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HIGH COURT OF CHHATTISGARH BILASPUR
M. A. (C) No. 347 of 2014

1. Chaman Lal Sahu S/o Shriram Sahu, aged about 30 years, R/o village Kuagodi, Police Station Daundi, District Balod (C.G.)
2. Shriram Sahu S/o Maksudan Sahu, R/o village Kuagodi, Police Station Daundi, District Balod (C.G.).

---- Appellants

Versus

1. Chandarram @ Chandar Singh S/o Dharam Singh, aged about 47 years,
2. Smt. Shanti Bai W/o Chandarram, aged about 45 years, Both resident of village Markatola, Police Station & Tahsil Daundi, District Balod (C.G.).
3. IFFCO Tokiyo General Insurance Company Limited, Through Manager, Main Office, Lal Ganga Shopping Complex-III Flat Shop No.345-347, G.E. Road, Raipur, near Ravi Bhavan, District Raipur (C.G.)

---- Respondents

For Appellants : Shri Shikhar Bakhtiyar, Advocate
For Respondent No.1 & 2 : None
For Respondent No.3 : Shri P. Acharya, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

27.08.2020

1. Appellants/driver and owner of Tractor bearing registration No.CG-07/NA/3679 and Trolley bearing registration No.CG-07/NA/3680 have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 29.01.2014 passed by the Second Additional Motor Accident Claims Tribunal Balod,

District Balod, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.02 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.1,90,000/- as compensation in a death case and fastened the liability upon the appellants/driver and owner of the offending vehicle to satisfy the amount of compensation.

2. Brief facts relevant for disposal of this appeal, are that, on 30.10.2012, Pawan Kumar was engaged as Labourer with appellant No.2 and went on Tractor bearing registration No.CG-07/NA/3679 and Trolley bearing registration No.CG-07/NA/3680 (hereinafter referred to as 'offending vehicle'). At that relevant time, non-applicant No.1 drove the offending vehicle rashly and negligently by reversing it and dashed Pawan Kumar who was standing nearby in agricultural field. In the aforementioned accident, Pawan Kumar suffered grievous injuries on his head leading to his death. The accident was reported to concerned Police Station, based upon which, Crime No.78 of 2012 was registered against non-applicant No.1 for offence punishable under Section 304-A of IPC.

3. Appellants/claimants, who are parents of deceased Pawan Kumar filed claim application under Section 166 of the M.V. Act seeking compensation of Rs.13,81,000/- mentioning

therein that on the date of accident, deceased was aged about 21 years and doing the work of Labour and thereby earning Rs.4,500/- per month.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and denied the pleadings made in the claim application. They have admitted that they are driver and owner of the offending vehicle, but denied that deceased was engaged by non-applicant No.2 as Labourer. It was further pleaded that amount of compensation claimed is highly exaggerated; on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company and non-applicant No.1/driver of offending vehicle was possessed of valid and effective driving licence to drive the vehicle.

5. Non-applicant No.3/Insurance Company submitted separate reply to claim application pleading therein that on the date of accident, non-applicant No.1/driver of offending vehicle was not negligent in driving the vehicle, but the accident took place on account of negligence on the part of deceased himself. It was further pleaded that deceased was travelling on Trolley, it has not been pleaded as to in what capacity deceased was travelling on Tractor-Trolley; no premium was charged for covering the risk of passenger travelling on Tractor-Trolley, seating capacity of the offending vehicle is

only 1 and that too of driver; there was breach of conditions of insurance policy, hence, the Insurance Company is not liable for payment of any amount of compensation.

6. Learned Claims Tribunal on appreciation of the pleadings, evidence and material placed on record by the respective parties held that Pawan Kumar died on account of motor accidental injuries suffered by him. Deceased fell down from the Trolley due to rash and negligent driving of offending vehicle by non-applicant No.1/driver of offending vehicle; there was breach of conditions of insurance policy and awarded a sum of Rs.1,90,000/- as compensation. While exonerating the Insurance Company from its liability, fastened the liability upon the driver and owner of the offending vehicle to satisfy the amount of compensation.

7. Shri Shikhar Bakhtiyar, learned counsel for the appellants submits that learned Claims Tribunal erred in considering the contents of First Information Report (Ex.P/2) (hereinafter referred to as 'FIR') only and has not considered the oral evidence placed on record of the eyewitness to the accident. He further submits that contents of FIR have not been proved as the complainant/author of the document has not been examined as witness before learned Claims Tribunal. It is contended that as per the pleadings and evidence placed on record by the claimants, there is specific case of the

claimants that deceased was standing on the agricultural field busy in talking with other person. While so, non-applicant No.1 reversed the Tractor negligently and caused accident to the deceased, but this fact and evidence have not been considered by learned Claims Tribunal. He places his reliance in case of **Branch Manager, United India Insurance Co. Ltd. v. Myakala Sulochana and others** reported in **2009 ACJ 1675**, **Nanhu Singh v. Jaheer and Others** reported in **2006 ACJ 803** and on the verdict passed by Madhya Pradesh High Court in **M.A. No.605 of 2018** vide **judgment dated 23.10.2018**, parties being, **Iffco Tokyo General Insurance Company Limited v. Smt. Uma Bai and others** in support of his submission.

8. Per contra, Shri P. Acharya, learned counsel for respondent No.3/Insurance Company submits that FIR which was recorded immediately after the accident by one Hajari Ram within 5 hours of the accident mentioned that deceased Pawan Kumar was standing on Trolley and on account of rash and negligent driving of offending vehicle by non-applicant No.1, Pawan Kumar fell down and suffered grievous injuries. He further submits that once the claimants have filed the copy of FIR to prove the fact of accident, then the whole contents of FIR is to be taken into consideration. In support of this argument, he places reliance on the verdict passed by Hon'ble Supreme Court in case of **Oriental**

Insurance Company Limited v. Premlata Shukla and Others reported in **(2007) 13 SCC 476**. It is contended that Tractor-Trolley is a goods vehicle and no person can travel in a goods vehicle, particularly, in a Tractor-Trolley where there is no seating space for any person except the driver of the Tractor. In support of this argument, he places reliance on the verdict passed by Hon'ble Supreme Court in case of **Oriental Insurance Co. Ltd. v. Brij Mohan and Others** reported in **(2007) 7 SCC 56** and **Shivaraj v. Rajendra and Another** reported in **(2018) 10 SCC 432**. It is further contended that learned Claims Tribunal after taking into consideration entire material and evidence available on record, rightly passed the impugned award, which does not call for any interference.

9. We have heard learned counsel for the respective parties and perused the record carefully.

10. Perusal of the record would show that the date of accident is 30.10.2012 at about 8.00 am, FIR (Ex.P/2) was lodged on same day at 13.40 hours i.e. 1.40 pm. In the FIR, it is mentioned that deceased Pawan Kumar was standing on Trolley and the complainant Hajari Ram was sitting in Tractor engine. It is also mentioned that on account of rash and negligent driving of Tractor-Trolley by non-applicant No.1 while reversing it, deceased fell down and suffered grievous injuries. After completion of investigation, Police filed Final

Report (Ex.P/1) and in the Final Report also, manner of accident as mentioned in the FIR was recorded by the Police. The claim application was filed on 03.01.2013 and in paragraph-7 of claim application, claimants have pleaded that due to rash and negligent driving of Tractor-Trolley by non-applicant No.1 while reversing it, on account of jerk, Pawan Kumar sitting on Trolley fell down, but this pleading was amended by the claimants on 19.02.2013 mentioning that deceased was standing near the agricultural field and he was knocked down by offending vehicle after filing of reply by non-applicants.

11. Perusal of the impugned award would show that learned Claims Tribunal has considered FIR (Ex.P/2) and Final Report (Ex.P/1) wherein it is mentioned that deceased was standing on the Trolley and fell down for arriving at a finding that there was breach of conditions of Insurance Policy. The claimants though pleaded in their claim application that deceased was sitting on Trolley, which was drafted by an Advocate and filed before learned Claims Tribunal was later on amended. The claimants have examined Chanderram alias Chander Singh as AW-1 and Virendra Kumar as AW-2. Virendra Kumar (AW-2) was examined as an eyewitness to the accident, who in his evidence specifically stated that, when Tractor driver was reversing the Tractor, it caused accident to the deceased. Respondent No.3/Insurance

Company has examined Naveen Soni, Legal Officer as NAW-1, who proved the insurance policy of offending vehicle on the date of accident vide Ex. D/1. He is not an eyewitness though he stated that on the basis of document prepared by Investigator of Insurance Company, deceased was sitting on Trolley and fell from it will be suggestive of the fact of accident, but merely placing on record the copy of FIR cannot be taken to have been proved particularly, when the author of FIR has not been examined before learned Claims Tribunal to prove the contents of FIR mentioned therein. The Insurance Company has not made any attempt to prove the case of breach of conditions of insurance policy as pleaded, but learned counsel for respondent No.3/Insurance Company only argued that, there is mention of fact that deceased was sitting on Trolley at the time of accident and he fell down from it.

12. In the case at hand, facts are different from the facts of the case cited by the appellant. In this case, the driver and owner has not pleaded the fact and manner of happening of accident. They did not enter into the witness box. The claimants in the claim application drafted by Advocate and signed by claimants mentions that deceased was sitting on Trolley. This pleading was amended only on the date when reply was filed by the non-applicants.

13. In the case law relied upon by learned counsel for respondent No.3/Insurance Company of **Premlata Shukla** (supra), Hon'ble Supreme Court has considered the issue with regard to proof of contents of the FIR and its applicability in evidence and held thus :-

> “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.
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> 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.
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> 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..........”

14. In the case at hand, claimants have pleaded in their application that accident was reported and Crime No.78 of 2012 was registered for the offence punishable under Section 304-A of IPC. There is no pleading with regard to wrong mentioning of facts in the FIR, more so, when initially the claimants have pleaded in their application that accident took place when deceased was travelling on Trolley of the Tractor. But subsequently, claimants have amended this pleading and mentioned that deceased was standing on the agricultural field.

15. In these facts of the case, not only the oral evidence but the entire material available on record is to be taken into consideration upon minute scrutiny.

16. In view of aforementioned facts where the claimants have relied upon the contents of FIR for proving the accident without mentioning or objecting the other part of contents of FIR and also taking a plea of the accident as mentioned in the FIR, initially, case of **Premlata Shukla** (supra), applies to the facts of the case with full-force. Learned Claims Tribunal

while considering the entire material available on record including pleadings and evidence, has recorded a finding that deceased was travelling on the offending vehicle at the time of accident, which does not call for any interference.

17. The judgments relied upon by learned counsel for respondent No.3/Insurance Company in case of **Brij Mohan** (supra) and **Shivaraj** (supra) wherein Hon'ble Supreme Court has held that no person can travel in a goods vehicle. There was no cabin in Tractor-Trolley and provides seating capacity of only one person i.e. driver.

18. In view of above law laid down by Hon'ble Supreme Court and the discussions made above, we are of the view that learned Claims Tribunal has not committed any error in arriving at a finding that there was breach of conditions of insurance policy, fastening the liability to satisfy the amount of compensation upon appellants/driver and owner of the offending vehicle and exonerating the Insurance Company.

19. In the result, the appeal fails being devoid of any substance and it is hereby dismissed.

Sd/-	**Sd/-**
(P. R. Ramachandra Menon) **Chief Justice**	**(Parth Prateem Sahu)** **Judge**

Yogesh