

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1139 of 2013

1. Smt. Sunita, W/o Late Toran Lal Sahu Aged About 32 Years
2. Ku. Phuleshwari D/o Late Toran Lal Sahu Aged About 12 Years
3. Gopi S/o Late Toran Lal Sahu Aged About 10 Years
4. Ku. Khushbu D/o Late Toran Lal Sahu Aged About 8 Years

Appellants 2-4 are Minors, Thru- natural guardian, Mother Smt. Sunita Bai, appellant No.1, wd/o Toran Lal Sahu

All are R/o Nawagaon, P.S. Bori, Tah. Dhamdha, District : Durg, Chhattisgarh

---- Appellants

Versus

1. Vishwanath, S/o Sukhdev Sahu, Aged About 29 Years R/o Parsadapar, Kadrapara, Opposite Block Office, Dhamdha, Distt. Durg, Chhattisgarh (Driver)
2. Tula Ram S/o Sukhdev Sahu, Aged About 29 Years R/o Parsadapar, Kadrapara, Opposite Block Office, Dhamdha, Distt. Durg, District : Durg, Chhattisgarh (Owner)
3. Janki Bai W/o Fagua Ram Sahu Aged About 50 Years R/o Nawagaon, P.S. Bori, Tah. Dhamdha, District : Durg, Chhattisgarh (Mother of deceased)

----Respondents

For Appellants	: Shri PR Patankar, Advocate
For Respondents	: None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
11.06.2020

1. Appellants/Claimants have filed this appeal challenging the impugned award dated 29.08.2013 passed in Claim Case 11 of 2013 by the First Additional Motor Accident Claims Tribunal, Durg, whereby learned Claims Tribunal dismissed the claim application.
2. Facts relevant for disposal of this appeal are that on 07.11.2010 at about 1 pm, Toranlal Sahu was travelling on Motorcycle bearing No.CG07-

LG-2042 (for short,'offending vehicle') and returning to his village Nawagaon from village Pathariya along with NA1. On the way, offending vehicle met with an accident and it fell down from the bank of pond. Toranlal Sahu suffered grievous injuries over his person and was taken to District Hospital, Durg from where he was referred to Sector-9 Hospital, Bhilai. Thereafter, from Sector-9 Hospital, from there, he was referred to Mekahara Hospital, Raipur where he was refused to be admitted. Then father of Toranlal Sahu got him admitted in Chandulal Chandrakar Hospital, Bhilai, where he was treated from 07.11.2010 till 13.11.2010. During the course of treatment, he succumbed to the injuries suffered by him on 14.11.2010. Matter was reported to Police Station Bori, based upon which Crime No.182 of 2010 was registered against NA1, rider of offending vehicle.

3. Claimants, who are widow and children of deceased filed claim application before the learned Claims Tribunal claiming Rs.16,80,000/- as compensation.

4. Owner of offending vehicle/NA2 filed reply to the claim application denying adverse pleadings made in the claim application against them and pleaded that at the time of accident, it was deceased Toranlal Sahu, driving offending vehicle and accident took place due to his rash and negligent driving, in which NA1 also suffered grievous injuries over his person and he was admitted as inpatient in Government Hospital, Durg and thereafter, in Sector-9 Hospital, Bhilai.

5. NA1 submitted in his reply that on the date of accident, NA1 went to village Khamariya due to his personal work and while returning, he stopped to have a cup of tea in village Pathariya. After having tea, when he was about to start, deceased Toranlal, who was sitting there came to him and stated that he was not having any money to return his village Nawagaon and requested NA1 to give lift. NA1 accepted his request and after travelling some distance, looking to the fatigue of NA1, deceased Toranlal Sahu requested him that he could drive the Motorcycle and while driving the offending vehicle, he could not control it and fell down in pond. It is further pleaded that at the time of accident, NA1 was travelling on offending vehicle as pillion.

6. Based on the pleadings made by the respective parties, learned Claims Tribunal formulated as many as four issues for consideration and upon appreciation of pleadings and evidence placed on record by respective parties, held that accident was on account of rash and negligent driving of deceased Toranlal Sahu and dismissed the claim application.

7. Shri PR Patankar, learned counsel for the appellants submits that learned Claims Tribunal has not considered the documentary evidence available on record, specially FIR and Final report submitted by the Police in its entirety, not appreciated the evidence of claimants' witnesses and arrived at an erroneous finding that it is the deceased himself who was driving offending vehicle, whereas, as per the case of claimants, deceased was travelling on offending vehicle as pillion. He further submits that for deciding claim applications, strict rules of Evidence Act

are not applicable but it is to be decided taking into the lenient approach. It is further submitted by learned counsel for the appellants that Ex.P2 FIR and Ex.P1 Final Report clearly shows that respondent-1/ NA1 has been made accused and charge-sheet has been filed against him and therefore, learned Claims Tribunal ought to have held that accident took place on account of rash and negligent driving of offending vehicle by respondent-1/NA1 and not by deceased.

8. We have heard learned counsel for the appellants and perused the record of claim case.

9. Pleadings in the claim application are with regard to deceased showing that on the date of accident ie on 07.11.2010, deceased went to village Pathariya along with NA1. While returning, offending vehicle met with accident due to rash and negligent driving of it, by NA1. Accident took place on 07.11.2010 at about 1pm but FIR was lodged on 13.11.2010, after death of Toranlal Sahu. FIR was lodged by Faguaram Sahu, who is shown to be father of deceased Toranlal Sahu. Perusal of contents of FIR would show that Faguaram was not present on the spot of accident, it was intimated to him by one Arjun Gond, upon which Faguaram Sahu along with Dilip Vaishnav, Piselal Sahu and Dhalsingh went to the spot in a Maruti Van of Shanti Jain of his village and took Toranlal Sahu to the hospital. His evidence further reads that from Government Hospital Durg, deceased was referred to Sector-9 Hospital, thereafter, they brought the injured to Mekahara Hospital, Raipur, where he was kept for about five hours for admission and refused to treat him. Upon which, they took him to Chandulal Chandrakar Hospital and got him

admitted. Doctors of this hospital discharged him that he is not going to cure and brought him to residence on 12.11.2010.

10. Postmortem report was filed as Ex.P4. It shows that post-mortem of body of late Toranlal Sahu was conducted on 14.11.2020 at about 12 noon in which it is opined that mode of death was 'Coma'.

11. Smt Sunita, appellant/1, wife of deceased Toranlal Sahu was examined as AW1, who in her examination-in-chief, affidavit under Order 18 Rule 4 of CPC, stated that late Toranlal Sahu went along with NA1/respondent-1 on offending vehicle as pillion rider. While returning, deceased met with an accident as he fell down from the vehicle. In her cross-examination, she admits that she is not eyewitness to the accident and made statement according to the facts intimated to her by villagers. She went on the spot after happening of accident, where she found NA1 sitting and saying that there is mistake on his part. She further admits that admission of mistake by NA1 has not been narrated/mentioned in her affidavit under Order 18 Rule 4 of the CPC.

12. NA1 examined himself as NAW1 and specifically stated that on 01.11.2010 when he was returning from village Pathariya, he met Toranlal Sahu, who requested him to drop him to village Nawagaon due to unavailability of conveyance. After travelling some distance, deceased asked him to give his Motorcycle to drive, as NA1 was feeling fatigue; he handed over his Motorcycle to the deceased. The deceased while driving offending vehicle rashly and negligently, met with an accident and both of

them fell into the pond, in the accident, NA1 also suffered injuries on his person.

13. In cross-examination, NA1 admits that criminal case was registered against him and not against the deceased to which he made complaint to Station House Officer, Police Station vide Ex.D1. NA1 further examined one Arjun Thakur as NAW2, eyewitness to the accident. In his statement/evidence, NAW2 stated that when he was taking bath in pond after returning from his agricultural fields, at that time, he saw an accident and at that time, deceased Toranlal Sahu was driving offending vehicle. He stated in his evidence that he saw the accident and distance between him and the place of accident is only 10ft. In his cross-examination also he stated that he saw Toranlal Sahu driving offending vehicle.

14. Looking to the contents of FIR which is lodged by father of deceased, in which it is mentioned that accident was informed to him by one Arjun Gond. In view of the fact as mentioned by Faguaram that accident was intimated to him by Arjun Gond, his evidence as eyewitness cannot be ignored and his evidence cannot be treated as evidence of placed witness.

15. Claim application before the Tribunal ought to be decided on the touchstone of preponderance of probabilities. In case at hand, documentary evidence available on record ie Final report (Ex.P1) and FIR (Ex.P2) show that FIR has been lodged only on 13.11.2010, whereas accident took place on 07.11.2010. There is no material available on

record as to why the accident was not reported to concerned Police Station on that date and even hospital has not informed to the Police.

16. AW1/appellant-1 submits in her evidence that she is not an eyewitness to the accident. She reached the spot after the accident but from the contents of FIR, which was lodged by father of deceased, it appears that after getting information about the accident of his son, Faguaram accompanied with three other persons namely, Dilip Vaishnav, Piselal Sahu and Dhalsingh went to the spot in a Maruti Van and took injured Toran Lal to hospital. But he does not mention name of AW1/appellant-1.

17. In view of evidence of AW1 that she not mentioned in her affidavit about the statement of NA1 to the effect that when she reached the spot, she found NA1 sitting there, stated to her that mistake has been committed by him appears to be an after thought. In view of evidence and material available on record, her evidence does not appear to be trustworthy.

18. Learned Claims Tribunal taking into consideration, overall facts and circumstances of the case, particularly, facts mentioned in FIR (Ex.P1) by father of deceased showing that appellant-1 was not visited the spot of accident immediately after the accident, there is specific pleading by NA1 that it is the deceased who drove the offending vehicle and upon registering the case against him, he also made an application to the Station House Officer, mentioning the fact that it is the deceased who drove the offending vehicle as Ex.D1 and the evidence of eyewitness

Arjun Gond NAW2, arrived at a conclusion that claimants failed to prove that accident took place on account of rash and negligent driving of offending vehicle by NA1.

19. Learned Claims Tribunal has elaborately discussed the material and evidence placed on record while dismissing claim application by its impugned order, upon analysing the pleadings and evidence available on record. We do not find any infirmity, or perversity in the finding recorded by learned Claims Tribunal in its impugned award.

20. For the foregoing reasons, we do not find any error in the impugned award. Appeal being devoid of any merit, it is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge