

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 655 of 2013****Reserved on 13.03.2020**  
**Pronounced on 22.05.2020**

1. Smt. Sanni, W/o Late Podiya, Aged About 35 Years, R/o Aadval, Post-Kumharsadara, Panchayat- Chhotekilepal, Block- Bastanar, P.S. Kodenar, Distt. Bastar C.G.,
2. Mosu, S/o Late Podiya, Aged About, 18 Years, R/o Aadval, Post-Kumharsadara, Panchayat- Chhotekilepal, Block- Bastanar, P.S. Kodenar, Distt. Bastar C.G.,
3. Shankar, S/o Late Podiya, Aged About 17 Years, Minor, Thru- Mother Smt. Sanni, R/o Aadval, Post- Kumharsadara, Panchayat- Chhotekilepal, Block- Bastanar, P.S. Kodenar, Distt. Bastar C.G., District :
4. Rambati, D/o Late Podiya, Aged About 14 Years, Minor, Thru- Mother Smt. Sanni, R/o Aadval, Post- Kumharsadara, Panchayat- Chhotekilepal, Block- Bastanar, P.S. Kodenar, Distt. Bastar C.G.,
5. Sukhmati, D/o Late Podiya, Aged About 9 Years, Minor, Thru- Mother Smt. Sanni, R/o Aadval, Post- Kumharsadara, Panchayat- Chhotekilepal, Block- Bastanar, P.S. Kodenar, Distt. Bastar C.G.,
6. Sukharam, S/o Late Podiya, Aged About 6 Years, Minor, Thru- Mother Smt. Sanni, R/o Aadval, Post- Kumharsadara, Panchayat- Chhotekilepal, Block- Bastanar, P.S. Kodenar, Distt. Bastar C.G.,

**---- Appellants (Applicants)****Versus**

1. Driver, Arun Kumar, S/o Awadh Ram, Aged About 24 Years R/o Jamrua, Tah. Balod, Distt. Durg New Distt. Balod C.G.,
2. Owner of the vehicle - Smt. Malati W/o K.K. Tiwari Transporter, Sing Road No. 4, Village And Post- Kirandul, Distt. Dantewada South Bastar C.G.,
3. Shri Ram General Insurance Company, Head Off. Industrial Narsita Park, Jaipur Rajasthan, Thru- Branch Manager, Near Sheverlet Agency, Geedam Road, Jagdalpur, Distt. Bastar C.G.,

**---- Respondents**


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|---------------------|---|--------------------------------|
| For Appellants      | : | Shri Uttam Pandey, Advocate.   |
| For Respondent No.1 | : | Shri Azad Siddiqui, Advocate.  |
| For Respondent No.2 | : | None, though served.           |
| For Respondent No.3 | : | Shri Pankaj Agrawal, Advocate. |

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**Hon'ble Shri Justice Sanjay S. Agrawal**

**C.A.V.Order / Award**

1. This Miscellaneous Appeal has been preferred by Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 01.02.2013 passed by the Motor Accident Claims Tribunal, Bastar, place at Jagdalpur (C.G.) (hereinafter referred to as the Tribunal) in Claim Case No. 54/2011 whereby the learned Tribunal has dismissed the claim. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.
  
2. Briefly stated the facts of the case are that on 12.05.2010 at about 8.00 pm, deceased Podiya was returning to his village Aadwal along with his friends Dhundhi, Shankar and Budhram after attending last rituals of his relative at Mawlibhatha. At the relevant time, he was hit vehemently by the offending vehicle "Truck" bearing its Registration No. C.G.-04-CR/3218, owned by Non-applicant No.2 – Smt. Malti Tiwari and was insured with Non-Applicant No.3 – Shri Ram General Insurance Company Limited. According to the claim petition, the vehicle in question was being driven rashly and negligently by its driver Arun Kumar, owing to which, it dashed the deceased when he was crossing the road. As a result of which, he sustained multiple injuries on different parts of his body, like legs, right shoulder and face etc. and was admitted immediately into the Hospital and expired subsequently at home on 02.06.2010. A report (*Dehati Nalishi*) (Ex.A-1) was lodged against the driver of the offending vehicle on 25.05.2010. Based upon which, an offence punishable under Sections 279 and 337 IPC has been registered against the driver of the offending vehicle in connection with Crime

No.57/2010 and after investigating the matter, the concerned Investigating Officer has submitted his final report on 31.07.2010 before the Judicial Magistrate First Class, Jagdalpur, where it was registered as Criminal Case No. 251/2010, "State vs. Arun Kumar".

3. On account of the aforesaid accident, a claim enumerated under Section 166 of the Act of 1988 has been made by the claimants, who are the legal representatives of the deceased Podiya, claiming total amount of compensation to the tune of Rs.11,70,000/- under various heads by submitting, inter alia, that the deceased, a 38 years old, was an agriculturist and used to earn Rs.4,500/- per month.
4. The aforesaid claim has been contested by Non-Applicant No.3, the insurance company alone while denying the factum of the alleged accident alleged to have been taken place on 12.05.2010. Alternatively, it was pleaded that since the alleged offending vehicle was being driven in violation of the insurance policy as its driver was not possessing the valid and effective driving license, therefore, no liability could be fastened upon it.
5. In support, the claimants have examined as many as two witnesses, while none was examined by the insurer.
6. After considering the evidence led by the claimants, it has been held by the Tribunal, while taking note of the evidence recorded in the said criminal case where the driver of the offending vehicle was found to be innocent and acquitted, that the deceased Podiya has not died on account of the alleged accident. It observed further that the claimants have failed to prove that the alleged accident occurred due to rash and negligent driving by the driver of the offending vehicle. As a

consequence, the learned Tribunal has dismissed the claim.

7. Being aggrieved, the claimants have preferred this appeal. Shri Uttam Pandey, learned counsel appearing for the appellants, submitted that the award impugned as passed by the Tribunal dismissing the claim is apparently contrary to law. According to him, the factum of alleged accident was duly established by the claimants while examining the eye-witnesses, who have stated that the alleged accident occurred due to rash and negligent driving of the driver of the alleged offending vehicle, yet the Tribunal, while disbelieving their statements, has committed a serious illegality in dismissing the claim mainly on the ground that an offence punishable under Section 304-A IPC has neither been registered nor the accused was found guilty in connection with the said crime. It is contended further that merely on acquittal of the driver of the offending vehicle would not by itself be sufficient to hold that he was not responsible for the cause of the alleged accident. In support, he placed his reliance upon the decisions rendered in the matter of *Dulcinea Fernades and others vs. Joaquim Xavier Cruz and another* and *Bimla Devi and others vs. Himachal Road Transport Corporation and others* reported respectively in (2013) 10 SCC 646 and (2009) 13 SCC 530.
8. On the other hand, Shri Azad Siddiqui and Shri Pankaj Agrawal, learned counsel appearing respectively for respondents No.1 & 3 have supported the award impugned.
9. I have heard learned counsel for the parties and perused the entire record carefully.

10. A claim has been made on account of the accident occurred on 12.05.2010. According to the claimants, deceased Podiya was hit by the offending vehicle owing to rash and negligent driving of the driver of the offending vehicle when he was returning along with others to his village Aadwal. In order to establish the said fact, the claimants have examined two of their witnesses, one was the widow of the deceased while the other was of his friend Budhram, who lodged the report and, both were the eye-witnesses to the said incident.
11. Muchaki Sanni (A.W.1) was the widow of the deceased and was present with her deceased husband at the relevant time. According to her, they were returning to their village from Mawlibhatha after attending the last ritual ceremony of their relative and when her husband (deceased Podiya) was trying to stop the vehicles and was asking for lift for returning home, at that time, he was hit vehemently by the alleged offending vehicle and the driver of it, after causing the accident, fled away from the spot. She deposed further that her husband was brought to the Maharani Hospital at Jagdalpur where he was undergone treatment for 15 days but was not cured. He was, therefore, brought home where he expired two days thereafter. She was stuck in her cross-examination and in fact no question was put to her regarding the factum of the alleged incident that her husband was not dashed as such by the offending vehicle owing to the rash and negligent driving of its driver.
12. Budhram (A.W.2) was the another eye-witness of the alleged accident, who had lodged the reports (Ex.A-1 and Ex.A-2) and based upon which, the alleged offence punishable under Sections 279 and 337 IPC was registered against the driver of the offending vehicle in connection with Crime No. 57/2010. According to him, the driver of the alleged offending

vehicle came in a very high speed and after hitting the deceased Podiya when he was crossing the road, ran away immediately from the spot. It was stated further that owing to the alleged accident, he (Podiya) was injured badly and was admitted into the Maharani Hospital at Jagdalpur and his condition was so critical that he could not recover in Hospital and was brought home where he expired. It was deposed further by him that they cremated the body of deceased Podiya after informing the concerned Police Station.

13. The statements of both the aforesaid witnesses could not have been rebutted in their cross-examinations nor any evidence was led by the insurer in order to rebut the same. That apart, a perusal of *Dehati Nalishi* (Ex.A.1) lodged by said Budhram on 25.5.2010 reveals the fact that deceased was hit vehemently due to rash and negligent driving by the driver of the alleged offending vehicle having its registration No. C.G.-04-CR/3218, which was coming from Dantewada and owing to which, he (Podiya) was injured badly and was admitted into the Hospital. The said fact is fortified by his M.L.C. report (Ex.A.3) as well as that of the report (Ex.A.4) submitted by Radiologist. It reveals further that the alleged offending vehicle and its relevant papers like "permit", "fitness certificate", "insurance policy" and the "driving license" of the driver were seized from its driver Arun Kumar vide seizure Memo (Ex.A.5).
14. It is true that during trial no charge was framed against the driver of the offending vehicle, namely, Arun Kumar under Section 304-A IPC and was acquitted subsequently by the concerned Magistrate vide judgment dated 29.10.2012 in Criminal Case No.251/2010. However, that alone would not be sufficient to hold that he was not responsible for the cause of alleged accident as the reports (Ex.A.1) and (Ex.A.2) were lodged by said

Budhram revealing the fact that deceased met with an accident by the said offending vehicle when he was crossing the road and sustained serious injuries. It appears further from perusal of the statements of the witnesses recorded in the said Criminal Case that he (deceased Podiya) expired, yet no charge as such under Section 304-A IPC was framed during the said trial. It was, however, the duty of the concerned Court to frame the charge under Section 304-A IPC when it came on record that he expired and non-framing of it, would not deprive the rights of the claimants. Though the driver of the alleged offending vehicle was acquitted but from perusal of the aforesaid oral and documentary evidence, it is evident that the driver was negligent in driving the alleged offending vehicle. At this juncture, the principles laid down by the Supreme Court in the matter of **Dulcina Fernandes and Others vs. Joaquim Xavier Cruz and Another** (supra) dealing with the similar situation are to be noted. In the said matter, the evidence of Claimants' eyewitnesses was discarded by the Tribunal and the Respondent in that case was acquitted in the criminal case. Based upon this factual scenario, it was opined therein at paragraph-12, which is relevant for the purpose, is reproduced herein as under:-

“12. “xxxxxxx. Though it is submitted at the Bar that the first respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, prima facie, materials showing negligence were found to put him on trial.”

15. Yet, in the matter of **Bimla Devi and Others vs. Himachal Road Transport Corporation and Others** (supra), it has been observed by the Supreme Court while dealing with the Claim Petition in terms of Section 166 of the Act of 1988 that the Tribunal *stricto sensu* is not bound by the pleadings of the parties and its function is to determine the amount

of fair compensation. In paragraphs 11 and 13 to 15, it has been observed as under:-

“11.“While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition.”

13.“The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate Respondents 2 and 3. The claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.”

14.“Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.”

15.“In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

16. In view of the principles laid down in the aforesaid case laws, it is evident that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Claims Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt.
17. Reverting back to the case in hand while keeping the aforesaid principles in mind, it is evident from the aforesaid documentary evidence coupled with unrebutted statements of the claimants and in absence of any evidence led by the non-applicants that a prima facie case establishes towards his complicity in driving the vehicle in question negligently and his acquittal in the said criminal case would not be of any effect on the assessment of the liability, as required in respect of the motor accident cases.
18. It, therefore, appears as visualized from the facts and circumstances of the case that the vehicle in question was not only involved in the alleged accident, but Non-applicant No.1 – Arun Kumar, was found to be driving the same in a rash and negligent manner. The initial burden was thus discharged by the claimants in order to establish the alleged factum of accident as well as the rash and negligent driving by the said driver. However, in order to disprove the said fact, the non-applicants have failed to produce any of their witnesses. Accordingly, it is held that the alleged accident occurred on 12.05.2010 due to rash and negligent driving of the offending vehicle by its driver, namely, Arun Kumar, resulting into the sad demise of Podiya and the finding of the Tribunal, therefore, deserves to be and is hereby set aside.
19. Since the accident was of 2010 and the evidence has already been recorded, therefore, I deem it appropriate to consider the amount of

compensation payable to the claimants and would consider further as to whether the vehicle in question was being used in violation of the terms and conditions of the insurance policy, as alleged alternatively by the insurer in its defence.

20. It appears from the averments made in the claim petition and the evidence led by the claimants that deceased Podiya was an agriculturist and was 40 years old at the relevant point of time. However, in absence of any definite and cogent proof of his income, it cannot be held to be Rs.4,500/- per month, as alleged by the claimants. It would thus be appropriate to consider his income as provided under the Minimum Wages Act, 1948. As the alleged accident occurred on 12.05.2010, therefore, it would be appropriate to consider his monthly income to the tune of Rs.3,488/- rounded off Rs.3,500/-, yearly Rs.42,000/-, prevailing at the relevant point of time as per the Notification issued by the Prescribed Authority under the Minimum Wages Act., 1948. Since the deceased was found to be 40 years old, as evidenced from the M.L.C. report (Ex.A.3), therefore, while determining his actual income as aforesaid, an addition of 25% of it, i.e., Rs.10,500/- towards future prospects of his income is to be made in the light of the principles laid down by the Supreme Court in the matter of ***National Insurance Company Limited -v- Pranay Sethi*** reported in (2017) 16 SCC 680. It would thus come to Rs.52,500/- (Rs.42,000/- + Rs.10,500/-) and that looking to the number of dependents, who are 6, deduction of 1/4th of it, i.e., Rs13,125/- towards his personal and living expenses would be appropriate and the yearly dependency would thus come to Rs.39,375/- (Rs.52,500/- - Rs.13,125/-). By applying multiplier of 15, looking to the age of deceased, the total dependency would thus arrive at Rs.5,90,625/- (Rs.39,375/- x 15). In addition to this, the claimants would be entitled to

a sum of Rs.70,000/- towards conventional heads as under:

| Head of Compensation |                                | Amount          |
|----------------------|--------------------------------|-----------------|
| (i)                  | Loss of consortium to the wife | : Rs. 40,000.00 |
| (ii)                 | Funeral expenses               | : Rs. 15,000.00 |
| (iii)                | Loss of Estate                 | : Rs. 15,000.00 |
|                      |                                | =====           |
| Total                |                                | : Rs.70,000.00  |
|                      |                                | -----           |

21. The claimants would thus be entitled to a total sum of Rs.6,60,625/- (Rs.5,90,625/- + Rs.70,000/-) with interest @ 6% per annum from the date of filing of claim petition till its realisation.

22. As far as the defence taken by the insurer that vehicle in question was being driven by the driver, who was not possessing the valid and effective driving licence and the insurance company is, therefore, not liable to indemnify the insured is, however, noted to be rejected as the driving licence No.A/34144/Durg, of the driver Arun Kumar was seized from him vide seizure memo (Ex.A.5), however, no effort was made by the insurer to get it verified from the concerned Regional Transport Authority nor any evidence was adduced in this regard. In such circumstances, the insurer cannot be held to be exonerated from its liability. It is accordingly held that the vehicle in question was not being used in violation of the insurance policy and the insurer of the same is accordingly held liable to indemnify the insured.

23. In view of the foregoing discussions, the appeal is allowed in part and non-applicants are held liable jointly and severally to satisfy the aforesaid amount of compensation and it is directed that Non-Applicant No.3 – Shri Ram General Insurance Company Limited shall pay the aforesaid amount of compensation, i.e., Rs.6,60,625/- to the claimants with interest @ 6% per annum from the date of filing of claim petition till its realisation.

Out of the said awarded sum along with its interest, a sum of Rs.4,00,000/- (Rupees four lakhs only) shall be deposited in the name of deceased's wife, namely, (Muchaki) Sanni, claimant No.1, in any of the Nationalised Bank for a period of 3 years, which shall be disbursed to her after its maturity and, rest of the sum shall be given to the claimants No.2 to 6 in equal shares, through cheque, as per the direction of the Executing Court.

24. No order as to costs.

Sd/-  
(Sanjay S. Agrawal)  
Judge