

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1122 of 2013**

1. Smt. Suhaga Bai Wd/o Late Ramlal Patel, aged about 32 years
2. Minor Ku. Bimla Patel D/o Late Ramlal Patel, aged about 13 years,
3. Minor Ghanshyam Patel S/o Late Ramlal Patel, aged about 09 years
4. Minor Shiv Kumar Patel S/o Late Ramlal Patel, aged about 06 years

Minor Appellant No. 2 to 4 are legal guardian through Mother Smt. Suhaga Bai widow of late Ramlal

All are R/o Village Khajuri, Chowki, Karhi, Police Station Baloda Bazar, Civil & Revenue District Baloda Bazar-Bhatapara C.G.

-----Appellants/ Claimants**VERSUS**

1. Ramchand Sahu, S/o Bhagbali Sahu aged about 32 years, R/o Village Khatiyapati, Police Station Baloda Bazar, District Baloda Bazar Bhatapara C.G.
-----Driver
2. Devkumar Parganiha S/o G.R. Parganiha R/o Village Raseda Sonadih, Police Station Baloda Bazar, District Baloda Bazar- Bhatapara C.G.
-----Owner
3. Bharti Ex General Insurance Company Limited, First Mala Chawla Complex Devendra Nagar, Road Sai Nagar Raipur, Tahsil & District Raipur C.G.
-----Non-applicant 4
-----Respondents

For Appellants	:	Mr. A.D. Kuldeep, Advocate.
For Respondent 1 and 2	:	Mr. Neeraj Choubey, Advocate
For Respondent No. 3	:	Mr. K. Rohan, Advocate

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

Per Parth Prateem Sahu, J.

10/07/2020

1. The appellants-claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short ' the Act, 1988'), challenging the impugned award dated 04-09-2013 passed in claim case no. 40/2012 by First Additional Motor Accident Claims Tribunal, Baloda Bazar, whereby the learned Claims Tribunal dismissed the claim application filed under Section 166 read with Section 140 of the Act, 1988.
2. Facts relevant for disposal of this appeal are that on 18-03-2012 at about 11-12

noon, Ramlal went to Baloda Bazar on his motor cycle bearing Registration No. CG 04KA 1285, while returning from Baloda Bazar to Khajuri at 09:30 P.M., he met with an accident near Sonpuri Forest Canal with a stationary truck bearing Registration No. CG 04JC 0914, the accident was reported to concerned police station and crime was registered against Respondent 1 driver of the truck. Claimants who are widow and children filed an application under Section 166 read with Section 140 of the Act, 1988, seeking compensation of Rs 22,35,000/- as total compensation on account of untimely death of late Ramlal from motor accident.

3. Respondent 1 and 2 who are driver and owner of the Truck submitted reply to the claim application denying the manner of accident as pleaded in the claim application, they have further pleaded that the Truck was parked on the side of the road and the deceased Ramlal under the influence of liquor in drunken mode drove his motor cycle and dashed the stationary truck, there was valid and effective driving licence with Respondent 1 and the truck was insured with Respondent 3-Insurance Company.
4. Respondent 3-Insurance Company submitted its separate reply to the claim application and pleaded that the deceased met with an accident from the rear side of the stationary truck, for which he himself was liable, the Insurance Company of the motor cycle was not impleaded as party, there was no valid and effective driving licence with Respondent 1 driver of the truck, there was breach of condition of insurance policy and the Insurance Company is not having any liability to pay any amount of compensation.
5. On appreciation of the pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that it was not proved that on the date of accident, truck was parked negligently and dangerously on the road and deceased Ramlal died on account of accident with it. The owner and the Insurance Company of the motor cycle were not the necessary party, the claimants are not entitled for amount of compensation on account of accidental death of Ramlal because deceased met with accident due to his own negligence,

there was no breach of condition of insurance policy and dismissed the claim application.

6. Learned counsel for the appellants submitted that the learned Claims Tribunal erred in dismissing the claim without considering the material and evidence available on record in its entirety. He contended that the truck was parked on middle of the road dangerously and negligently and as the accident was during the night, the truck parked on road was not visible from distance. He also submits that at least it is a case of contributory negligence, but the learned Claims Tribunal had not considered that issue.
7. Per contra, Mr. Neeraj Choubey, learned counsel appearing for Respondent 1 and 2 submits, that there is material and evidence available on record that the truck was parked on side of the road which was also admitted by the witness of the claimants, adding to it, it is argued that there was no eye-witness to the accident, but the driver of the truck entered into the witness box and in his evidence, he has very specifically pleaded that the truck was parked on the side of the road and two of his wheels were off the road, indicators were also on, there was reflective radium tape affixed on front and rear side of the truck as well. He submits, that the learned Claims Tribunal, after analyzing materials and evidence available on record, has rightly dismissed the claim application which does not call for any interference.
8. Mr. K. Rohan, learned counsel appearing for Respondent 3 also supports the impugned award and submits, that there is specific mention in the post mortem report of the deceased that the deceased was driving his vehicle after consuming alcohol, which is evident from the post mortem report Ext. A-7. He submits that as per the evidence of claimants' witness, a spot map has been prepared on the basis of his information which was also signed by him in which the truck has been shown to be parked at left side of the road. He submits that looking to the entire documentary as well as oral evidence available on record, the learned Claims Tribunal justified in dismissing the claim holding that the accident was on account of negligence of the deceased himself.

9. We have heard learned counsel for the respective parties and also perused the record of the claim case.
10. So far as, the argument raised by the learned counsel for the appellants that the truck was parked in the middle of the road itself, we have perused the copy of the crime details, the spot map prepared by the investigating agency Ext. A3 in which the place of accident has been shown to be edge of the road. If the evidence of AW3 Samelal Patel, who is brother of the deceased, is considered along with the spot map, he admits that deceased Ramlal met with an accident from the rear side of the truck, the truck was stationary, he admits that the spot map was prepared in front of him on the basis of the information given by him to the police, he signed the spot map, he also admits that in Ext. A-3, the place of parking of the truck has been shown on the edge of the road.
11. In view of the aforementioned documentary as well as oral evidence available on record of witness AW-2 himself, the finding recorded by the Tribunal that the truck was parked on the side of the road of which two of its wheels were off the road, cannot be said to be erroneous. So far as, the other submissions made by the learned counsel for the appellants that as it is a case where the truck was parked negligently and dangerously in the night on the road side is concerned. There are no averments made on the part of AW-2 that the truck without any indicator lights, even when, his statement is that he reached on the place of incident within few minutes of accident. Contrary, the driver of the truck appeared before the learned Claims Tribunal as NAW-1 and in his evidence, in cross examination, he stated that two of the wheels of the truck were off the road, indicator lights were on and the reflective radium tape was affixed on rear and front side of the truck. Other grounds raised by the learned counsel for the respondents and considered by the learned Claims Tribunal in paragraph 9 of the award that in the post mortem report, alcohol was found in stomach of the deceased, to arrive at a finding that, there was no negligence on the part of the driver of the truck. In view of the aforementioned evidence available on record that the truck was parked on the

side of the road with turned on indicator, reflective radium tape, we do not find any infirmity and perversity in the impugned award passed by the learned Claims Tribunal in holding that the accident was on account of the self-negligence of the deceased.

12. Under the provisions of the Act, 1988, even if deceased died in an accident solely on account of his own negligence then also under Section 140 of the Act, 1988, the claimants are entitled for the amount under 'No Fault Liability'. Provisions of Section 140 the Act, 1988, is reproduced below.

“140. Liability to pay compensation in certain cases on the principle of no fault.—(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from

the amount of compensation payable under this section or under section 163A.]

13. In the instant case as we have affirmed the finding recorded by the learned Claims Tribunal that the accident was taken place by self-negligence on the part of the deceased, even then the provisions of Section 140 of the Act 1988, the claimants are entitled for Rs. 50,000/- towards no-fault liability. On going through the order sheets of the Tribunal, we do not find that Respondents paid the amount of Rs. 50,000/- to the claimants towards no-fault liability, even when the application filed under both the Sections i.e. Section 166 and Section 140 of the Act, 1988.
14. In view of the above, it is held that the claimants are entitled for an amount of Rs. 50,000/- towards the no-fault liability, if the amount under the head of no-fault liability has not been paid to the claimants then Respondent 1 to 3 are liable for payment of amount of Rs. 50,000, jointly and severally as compensation under Section 140 of the Act, 1988.
15. Consequently, the appeal is allowed in part and the impugned award is modified to the extent as indicated hereinabove.

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

Sd/-
(Parth Prateem Sahu)
Judge