

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 46 of 2014****Reserved on 18.02.2021****Pronounced on 08.03.2021**

1. Smt. Meera Singh Wd/o Late Munna Singh Aged About 35 Years R/o Housing Board Colony, Balkonagar, Korba, Tah. And Distt. Korba C.G.
2. Kumari Nisha Singh D/o Late Munna Singh Aged About 18 Years R/o Housing Board Colony, Balko Nagar, Korba, Tah. And Distt. Korba C.G.
3. Amit Kumar Singh S/o Late Munna Singh Aged About 16 Years Minor, Through- Mother Smt. Meera Singh, R/o Housing Board Colony, Balko Nagar, Korba, Tah. And Distt. Korba C.G.
4. Dheeraj Singh S/o Late Munna Singh Aged About 14 Years Minor, Through- Mother Smt. Meera Singh, R/o Housing Board Colony, Balko Nagar, Korba, Tah. And Distt. Korba C.G. ---- **Appellants**

Versus

1. Kishore Kumar Namdev, S/o Rameshwar Prasad Namdev, Aged About 26 Years R/o Sheowni, P.S. Champa, Distt. Janjgir-Champa C.G.
2. Arvind Pal S/o Ramdular Pal R/o Kumda, Suhagpur, Distt. Korba C.G.
3. The Oriental Insu.Co.Ltd. S/o Through- Divisional Manager, The Oriental Insurance Company Ltd., Divisional Office At Geetanjali Bhawan, Old Bus Stand, Korba C.G. ---- **Respondents**

For Appellants:	Shri Amiyakant Tiwari, Advocate along with Shri Bharat Gulabani, Advocate.
For Respondent No.1:	Shri A. S. Rajput, Advocate.
For Respondent No.2:	Shri Ashutosh Shukla, Advocate.
For Respondent No.3:	Shri R. N. Pusty, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**Award/Order On Board**

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988') questioning the legality and propriety of the award dated 31.07.2013 passed by the Additional Motor Accident Claims Tribunal (F.T.C.), Korba (C.G.) (hereinafter referred to as 'the Claims Tribunal') in

Claim Case No.03/2013, whereby, the learned Claims Tribunal has dismissed the claim petition. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 26.07.2006 at about 4.45 a.m., deceased Munna Singh and others were going by Pickup Van, i.e., Mahindra Jeep from Balconagar, Korba to Raipur for the purpose of fetching vegetables, while carrying some materials as well. According to the claim petition, the vehicle in question having its Trade Certificate Jeep No. M.P. 26 T 0373, Engine No. GA51K64794- Chassis No. MA1ZG2GAA51K40045 was owned by Non-applicant No.2- Arvind Pal and was insured with Non-applicant No.3- The Oriental Insurance Company Limited, which was being driven rashly and negligently by its driver, namely, Kishore Kumar Namdev (Non-applicant No.1). As a result of which, he lost his control and owing to which, deceased Munna Singh fell down and died on the spot while one Kripa Shankar was injured.

3. On account of the aforesaid accident, the Claimants, being legal representatives of the deceased, instituted a claim under Section 166 of the Act, 1988 submitting *inter alia* that the deceased, 32 years old, was a vegetable vendor and used to earn Rs.6,000/- per month and thus claimed total amount of compensation to the tune of Rs.19,00,000/- under various heads.

4. The aforesaid claim has been contested by the Non-applicants. Non-applicant No.1 Kishore Kumar Namdev, the driver of the offending vehicle, while denying the fact that the alleged accident occurred due to his rash and negligent driving, pleaded further that some unknown vehicle "Truck", which was being driven rashly and negligently by its driver, came

from opposite side in a high speed and dashed his vehicle, resulting into the sad demise of Munna Singh. It is pleaded further that the driver of that unknown vehicle alone was responsible for the alleged accident.

5. Non-applicant No.2, the owner of the offending vehicle, while denying the fact that the alleged accident occurred due to rash and negligent driving of the driver of the offending vehicle pleaded that the Claimants have obtained a sum of Rs.30,000/- from him and assured him not to file any petition against him, and therefore, the claim is liable to be dismissed. While Non-applicant No.3, the insurer has contested the claim by saying that some unknown vehicle "Truck" was involved in the alleged accident and alternatively pleaded further that the drivers of both the vehicles are responsible for it. It is contested further on the ground that the driver of the offending vehicle was not holding the valid and effective driving licence and the same was being used in violation of the insurance policy by carrying passengers at the relevant time. As such, no liability could be fastened upon it.

6. In support, the Claimants have examined as many as two witnesses including an eyewitness of the alleged accident, while the owner has examined himself and the insurer has produced one of its witnesses.

7. After considering the evidence led by the parties, it has been held by the Claims Tribunal, while entertaining the issue No.1, that the alleged accident has not occurred due to rash and negligent driving by Kishore Kumar Namdev, the driver of the offending vehicle. It held further that the vehicle in question, insured as Goods vehicle, was being used in violation of its policy by carrying passengers by the driver, who was not authorised to drive the same as such and, as a consequence of it, dismissed the

claim petition.

8. Being aggrieved, the Claimants have preferred this appeal. Shri Amiyakant Tiwari, learned counsel appearing for the Appellants/Claimants submits that the award impugned, as passed by the Tribunal dismissing the claim by holding that the driver of the offending vehicle was not responsible for the alleged accident, is apparently contrary to the materials available on record. While inviting attention to the unrebutted statement of the eyewitness, namely, Rajesh Singh (AW2) and that of owner Arvind Pal (NAW2), it is contended that the driver of the alleged offending vehicle alone was responsible for the alleged accident. However, without considering the evidence led by the parties in its proper manner and that by applying the strict rules of evidence, the Claims Tribunal has committed an illegality in dismissing the claim petition.

9. On the other hand, learned counsel appearing for the Respondents, while supporting the award impugned, submit that the Tribunal by placing its reliance upon the documentary evidence like Ex.P.1 to Ex.P.10 produced by the Claimants themselves has rightly arrived at a conclusion that the alleged accident has not taken place due to rash and negligent driving of the driver of the offending vehicle.

10. I have heard learned Counsel for the parties and perused the entire record carefully.

11. The question, which arises for determination based upon the aforesaid contentions of the parties, is as to whether finding of the Tribunal dismissing the claim petition by holding that the driver of the offending vehicle was not responsible for the alleged accident, is sustainable or not?

12. Undisputedly, the alleged accident occurred on 26.07.2006 when

deceased Munna Singh and Kripa Shankar (injured) along with others were going by alleged offending vehicle from Balconagar, Korba to Raipur for the purpose of fetching vegetables along with carrying some materials/vegetable. It is also not in dispute that owing to the alleged accident, deceased Munna Singh died on the spot, while Kripa Shankar sustained injuries. Perusal of the charge sheet, marked as Ex.P.1, would show that a case was registered against the driver of the unknown vehicle "Truck" on the basis of the report lodged by Kishore Kumar Namdev, the driver of the offending vehicle under Sections 279, 337 and 304-A of IPC in connection with Crime No. 310/06.

13. It appears further that in order to establish the factum of the alleged accident, the Claimants have examined one of its eyewitnesses, namely, Rajesh Singh (AW2), who has stated in paragraph 2 that on the date of the accident he was also going by some other vehicle to Raipur and at the relevant time, the driver of the offending vehicle, namely, Kishore Kumar Namdev, overtook his vehicle while driving his vehicle in a rash and negligent manner and dashed against the nearby tree. As a result of the alleged accident, the deceased sustained serious injuries on his head and became unconscious while Kripa Shankar was also injured. In his evidence, he denied regarding the involvement of the said unknown vehicle "Truck". The statement of this witness could not have been rebutted in his cross examination. No other eyewitness was thereafter examined by any of the parties and even the driver of the offending vehicle though pleaded that the alleged accident has occurred due to rash and negligent driving of the said unknown "Truck", but did not enter into the witness box in order to establish the said fact. It appears further that the

owner of the vehicle in question, namely, Arvind Pal, examined himself as NAW2, who has stated in his evidence that he came to know about the alleged accident by his said driver, as he informed him that the alleged accident has occurred by his vehicle, in which, two persons have got injured. He stated further that the widow of the deceased, namely, Smt. Meera Singh, after obtaining a sum of Rs.30,000/- from him, had assured not to file any claim petition against him and will amicably settle the matter. Close scrutiny of both these witnesses (AW2 and NAW2) would lead to an irresistible conclusion that the driver of the offending vehicle alone was responsible for the alleged accident. That apart, the driver of the alleged offending vehicle, namely, Kishore Kumar Namdev, who lodged the report before the concerned police station against the driver of the unknown "Truck", has tried to mislead the factum of alleged accident by lodging the report, but has not entered into the witness box. In such circumstances, it appears that he alone was responsible for the alleged accident.

14. The contention of the learned counsel for the Respondents, based upon the principles laid down in the matters of ***Oriental Insurance Company Limited vs. Premlata Shukla and others*** and ***National Insurance Company Limited vs. Rattani and others*** reported in (2007) 13 SCC 476 and (2009) 2 SCC 75 respectively that the Claimants are bound by the documentary evidence like Ex.P.1 to Ex.P.10 as they themselves have placed their reliance upon it, is however, noted to be rejected as the Claimants in those matters had made the First Information Report as a part of the claim petition and placed reliance heavily upon it and in such an eventuality, it was held that the Claimants cannot disown their own documents. However, in the instant matter, though there was a

reference of the registration of the case in relation to the alleged accident, but, that was not the part of their claim petition and in fact what has been pleaded is that the alleged accident occurred due to rash and negligent driving of the driver of the alleged offending vehicle, namely, Kishore Kumar Namdeo, who lost his control on the said fateful day. Meaning thereby, the Claimants have placed their reliance upon it just for establishing the factum of the alleged accident. Besides, a bare perusal of the report (Ex.P.11) lodged by Smt. Meera Singh, the widow of the deceased, would show that a complaint was made before the SP, Raipur regarding lodging of false report by the driver of the alleged offending vehicle, i.e., Kishore Kumar Namdev. In such circumstances, principles laid down in those matters are distinguishable from the facts involved in the present matter.

15. Considering the aforesaid facts and circumstances of the case and considering further the evidence led by the parties, vis-a-vis, non-examination of the driver of the offending vehicle, it is evident that the driver of the offending vehicle alone was responsible for the alleged accident, occurred on 26.07.2006. The finding of the Claims Tribunal in this regard, therefore, deserves to be and is hereby set aside and it is accordingly held that the alleged accident occurred on 26.07.2006 due to rash and negligent driving of the driver of the offending vehicle, owing to which, the deceased died on the spot, while Kripa Shankar sustained injuries.

16. In so far as the finding of the Tribunal holding that the alleged offending vehicle was being used in violation of the insurance policy is concerned, I do not find any infirmity in the same. The vehicle in question

was admittedly insured as a Goods Vehicle as evidenced by the policy, marked as Ex.D.1. However, it was being used other than its purposes by carrying passengers in violation of the terms and conditions as stipulated therein. In such circumstances, the Insurance Company cannot be held liable to indemnify the insured and was, therefore, rightly exonerated from its liability by the Tribunal.

17. Deceased Munna Singh, a 32 years old, was found to be a vegetable vendor and as such his monthly income was rightly assessed by the Tribunal at Rs.4,500/-, yearly Rs.54,000/- and that by adding 40% of it, i.e., Rs.21,600/- (Rs.54,000 x 40%) towards future prospects of his income, as held by the Supreme Court in the matter of **National Insurance Co. Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, yearly income of the deceased would arrive at Rs.75,600/- (Rs.54,000/- + Rs.21,600/-). After deducting one third of it, i.e., Rs.25,200/- (Rs.75,600/- x 1/3) towards his personal and living expenses, the annual dependency would come to Rs.50,400/- (Rs.75,600/- - Rs.25,200/-). As the age of the deceased at the time of the accident was 32, the multiplier applicable would be 16, therefore, total dependency payable to the Claimants would be Rs.8,06,400/- (Rs.50,400/- x 16). In addition to this, the Claimants would be entitled to a sum of Rs.70,000/- towards conventional heads as under:-

Mode of compensation	Amount Rs.
(i) Loss of consortium to wife	- 40,000/-
(ii) Funeral expenses	- 15,000/-
(iii) Loss of estate	- 15,000/-
Total	- Rs.70,000/- =====

18. The Claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.8,76,400/-, (Rs.8,06,400/- + Rs.70,000/-) with 6% interest per annum from the date of the filing of the claim petition till its realization.

19. Although as observed hereinabove that the Insurance Company has been exonerated from its liability but the policy (Ex.D.1) was admittedly found to be in existence. Therefore, by applying the principles laid down in the matters of ***National Insurance Co. Ltd. vs. Swaran Singh and Others*** and ***Manager, National Insurance Company Limited vs. Saju P. Paul and another*** reported in (2004) 3 SCC 297 and (2013) 2 SCC 41 respectively, I accordingly issue a direction to the said Company to first pay the awarded sum to the Claimants and then to recover the amount of compensation paid by it from the owner and driver of the offending vehicle in execution proceedings arising in this very case.

20. The appeal is, accordingly, allowed in part to the extent indicated hereinabove with the aforesaid direction. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE