs. 3,21,000/- as compensation.
2. Facts of the case in nutshell are that on 16-05-2010 at about 10:00 p.m. when Ramsant (now deceased) was returning to his house from a grocery shop on his bicycle, on the way near a crossing bridge of Rewti River, one Tractor bearing Registration No. CG 15A 2240 (offending vehicle) and

Trolley attached with it bearing Registration No. CG 15A 2242 owned by Appellant 1 and driven by Appellant 2, dashed the Bicycle of Ramsant. In the said accident, Ramsant fell down from his Bicycle and suffered grievous injuries over his stomach and chest. He was taken to hospital at Pratappur then to District Hospital, Ambikapur and during the course of treatment, he died. The aforementioned accident was reported to concerned Police Station, based on which, crime was registered against Appellant 2-driver of the offending vehicle and after completion of the investigation, final report was also submitted before the jurisdictional Court/Magistrate for offence under Section 304A of IPC, showing Appellant 2 as accused. Claimants/ Respondent 1 to 3 filed claim application seeking compensation of Rs. 6,13,500/- on account of motor accidental death of late Ramsant.

3. Appellants/ Non-applicants 1 and 2, owner and driver of the offending vehicle submitted reply to the claim application and denied the entire claim of Respondents-claimants and pleaded that they were not aware as to how deceased Ramsant died. They have denied the fact of accident as pleaded in claim application as on the date of accident, offending vehicle was not used for any work but it was parked in garage and Appellant 2 driver of the offending vehicle was on leave since last one week. They have further pleaded that from the post mortem report, it appears that no external injuries have been found on the body of the deceased and the post mortem report bears one of the causes of death to be *septicemia*. They have also pleaded that the death of Ramsant was not on account of any accident but due to his own medical ailment of stomach. Further, it is mentioned that due to suffering from medical ailment, deceased was not doing any work of agricultural, the offending vehicle was seized after about one month from the date of accident.

4. The learned Claims Tribunal upon appreciation of pleadings and evidence

placed on record by respective parties held that due to rash and negligent driving of offending vehicle by Appellant 2 accident occurred in which Ramsant died. While allowing claim application in part, learned Claims Tribunal awarded Rs. 3,21,000/- as compensation along with interest @ 7.5% p.a. from the date of filing the claim application till its realization.

5. Learned counsel for the appellant submits that the Claims Tribunal while passing impugned award has not considered the documentary and oral evidence available on record in its entirety and recorded erroneous finding that the offending Tractor owned by Appellant 1 was involved in the accident. He further submits that the said finding is without any admissible piece of evidence. It is further contended that looking to the contents of post mortem report, death of Ramsant cannot be said to have taken place due to motor accidental injuries suffered by him. He submits that the claim application filed by Respondents-claimants is based on pleadings of wrong facts because on the date of accident, offending Tractor and Trolley was parked in garage and was not used for any work as the Appellant 2 driver of the offending Tractor was on leave for about one week prior to the date of accident. It is further contended that the witness examined on behalf of the claimants are relatives of the deceased, therefore, they being interested witness, their evidence has to be considered minutely. The accident took place on 16-05-2010, F.I.R. was lodged only after 20-25 days of the accident without explaining delay which makes the case of claimants suspicious and lastly, it is submitted that the learned Claims Tribunal has awarded the amount of compensation on higher side by applying multiplier of 15 erroneously instead of 13.
6. Per contra, Mr. D.N. Prajapati, learned counsel for Respondents-claimants submits that the award passed by the learned Claims Tribunal is based on the oral and documentary evidence available on record, strictly within the

four corners of law. It is further contended that the learned Claims Tribunal upon examining the facts and evidence placed on record minutely based on the judgment passed by Hon'ble Supreme Court as well as the Hon'ble High Courts has held that claimants have proved the fact of motor accidental death of Ramsant and rightly awarded the amount of compensation. He also submits that the application of multiplier of 15 is in accordance with the judgment passed the Hon'ble Supreme Court which does not call for any interference.

7. We have heard learned counsel for the respective parties and also gone through record.
8. Respondents-claimants have placed on record the copy of F.I.R. as Ext. P-2; merge intimation as Ext. P-3 and copy of Final Report as Ext. P-1. Copy of merge intimation available on record was based on the information of the State Government through Constable of Kotwali Police Station Ambikapur in which the date of accident is shown as 19-05-2010 and the intimation was given only on 07-06-2010. Based on the merge intimation, F.I.R. was registered on 14-06-2010 and the reason for the delay which is assigned in the F.I.R. is "due to merge enquiry". The police after completion of the investigation submitted its final report making Appellant 2 as accused. Copy of post mortem report was filed as Ext. P-9 and the Doctor who conducted post mortem report opined the cause of death as *septicemia*, shock and abdominal hemorrhage on account of injury caused by hard and blunt object. Mode of death mentioned as shock. Post mortem was conducted on 19-05-2010 at 01:30 p.m. In Ext. P-5 which is the information given to the Station House Officer (SHO), Police Station Ambikapur on 19-05-2010, showing the name of patient as Ramsant by Doctor of District Hospital, Ambikapur. Respondents-claimants have examined one Kamlesh as AW-1 who is Respondent 3, Bhuneshwar as AW-2, Rajpal as AW-3 to prove the

claim filed under Section 166 of the Motor Vehicles Act, 1988. The appellants/ non-applicants have examined Appellant 1 as NAW-1, Dharamjeet as NAW-2, Sajnath as NAW-3 and one Shyam Bihari Patel as NAW-4.

9. To appreciate the submissions made by the learned counsel for the appellants, we have gone through the aforementioned documents available on record. So far as the submission made by the learned counsel for the appellants that the case of Respondents-claimants seems to be suspicious on account of lodging F.I.R. belatedly is concerned. In the case at hand, the deceased after suffering alleged accidental injuries was taken to the hospital and during the course of treatment, he succumbed to injuries after about two days from the date of accident. Doctor forwarded the memo to the concerned Police Station, on the basis of which, dead body of late Ramsant was sent for post mortem which shows that it is not a case where after accident, deceased was taking rest or treatment at home but he was immediately taken to District Hospital, the death was reported to concerned Police Station by the Doctor and thereafter, the post mortem was conducted on the same date i.e. 19-05-2010. The SHO was intimated immediately and F.I.R was lodged after lapse of more than 20 days. Delay in lodging F.I.R. itself will not be a ground to dislodge the claimants from getting just and proper amount of compensation, if other facts are proved by the claimants.
10. The Respondents-claimants to prove their claim application have examined Kamlesh as AW-1 who is son of deceased Ramsant (Respondent 3). In his evidence, he admitted that on the ill-fated day, he was not present on spot but he was informed by one Rajpal when he was attending a marriage ceremony. After getting information, he went to spot of accident along with the informant Rajpal. Rajpal has been examined as AW-3 and in his evidence, he stated that when he was returning to his home, he saw one

Tractor coming from Govindpur driven rashly and negligently by its driver and dashed Ramsant. He also stated that after causing the accident, driver of the offending Tractor fled away. They brought Ramsant to his house, looking to the nature of injuries suffered by Ramsant, he was taken to Hospital at Pratappur and thereafter to District Hospital, Ambikapur. During the course of treatment, he succumbed to injuries suffered by him. In his examination in chief, in paragraph 5, he stated that, when they enquired about the Tractor, they came to know that it was the Tractor of Appellant 1, driven by Appellant 2. In cross examination, he submits that Ramsant was his elder brother. He admits in his cross examination that while coming from Govindpur, he reached on the spot after five minutes of the accident but he did not find vehicle on the spot and stated that it fled away. Other witness was examined as AW-2 Bhuneshwar, in his examination in chief stated that on 16-05-2010 at about 10:30 p.m., he was standing on a shop (mill) of village Dandhkarva, at that time, Kamlesh came there and informed that Ramsant met with an accident with a Tractor. He further stated that he saw one blue colored Tractor of village Govindpur at about 10:30 p.m. which was driven by its driver rashly and negligently and went towards 11 Number, when they reached near the house of Appellant 1-Akbari Prasad Patel at Govindpur, they saw the offending Tractor standing near the house of Appellant 1 and further stated that Ramsant died due to accidental injuries suffered by him on his stomach. He further stated that Kamlesh is his real brother-in-law and thereafter clarified that it is Sailesh who is brother-in-law because his sister was married with Sailesh and Kamlesh is brother of Sailesh. There is further statement that on the date of accident, he was near a kirana shop (grocery shop) at that time, Kamlesh came there and informed that his father Ramsant suffered accident caused by offending Tractor and fled away from the spot. Further reading of the evidence of this witness, it mentions that he along with Respondent 3-Kamlesh went in

search of offending Tractor towards 11 Number but they could not succeed to trace the offending Tractor and returned back to their house. He further admitted that after coming back to house, they engaged themselves in getting treatment of Ramsant and he was taken to Pratappur Hospital with the help of motor vehicle of his neighbor. He further stated that the Hospital at Pratappur referred the case to Ambikapur Hospital. In the evidence, he stated that the offending vehicle was standing near the house of Appellant 1- Akbari Patel from where they saw the number of vehicle and thereafter this information was subsequently given to Police Station. This witness clarifies that he has not seen the accident.

11. The appellants in support of their defence have examined Appellant 1 as NAW-1 in which he has stated that his vehicle was implicated in a false case and further stated that he has met with the police authorities and made application but he was informed that the case is pending before the Court and nothing can be done. It is admitted by him that Appellant 2 was driving his vehicle and there is no document to show that they have made any complaint to the higher police authorities. He stated in his evidence that deceased Ramsant was suffering from some medical ailment and was also operated but there is no documentary medical evidence placed on record by him. Dharamjeet was examined as NAW-2 who was shown to be ex-sarpanch of village Dandhkarva and in his statement, he stated that deceased was suffering from some medical ailment of his stomach and in cross examination also he narrated similar fact. In his statement he stated that the stitches on the stomach of deceased became infected and there was puss formation in intestine. One Sanjnath was examined as NAW-3 who also stated about suffering of the deceased with some medical ailment in intestine.

12. There is no direct evidence of the accident and there is no eye witness to

the accident as well. Rajpal who was examined as eye witness was brother of the deceased. Learned Claims Tribunal taking note of the judgment passed by the Hon'ble Supreme Court in the case of **Kusumlata v. Satbir and another** reported in **(2011) 3 SCC 646** and evaluating the evidence of witnesses has arrived at a finding that the accident was on account of rash and negligent driving of the vehicle by Appellant 2/ Non-applicant 2. Tribunal has considered the fact that defence taken by owner in reply could have been proved by examining Appellant 2/ Non-applicant 2 driver of the offending vehicle, but the driver of the offending vehicle, though represented, has not been brought in the witness box. Learned Claims Tribunal found the cause of accident to be proved on the basis of evidence of AW-1/Kamlesh, AW-2/ Bhuneshwar and AW-3/ Rajpal.

13. From the defence of the appellants, it is apparent that they have taken a specific plea that no accident was caused from their vehicle, at the time of accident, the offending vehicle was not being in use and was parked in garage. Learned Claims Tribunal while recording the finding with regard to the issue No. 1 and 2 has taken note of the evidence of claimants' witnesses. Upon perusal of the material available on record, particularly, the evidence of claimants' witnesses, AW-1 Kamlesh who is son of deceased has stated that the accident was seen by Rajpal and it was he who stated the accident with tractor. AW-1 Kamlesh, in cross examination, admits that he was not present on the spot of accident but he was attending a marriage ceremony and he was informed by AW-3 Rajpal. He was not near the place of accident. He went on spot with Rajpal and from there, he went to search vehicle towards 11 Number alone and on the way, he met Bhuneshwar and then both of them went towards 11 Number. They returned back after staying about one-hour and brought injured Ramsant back to their house. Till that time the vehicle was not known. He also admits in cross examination, at last that, he has not seen the vehicle of Akbari

Prasad on spot and further clarified that Rajpal has seen it. Rajpal is AW-3, in his evidence, stated that he reached the spot after 5 minutes after accident. This witness in his examination-in-chief has stated that, one Tractor coming from Govindpur, driven rash and negligently, dashed Ramsant. He further stated that in paragraph 3 of examination in chief that when he was going to his house Dandhkarva from Govindpur, he saw the Tractor hitting the deceased and thereafter, the driver of the Tractor along with his vehicle fled away from the spot. In paragraph 5 of the statement, he stated that during the course of enquiry done by them, they came to know that it was the Tractor was of Akbari Prasad Patel, residence of Govindpur. He did not state as to how he or they came to know about the involvement of vehicle of appellant. Other witness examined by the claimants is Bhuneshwar AW-2, who in his examination-in-chief mentioned that he saw one blue color tractor of village Govindpur at about 10 O'clock in the night and when they reached Govindpur in search of Tractor, they found the offending Tractor and Trolley was standing near the house of Akbari Prasad Patel. In cross examination of this witness, he admits that he is close relative of Kamlesh and on the date of accident, he was near Kirana shop of village Dandhkarva. At that time, Kamlesh came there and intimated him that his father met with an accident, one Tractor after causing accident fled away speedily and thereafter, he and Kamlesh went for in search of that Tractor till 11 Number, but they could not find the offending Tractor and returned back to their home. In his cross examination, this witness has not stated that along with Kamlesh in the search of offending Tractor, they went up to the house of Appellant 1 Akbari Prasad Patel, but he has stated that they went to 11 Number and did not find offending Tractor, returned back to their home along with injured Ramsant. In the evidence, he has stated that after the death and till last rites ceremony, they were tracing the offending tractor and they saw it in the house of Appellant 1-Akbari Prasad. He further

admits that they have intimated, subsequently, the name of owner and driver as also the number of offending vehicle to the police.

14. True it is that claims, under the Motor Vehicles Act, are to be decided on the touchstone of preponderance of probability, but when there is a dispute regarding involvement of a vehicle, then the minute examination of the evidence of witnesses are required to be done, more so when, all the witnesses are relatives and were not on spot of accident.
15. In the case at hand, the time of accident, as narrated was about 10:00 p.m., place of accident is near the bridge of Revati river (rural area). Rajpal AW-3 has been shown to be an eye-witness of the accident who is brother of the deceased. Rajpal was examined as AW-3. In his examination-in-chief under Order 18 Rule 4 CPC, he stated that the deceased went to grocery shop in village for purchasing some articles at 10:00 p.m. and while returning on his bicycle, when he reached near bridge of Revati river, one tractor coming from Govindpur driven by its driver rashly and negligently dashed Ramsant. In paragraph 3 of the affidavit, he stated that he was returning from village Govindpur to his house at Dandkarva, one tractor after knocking down the deceased ran away which he saw. This witness took the deceased Ramsant to his house. This witness has not mentioned any identification of tractor. During the course of enquiry witness revealed that the offending tractor was of village Govindpur owned by Akbari Prasad Patel, but not mentioned as to how he came to know and from when. In cross examination, he admits that deceased Ramsant was his elder brother among four brothers. He admits that they took Ramsant when he was lying over the bridge. He also admits that he reached at bridge after five minutes of accident. He stated that he was coming from Govindpur and further admitted that when he reached at spot, offending vehicle was not there. This witness immediately after accident went to inform Kamlesh son of

deceased who was in another locality attending marriage. When he reached to Kamlesh and intimated about the accident, both of them came to the spot of accident and thereafter immediately took Ramsant to home and the bicycle of Ramsant was brought by somebody else. They provided him treatment and thereafter took him to Pratappur. Relevant portion of the evidence is extracted below.

“9. यह कहना सही है कि घटना स्थल से मैं तत्काल कमलेश का बुलाने घर गया लेकिन वह घर पर नहीं था बल्कि दूसरे मुहल्ले में जहा शादी हो रहा था वहा बुलाने गया था । यह कहना सही है कि मैं कमलेश को बुलाकर घटना स्थल लाया और तुरंत रामसंत को लेकर घर चले गए। दूसरे दिन सुबह घर का कोई आदमी रामसंत का साइकल उठाकर ले गया था जिसका नाम मैं नहीं बता सकता हू। यह कहना सही है कि हमलोग घर लेजाकर मृतक रामसंत का इलाज करवाए इसके बाद प्रतापपुर ले आये। यह कहना सही है कि हमलोग प्रतापपुर लाने के बाद थाना में रिपोर्ट नहीं लिखाये। यह भी सही है कि रस्ते में थाना चन्दोरा पड़ता है वहा भी रिपोर्ट नहीं लिखवाया। हमलोग गांव के ही कमलेश साहू नाम के व्यक्ति के गाडी को किराया में लेकर प्रतापपुर लाये थे मैं कमलेश साहू के गाडी का नंबर नहीं बता सकता। हमलोग प्रतापपुर से 7 बजे सुबह ले कर अंबिकापुर गए थे। यह सही है कि हम दोनों भाई अलग अलग रहते है। यह सही है कि मैं डाडकरवा नहीं रहता हूँ बल्कि परसा पारा में रहता हू।”

16. In paragraph 10 of the cross examination, this witness has further stated that after the last ceremony, they came to know that the tractor was of Akbari Prasad Patel. He further stated that they went to the house garage of Akbari Prasad Patel and noted the number of the vehicle. Kamlesh was examined as AW-1 who is son of the deceased Ramsant. In his cross examination, he has stated that he came to know when Rajpal intimated him about the accident. He came to the spot of accident along with Rajpal after coming on to spot of accident, he went to 11 Number alone where at village Dandkarva he met Bhuneshwar and proceeded to 11 Number with Bhuneshwar and they were there for about one hour. He also stated that after returning from 11 number after one hour, they took his father to his

house. He admits that his father did not inform about the number of the tractor as he was unconscious. He also admits that Bhuneshwar was his real brother-in-law and Rajpal is his uncle. They brought his father from the place of accident to their house and from there to hospital at Pratappur, but not informed any of the villagers about the accident. Kamlesh in his evidence stated that he was at number 11 for about one hour. Relevant portion of evidence is extracted below.

“9. ... यह कहना सही है कि राजपाल के बताने पर मुझे घटना की जानकारी हुई। मैं यह सुनकर अकेले आया, साक्षी फिर कहता है कि मैं राजपाल के साथ घटना स्थल पर आया जहाँ पर मेरे पिता नदी के पास गिरे पड़े थे, तब मैं अकेले 11 नंबर तरफ जा रहा था तो रस्ते में डाडकरवा ग्राम में भुनेश्वर मिला तब हम दोनों मिलकर 11 नंबर की तरफ गए। हम लोग वहाँ 11 नंबर की तरफ करीब 1 घंटा तक थे।”

17. Bhuneshwar was examined as AW-2. In his affidavit under Order 18 Rule 4 CPC that on 16-05-2011 about 10:30 at night, he was standing near the floor mill of village Dandkarva where Kamlesh son of deceased came on his cycle and informed that his father met with an accident with tractor. He stated that at 10:30 p.m., he saw one Blue color tractor of village Govindpur driven at high speed negligently by its driver and went towards 11 Number. When this witness along with Kamlesh went for search of tractor to the village Govindpur, they found the tractor standing near the house of Akbari Prasad Patel. He in his cross examination stated that he was standing near shop where the Kamlesh came there and informed that one tractor hitting his father ran away with a very high speed. On his information, both of them went to 11 Number in search of tractor but they could not found any tractor, they returned back and took the injured person to his house and provided treatment and, thereafter, took the injured to Pratappur hospital. They have concluded the last rites ceremony after ten days of death. Tractor trolley was standing in the house of Akbari Prasad Patel.

18. Non-applicant 1/ owner of the offending vehicle who has examined himself as NAW-1. He submitted his affidavit under Order 18 Rule 4 of CPC stating therein that his tractor was parked in his house garage, his vehicle was falsely implicated in the offence. He also stated that for false implication of his tractor by the SHO (Police), he made complaint to higher authorities but it was informed that the case is pending before the Court. The registration number of the vehicle was taken by the police officials from house. This witness denied the suggestion made by the learned counsel for the appellant that he has not submitted an application to higher police authorities.
19. Dharamjeet was examined as NAW-2 for the owner of the offending vehicle. Rajnath was examined as NAW-3 and Shyam Bihari as NAW-4. These witnesses have stated that Akbari Prasad Patel uses his vehicle only for his own agricultural work and he does not use his vehicle for commercial purpose.
20. From the aforementioned facts of the case, it is apparent that the witnesses are close relatives of the deceased i.e. AW-1 his son, AW-2 his brother-in-law, AW-3 his brother and uncle of claimant no. 3.
21. As per the evidence of AW-3, Rajpal, he reached near the spot after about 5 minutes of accident, his evidence that he was coming from Govindpur and going towards Dandkarva to his house and he saw one tractor crossing with a high speed driven by its driver rashly and negligently. In his evidence, he has stated that when he came along with Kamlesh on the spot of accident immediately they took the injured to his house, but the evidence of Kamlesh shows that leaving his injured father on the spot he went in search of the tractor to 11 Number and he along with Bhuneshwar searched for the offending vehicle for about one hour.

22. These evidence of three witnesses examined on behalf of the appellant who are close relatives to each other, not mentioned about identification of vehicle and the source from where they came to know of involvement of appellant's tractor, do not appear to be trustworthy. The alleged vehicle was not identified except the color at the time of accident that too stated as Blue. The color of tractor of Non-applicant 1 seized by the Police as mentioned in seizure memo is 'Green' (Ext. P-12). Even if the evidence of Bhuneshwar is accepted, they have not stated that there was only one vehicle in the nearby village and the road is used for passing of the vehicles or persons of that village only. They have collected the number of the offending vehicle after many days i.e. completion of the last rite ceremony from the house of appellant where appellant's tractor was standing and on that basis the offences were registered.
23. In the case at hand, witness Bhuneshwar has stated that he has seen blue color tractor driving very rashly and negligently with high speed, but the vehicle of the appellant as appears from the seizure memo was of green color. As we have discussed above, they have not stated that there is only one tractor in the nearby area and the road from which it was running goes only to that village and it ends there. In view of the evidence brought on record by the claimants, it cannot be said that it is the tractor owned by the appellant was involved in the accident is proved by the claimants. Facts of the case relied upon by the Tribunal **Kusumlata (supra)** is on different facts. In that case, the vehicle was identified by witness followed the vehicle and caught the driver of offending vehicle.
24. No doubt that the claimants are entitled for a just amount of compensation under the provisions of the Motor Vehicles Act which is a beneficial piece of legislation, but at the same time, it is also to be kept in mind that if the involvement of the vehicle itself is not proved, the claimants may not be held

entitle for any amount of compensation because proof of accidental injuries suffered from any particular vehicle is essential for mulcting compensation upon the owner of vehicle. Facts of each case requires examination and when the involvement of vehicle is in dispute, minute scrutiny of evidence is to be done to arrive at a conclusion that there was involvement of vehicle and if there is the slightest evidence connecting involvement of vehicle then the compensation is to be awarded.

25. In the facts and circumstances of the case and after considering the evidence placed on record, I am of the view that the involvement of the vehicle in question is not proved and the award passed by the learned Claims Tribunal is not sustainable. The impugned award is liable to be and is hereby set aside.

26. Consequently, the present appeal is allowed.

Sd/-

(Parth Prateem Sahu)
Judge