

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 1304 of 2014**

1. Parmanand Sahu S/o Roopram Sahu, aged about 42 years
2. Jitendra Kumar S/o Parmanand Sahu, aged about 21 years
3. Ku. Chhavi D/o Parmanand Sahu, aged about 19 years
4. Kuleshwar Prasad S/o Parmanand Sahu, aged about 17 years
5. Rahul Kumar S/o Parmanand Sahu, aged about 15 years,
Appellant No. 4 & 5 are minor through his guardian Father Parmanand Sahu, S/o Shri Rooplal, aged about 42 years, All Caste-Teli, All R/o Vill. Hirapur, P.S. & Tah. & District Balod (C.G.).

---- Appellants**Versus**

1. Jogilal Sahu S/o Hamitlal Sahu, Caste Teli, R/o Mudkhusra, P.S. & Tah. Doundilohara, Dist. Balod (C.G.).
2. Hamitlal Sahu S/o Dhiraji Sahu, Caste Teli, R/o Mudkhusra, P.S. & Tah. Doundilohara, Dist. Balod (C.G.).
3. The Oriental Insurance Company Limited, Through Branch Office, Near Railway Station, Rajnandgaon, Dist. Rajnandgaon (C.G.).

---- Respondents

For Appellants	: Mr. Arvind Dubey, Advocate
For Respondents 1 & 2	: None
For Respondent No.3	: Mr. Hanuman Prasad Agrawal, 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****28/09/2020**

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 23/08/2014 passed by Second Additional Motor Accident Claims Tribunal Balod, District Balod, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.36 of 2013 whereby learned Claims Tribunal dismissed the claim application.

2. Brief facts relevant for disposal of this appeal, are that, on 26/05/2013 at about 1.25 am, Smt. Parwati Bai Sahu was travelling on a Tractor bearing No.CG/07/N/6626 and Trolley bearing No.CG/07/N/6627 as labourer and returning to village Heerapur from agricultural work. The Tractor was being driven by non-applicant No.1. When the Tractor reached near village Taragaon Durg Road, one unknown Truck driven rashly and negligently by its driver, dashed the Tractor and caused accident. In the aforementioned accident, Smt. Parwati Bai Sahu fell down from Trolley and came under the wheels of it. Smt. Parwati Bai Sahu on account of the injuries suffered by her died on spot.
3. Appellants/claimants who are husband and children of deceased filed an application under Section 163-A of the M.V. Act seeking compensation of Rs.18,42,000/- on different heads pleading therein that on the date of accident, deceased was aged about 38 years and earning Rs.3000/- per month as labourer.
4. Non-applicants No. 1 and 2, who are driver and owner of the Tractor & Trolley submitted reply to claim application pleading therein that non-applicant No.1/driver of the Tractor was driving the vehicle

slowly and cautiously; Truck coming from opposite direction driven rashly and negligently by its driver, dashed the Tractor, therefore, non-applicant No.1 was not liable for the accident. It was further pleaded that the Tractor & Trolley was insured with non-applicant No.3 and the policy was effective from 17/08/2012 to 16/08/2013 and in case, compensation is awarded, then the liability to pay the amount of compensation will be upon non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application and pleaded that non-applicants No.1 and 2/driver and owner of the Tractor & Trolley have not taken appropriate defence; accident of Smt. Parwati Bai Sahu was not with the Tractor & Trolley mentioned in the claim application, nor the deceased was travelling in the Tractor & Trolley in the capacity of Labourer. It was further pleaded that from the document placed on record i.e. *Naksha Panchayatnama* (Ex.P/3), it would show that Smt. Parwati Bai Sahu travelled on Tractor bearing No.CG/07/AG/6626 from village Heerapur to village Machoud in a marriage ceremony (*Chouthiya*) and while returning from village Machouda, accident took place with one unknown Truck at about 1.25 am near village Paragaon; the deceased came under the wheels of unknown Truck, but for getting the amount of compensation, Tractor bearing No.CG/07/N/6626 and Trolley bearing No.CG/07/N/6627 has been implicated in collusion with non-applicants No.1 and 2.

6. Claimants have not filed entire documents of criminal case registered against non-applicant No.1/driver of the Tractor & Trolley, nor any document with regard to seizure of the Tractor & Trolley has been placed on record. The Tractor was insured for agricultural purpose, but at the time of accident, about 30 persons were travelling on Tractor & Trolley and returning from marriage ceremony (*Chouthiya*); there was breach of the conditions of insurance policy.
7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, framed as many as four issues for consideration and after recording the evidence of witnesses and hearing the submissions held that claimants have failed to prove that deceased was travelling on Tractor bearing No.CG/07/N/6626 and Trolley bearing No.CG/07/N/6627 as Labourer and she died in a motor accident, breach of conditions of insurance policy has not been found to be proved and dismissed the claim application.
8. Mr. Arvind Dubey, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in dismissing entire claim without evaluating the entire material and evidence available on record properly. He further submits that learned Claims Tribunal erroneously arrived at a finding that vehicle mentioned in claim application is not involved in the accident, but it is some other Tractor & Trolley bearing No.CG/07/AG/6626. He points out that respondents No.1 and 2/owner and driver of the vehicle mentioned

in the claim application has admitted the pleadings of claim application in part and in para-5 of the reply, they have admitted that on the date of accident, deceased Smt. Parwati Bai Sahu was travelling on Tractor & Trolley as Labourer and they have also accepted the fact of accident; there was no reason for learned Claims Tribunal for arriving at a finding that the Tractor & Trolley with number shown in the pleadings is not involved in the accident. It is contended that in the entire documents placed on record, Tractor & Trolley has been mentioned as Tractor bearing No.CG/07/N/6626 and Trolley bearing No.CG/07/N/6627 to be the Tractor & Trolley, on which, deceased was travelling, but learned Claims Tribunal has taken note of only one document i.e. *Naksha Panchayatnama* (Ex.P/3) wherein the number of Tractor & Trolley has been shown differently. It is further contended that the mistake of recording the number in *Naksha Panchayatnama* (Ex.P/3) is on account of the mistake committed by some Police Officials. There is specific mention of the number of Tractor & Trolley in the First Information Report registered against non-applicant No.1 on the same day. The pleadings that Tractor & Trolley mentioned in the claim application is not involved in the accident, have not been proved by non-applicant No.3/Insurance Company by placing cogent and reliable piece of evidence on record.

9. Per contra, Mr. Hanuman Prasad Agrawal, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal has taken note of the number of Tractor & Trolley

mentioned in the *Naksha Panchayatnama* (Ex.P/3) prepared by the Police and this document was filed by the claimants themselves. He further submits that even if, the submission of learned counsel for the appellants is admitted, then it is clear that deceased was travelling on Tractor & Trolley, which is a goods carriage vehicle and there was no seating capacity for any passenger. It is contended that the Tractor was insured for agricultural purpose and not as passenger carrying vehicle and thereby there was breach of conditions of insurance policy. It is lastly contended that even if the claim is allowed, no liability can be fastened upon the Insurance Company.

10. We have heard learned counsel for respective parties and perused the record.
11. To appreciate the submission made by learned counsel for the appellants, we have perused the documents i.e. Ex.P/2, Ex.P/3 and Ex.P/4, which are the documents of the criminal case, copy of Final Report, First Information Report and the information under Section 174 of Cr.P.C. with regard to untimely death is available on record, but have not been exhibited.
12. In *Naksha Panchayatnama* (Ex.P/3), number of Tractor has been mentioned as CG/07/AG/6626. In copy of First Information Report available on record, which is registered on same day i.e. 26/05/2013 against unknown Truck recorded by Head Constable bears the number of Tractor as No.CG/07/N/6626, there is a correction in

alphabet 'M' which has been made as 'N'. Even if, there is some correction in number of Tractor in First Information Report, the number shown does not appear to CG/07/AG/6626 as mentioned in *Naksha Panchayatnama* (Ex.P/3). The death report prepared by one Niranjana Lal Sahu bears the number of Tractor has been shown as CG/07/N/6626. After investigation, Final Report was submitted showing the number of Tractor to be CG/07/N/6626. Not only this, owner and driver of the Tractor & Trolley have admitted the involvement of their vehicle in the accident and death of Smt. Parwati Bai Sahu.

13. The Insurance Company has not placed on record any witness to prove that the Tractor No.CG/07/N/6626 was not involved in accident, but for relying upon the document Ex.P/3, proceedings of claim under M.V. Act is an enquiry to be conducted by the Claims Tribunal and to pass just award upon appreciation of entire material and evidence available on record. In record of claim case, copy of Final Report, First Information Report and Death Report are available on record, in which, there is no mention of CG/07/AG. There is admission of involvement of the Tractor and Trolley in reply to claim application, by owner and driver. The Insurance Company has not pointed out any document or proceedings initiated against owner or driver, for their collusive act, if any.
14. In view of aforementioned discussion, documentary evidence as well as pleadings of admission of involvement of the Tractor by owner

and driver as mentioned in the copy of First Information Report, the finding recorded by learned Claims Tribunal based on only one document i.e. *Naksha Panchayatnama* (Ex.P/3) that the Tractor & Trolley as mentioned in the claim application is not involved, is not sustainable and is hereby set aside.

15. Learned Claims Tribunal has not computed the amount of compensation, hence, the case is remitted back to the learned Claims Tribunal for deciding the claim application afresh and it is ordered accordingly.
16. Learned Claims Tribunal has recorded a finding that plying of the Tractor & Trolley by non-applicant No.1 in breach of conditions of insurance policy has not been found to be proved also requires reconsideration in view of the law laid down by Hon'ble Supreme Court in case of **New India Assurance Co. Ltd. v. Asha Rani and others** reported in **(2003) 2 SCC 223**, **National Insurance Co. Ltd. v. Baljit Kaur and others** reported in **(2004) 2 SCC 1**, **Oriental Insurance Co. Ltd. v. Brij Mohan and others** reported in **(2007) 7 SCC 56**, **National Insurance Co. Ltd. v. Cholleti Bharatamma and others** reported in **(2008) 1 SCC 423** and **Shivaraj v. Rajendra and another** reported in **(2018) 10 SCC 432**.
17. For the foregoing reasons, the appeal is allowed. Impugned award is set aside and the matter is remanded back to the Court of Second Additional Motor Accident Claims Tribunal, Balod, Chhattisgarh 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 case. Since the accident is of the year 2013, we direct the Claims Tribunal to decide the Claim Case No.36 of 2013 as expeditiously as possible, preferably within a period of five months, from the date of receipt of certified copy of this judgment.

18. Original record of Claim Case No.36 of 2013 be sent back forthwith along with copy of this judgment.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh