

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1322 of 2014****Judgment Reserved on 08/11/2021****Judgment Delivered on 11/11/2021**

1. Pardeshi Ram S/o Ferharam Yadav, aged about 49 years,
 2. Smt. Hembati Yadav, W/o Pardeshi Ram Yadav, aged about 45 years,
- Both are resident of Village Hadgaon, Tehsil Berla, District Bemetara (C.G.).

---- Appellants**Versus**

1. Mohd. Moin Khan S/o Mohd. Maksood Ali Khan, aged about 35 years R/o Village Tiloni, Post Agra Sundar Nagar, Police Station Lalganj, District Pratapgarh (U.P.) at present resident of through M/s C.G. Cement career, Ring Road No. 2 Bhanpuri, Raipur, District Raipur (C.G.).
2. M/s C.G. Cement Career, Ring Road No.2 Bhanpuri, Raipur, District Raipur (C.G.).
3. National Insurance Company Limited, through Branch Manager, Second Floor Mobin Mahal, Opposite Sahid Ismarak Bhawan, G.E. Road, Raipur, District Raipur (C.G.)

---- Respondent

For Appellants	:	Mr. Rajkumar Pali, Adv.
For Respondent No. 3	:	Mr. Anil Gulati, Adv.
For Respondent Nos. 1 & 2	:	None though served

Hon'ble Shri Justice Deepak Kumar Tiwari
CAV JUDGMENT

Heard.

1. This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act') against the impugned award dated 13/11/2014 passed by the Motor Accident Claims Tribunal, Bemetara, in Claim Case No. 01/2014 (Pardeshi Ram & Another v. Mohd. Moin Khan

& Others), whereby the claim petition filed by the father and mother of the Deceased Tilak Yadav (henceforth 'the Deceased') was dismissed by holding that the deceased was himself responsible for the said accident.

2. Facts of the case in brief are that on 05/09/2013 at about 8 pm, the deceased who was aged about 20 years was traveling along with his two friends from Bemetara to his village Hadgaon. When he reached near village Sawantpur, at the turning, he met with an accident with a truck bearing registration No. CG04 JC 2490 which was standing on the road without lighting any indicator. The deceased sustained serious injuries. The deceased died on the way when he was being taken to government hospital Bemetara. The deceased was bachelor so claim petition was preferred by his mother and father for claiming Rs. 9,20,000/- in total under all heads.
3. Respondent Nos. 1 & 2 who are respective driver and owner of the truck, had submitted their replies and had denied the pleadings made by the appellants/claimants. They stated that it was the negligence of the deceased himself, therefore, the appellants/claimants are not entitled to get any claim.
4. Respondent No.3, Insurance Company had supported the pleadings of replies filed by respondent Nos. 1 & 2. It has also been stated that respondent No. 1 was not having valid and effective license, therefore, there is violation of the policy and the Insurance company is not liable to pay compensation, if any.
5. The learned tribunal, after due appreciation of the evidence which was brought on record, passed the impugned order by dismissing the claim

petition, particularly on issue no. 1 that the appellants/claimants have failed to prove that the said accident was caused due to negligence of respondent No.1, driver of the truck.

6. Counsel for the appellants submits that the learned claims tribunal had dismissed the claim only on the basis of oral statement of respondent No.1. the tribunal has failed to consider that respondent Nos. 1 & 2 have failed to produce any evidence or material on record with regard to the break down or mechanical failure of the truck at the time of incident. The tribunal has not considered the evidence of appellants' witnesses, therefore, he prays to set-aside the impugned order. Reliance has been placed in the matter of ***Raj Rani and others v. Oriental Insurance Co. Ltd. And others, (2009) ACJ 2003.***
7. On the other hand, learned counsel appearing on behalf of Insurance Company opposed the submissions made by the counsel for the appellants and supported the impugned order. Reliance has been placed in the matter of ***Nishan Singh v. Oriental Insurance Company Ltd, AIR 2018 SC 2118.***
8. I have heard learned counsel for the parties and perused the records.
9. The question for determination before this Court is that whether the learned Claims Tribunal committed error in dismissing the claim in its entirety and the impugned order is perverse and liable to be interfered.
10. Pardeshi (AW1), father of the Deceased and Krishna Kumar Nishad (AW2), Kotwar of the village Sawantpur have specifically deposed that the deceased while riding the motorcycle along with his friends was going

from Bemetara to his village. At about 8 pm, he dashed a stationary truck from its back side. Both the claimants' witnesses have admitted in their cross-examination that the truck was in stationary position on the spot for last 2-3 days. Pardeshi (AW1) has also admitted in para 6 that on the spot of occurrence, there was sufficient space and the road was wide enough having two lanes and two vehicles might easily pass from there. He further admitted that while going to Bemetara, the deceased had seen the stationary truck on the road. He further admitted in para 7 that his son was in drunken condition, so he could not notice the stationary truck and dashed the truck from behind.

11. Respondent No. 1, Mohd. Moin Khan driver of the truck has deposed that due to break down of the truck, he had parked the truck at the side of the road. He also stated that parking light and four signal lights of the truck were on at the time of accident. He further stated that the road was sufficiently wide and other vehicles were passing easily. At the time of accident, he was in front of truck and cooking food. He also stated that he put some branches of tree around the truck for showing sufficient signs. So for the said accident, he is not negligent and liable and there was no fault of him.
12. It is a settled principle that there cannot be a mathematics equation to say that when the dash was given to the stationary truck, it was 100% negligence of the driver of the stationary vehicle. Various factors are to be looked into like, width of the road, size of the stationary vehicle, exact

place of road where the truck was standing, time of incident, flow of traffic etc., and on these basis individual conclusion can be drawn.

13. In the present case, the spot map prepared during the investigation (Ex.P-3) indicates that the truck was parked at the side of road. It has also come on record that the accident occurred on Bemetara to Durg road which is sufficiently wide having two lanes. At the time of incident, the deceased who was driving the vehicle had consumed liquor along with his friend, and in drunken condition, he dashed the stationary vehicle from behind. Even on mechanical examination of the truck, it was not reported that there was any fault in the reflectors light (parking light). So, the version of the driver of the truck that at the time of incident parking light was on, can be inferred much more reliable than claimants' witnesses. The deceased had last opportunity to avoid the accident but he himself could not properly take care of it while riding the two wheeler. There is sufficient evidence on record which significantly shows that the deceased himself was in gross negligence for such accident. Therefore, the finding arrived at by the tribunal on this issue is based on proper appreciation of evidence and this Court does not find any substantial ground to take a decision otherwise. Accordingly, the finding on this issue is affirmed.
14. Counsel for the appellant has cited the decision of ***Raj Rani and others v. Oriental Insurance Co. Ltd. And others, (2009) ACJ 2003.*** In the said case, the vehicle was parked in middle of the road and the facts of the said case are distinguished from the instant case, as in the present case the deceased himself was riding the motorcycle at the night hours in drunken

condition and dashed the stationary vehicle which was parked on the road side.

15. Learned counsel for Insurance Company cited the decision in the matter of *Nishan Singh v. Oriental Insurance Company Ltd, AIR 2018 SC 2118*. In the said case, the Maruti car collided with the truck from back side. It was held by the Apex Court that the driver had failed to keep proper distance between the two vehicles running in the same direction and if the proper distance is not made then the whole negligence shall be determined on the part of rear vehicle in regard to the occurrence of accident. It was also observed that only by registering of FIR of the said accident and submitting of charge-sheet against the driver of the truck in question, the driver of the truck in question cannot be held guilty for the said accident whereas the evidence came forward that the accident occurred as the driver of the car in question was not driving the car in question in accordance with traffic rules by maintaining proper distance from the truck.
16. In view of above, as the deceased himself was found liable for the accident as rightly concluded by the learned tribunal so far as dismissing the claim petition, the finding of the tribunal does not warrant any interference.
17. Accordingly, the appeal fails and the same is dismissed.
18. There shall be no order as to costs.

Sd/-
(Deepak Kumar Tiwari)
Judge