NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No.267 of 2015

1. Smt. Ranjita Rajput, W/o Late Manoj Kumar Rajput, Aged About 25 Years
2. Ku. Pooja Rajput, D/o Late Manoj Kumar Rajput, Aged About 7 Years
3. Ku. Sejal Rajput, D/o Late Manoj Kumar Rajput, Aged About 4 Years
   For Appellant No.2 and 3 through their natural guardian Smt. Ranjita Rajput, Appellant No.1
4. Smt. Gulbiya Rajput, W/o Late Dharam Singh Rajput, Aged About 56 Years
   All R/o Village- Chota Manpur, Post- Atariya, P.S. - Gandia, Tahsil - Chouikhdhan District- Rajnandgaon, Chhattisgarh

---- Appellants

Versus

1. Smt. Ful Bai Chouhan, W/o Bhagatram Chouhan R/o Shanti Vihar Colony, Daganiya, Raipur District Raipur, Chhattisgarh
2. Universal Sompa General Insurance Company Limited, Plot No. EL- 94, T.T.C. Industrial Area, New Mumbai 400710 (Maharashtra) through Branch Manager, Universal Sompa General Insurance Company Limited, Karan City Automobile Private Limited, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Appellants : Shri A.K. Prasad, Advocate
For Respondent No.1 : None
For Respondent No. 2 : Shri Tessy Abraham, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

20.07.2021

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 award dated 24.12.2014 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon, Chhattisgarh (hereinafter

referred to as 'Tribunal') in Claim Case No.33 of 2012 whereby learned Claims Tribunal dismissed the application filed under Section 166 of the M.V. Act.

2. Facts relevant for disposal of this appeal, are that, on 08.02.2012, at about 5.25 AM, Manoj while driving the Car bearing No.CG-04/JB/6666 (hereinafter referred to as 'offending vehicle') and going to Gandai from Chhuikhadan, at that relevant time, to save one cow, he applied break, due to which, offending vehicle turned turtle. In the said accident, Manoj succumbed to motor accidental injuries.

3. Appellants/claimants have filed an application under Section 166 of M.V. Act seeking compensation of Rs.43,10,000/- pleading therein that while driving the offending vehicle, he met with an accident and came under it; on the date of accident, he was working as Peon, posted at Government Higher Secondary School, Atariya Road and earning Rs.10,000/- per month.

4. Non-applicant No.1/respondent No.1 submitted reply to claim application, denying the factual part of pleadings of claim application further pleaded that liability, if any, to satisfy the amount of compensation towards interim compensation will be upon the Insurance Company. It was further pleaded that deceased was possessed with valid and effective driving

licence and offending vehicle was insured with non-applicant No.2/Insurance Company.

5. Non-applicant No.2/respondent No.2/Insurance Company submitted reply to claim application, they have taken preliminary objection that accident was a result of self negligence of deceased. It was pleaded that deceased was not a third party and risk of deceased was not covered under Section 147 of the M.V. Act. Deceased was not paid driver of owner of offending vehicle, but was driving the private vehicle. While submitting reply to contents of claim application, they have denied all the facts mentioned therein. It was further pleaded that from First Information Report and other documents of criminal case, it is apparent that accident was a result of self negligence and amount claimed is highly exaggerated. Criminal case was registered against the deceased himself, but upon his death, it was closed. Claim application is not maintainable as accident is on account of self negligence of deceased. He was not possessed with valid and effective driving licence and offending vehicle was being used as a 'Taxi', as such, there was breach of policy conditions also.

6. On appreciation of pleadings, evidence and material brought on record by the respective parties, learned Tribunal held that claim application was not maintainable and dismissed the same vide impugned order.

7. Shri A.K. Prasad, learned counsel for the appellants/ claimants submits that learned Tribunal erred in dismissing the entire claim of appellants/claimants contrary to law. Tribunal erred in arriving at a finding that accident was on account of self negligence of deceased himself. To arrive at the conclusion of self negligence, Tribunal has taken into consideration First Information Report and other documents available in charge-sheet filed by Police, which was based on the complaint made by owner of offending vehicle, who was not an eyewitness. Tribunal erred in not allowing the application for amendment of the provisions, under which, application is filed i.e. from Section 166 of M.V. Act to application under Section 163-A of the M.V. Act. Without there being any material, learned Tribunal erroneously arrived at a conclusion that deceased was self negligent in the accident. He lastly submits that at least appellants/ claimants should have been awarded amount of compensation towards personal accident coverage.

8. Per contra, Shri Tessy Abraham, learned counsel for respondent No.2/Insurance Company submits that claimants themselves have filed an application under Section 166 of the M.V. Act. For succeeding in proceedings for compensation, claimants have to prove that victim suffered injuries on account of negligence on the part of some other person. Claimants failed to prove that accident was a result

of negligence on the part of some other person. He further submits that learned Tribunal has rightly considered the claim based on the provisions, under which, application is filed and dismissed the same. It is contended that learned Tribunal has rightly taken into considering Final Report (Ex.P/1) and documents enclosed along with it, which are placed on record by the claimants themselves in support of their pleadings to arrive at a conclusion that there was no involvement of any other motor vehicle, nor negligence of the owner of the vehicle has been proved. It is further contended that application for amendment has rightly been dismissed by learned Tribunal, which was filed at the end of inquiry before the Tribunal.

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

10. Undisputedly, appellants/claimants have filed an application seeking compensation under Section 166 of the M.V. Act. In claim application, they have pleaded the income of deceased as Rs.10,000/- per month from occupation of Peon in Government Higher Secondary School. Appellants/ claimants in support of their case have placed on record Exs. P/1 to P/9 i.e. documents of criminal case. In First Information Report, there is mention that deceased met with an accident while driving the offending vehicle negligently. The offending vehicle went in agricultural field situated on

road side and turned turtle. Similar fact has been narrated in the Final Report (Ex.P/1).

11. Appellant No.1 Smt. Ranjita Rajput was examined as AW-1. In the affidavit filed under Order XVIII Rule 4 of the CPC, she stated that on the date and time of accident, suddenly one cow came in front of the vehicle and in an attempt to save the cow, deceased applied break, due to which, offending vehicle turned turtle. In cross-examination, she admitted that she was not present on the spot at the time of accident. She does not know as to how accident took place and how the vehicle was running.

12. Smt. Bharti, Principal of Government Higher Secondary School, Chhuikhadan was examined as AW-2, who proved the employment of deceased as peon and his income as Rs.9,710/- per month. No other witness was examined on behalf of appellants/claimants.

13. Appellant/claimants themselves filed the documents of criminal case wherein it is mentioned that accident occurred due to rash and negligent driving of deceased himself. There is no evidence brought on record as to why the contents of documents narrating facts of the accident be not relied upon. Appellants/claimants have made an attempt to show that accident took place due to sudden coming of cow on road,

but in cross-examination itself, Smt. Ranjita Rajput (AW-1) stated that she was not present on the spot.

14. In view of above, in the considered opinion of this Court, learned Tribunal has not made any error in recording a finding that accident was on account of of self negligence of deceased himself. For succeeding in claim application filed under Section 166 of the M.V. Act, it is burden of claimants of establishing negligence of driver of other vehicle or owner as held by Hon'ble Supreme Court in case of **Oriental Insurance Co. Ltd. v. Meena Variyal and Others** reported in **(2007) 5 SCC 428**.

15. With regard to submission made by learned counsel for the appellants/claimants that learned Tribunal ought to have permitted the amendment in claim application and converting the application from under Section 166 to Section 163-A of the M.V. Act and erred in dismissing the application for amendment, I have perused the copy of amendment application filed under Order VI Rule 17 of the CPC on 26.09.2014. Prior to filing of amendment application, appellant No.1 submitted her affidavit under Order XVIII Rule 4 of the CPC. She was cross-examined on 18.06.2014 wherein she stated that income of deceased as Rs.10,000/- per month. Smt. Bharti (AW-2) Principal of Government Higher Secondary School, Chhuikhadan proved the salary slip of deceased showing income as Rs.9,710/-. For filing an

application under Section 163-A of the M.V. Act, income of deceased/victim should not be more than Rs.40,000/- per annum, hence, even otherwise, in view of income proved by appellants/claimants of the deceased, application under Section 163-A of the M.V. Act will not be maintainable.

16. Perusal of copy of insurance policy (Ex.P/10) would show that PA cover for owner-driver is paid under IMT-15. Premium paid under IMT-15 is for personal accident cover to insured or any named person other than paid driver or cleaner. Premium towards personal accident coverage is charged by the Insurance Company under specific clause i.e. IMT-15, deceased was not named in the Insurance policy hence, appellants/claimants can not be awarded any amount of compensation as the Insurance policy is a contract between Insurer and Insured for covering risk in terms of the policy.

17. For the foregoing reasons, I do not find any ground to interfere with the impugned award. Appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh