

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 74 of 2015**

- Vinod Prasad S/o Vishwnath Prasad, aged about 40 years, R/o Village-Ramkanda, Police Station-Ramkanda, District-Gadwa (Jharkhand)
-----Appellant/Owner

VERSUS

1. Aysa Khatun W/o late Saifulla Ansari, aged about 35 years,
2. Saud Ansari S/o late Saifulla Ansari, aged about 18 years
3. Saied Ansari S/o late Saifulla Ansari, aged about 13 years
4. Julekha Khatun D/o late Saifulla Ansari, aged about 11 years,
5. Sabir Ansari S/o late Saifulla Ansari, aged about 7 years
6. Jabir Ansari S/o late Saifulla Ansari, aged about 5 years
7. Mujhar Fatma D/o late Saifulla Ansari, aged about 2 years
8. Fariyaad Hussain S/o late Rahimat, aged about 78 years
9. Rahmatiya W/o Fariyaad Hussain, aged about 70 years

All Residents of Village Mahavirganj, Police Station Ramanujganj (Police Outpost-Vijaynagar Outpost) District-Balrampur-Ramanujganj, Civil District- Sarguja, Revenue District Balrampur C.G.

Respondent 3 to 7 are minor through their mother and natural guardian Respondent 1.

-----Respondents

For Appellant	: Mr. A.K. Prasad, Advocate
For Respondent 1 to 7	: Mr. A.L. Singroul, Advocate

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

Order on Board**Per Parth Prateem Sahu, J.****13/01/2021**

1. Non-applicant/ owner of the offending vehicle has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short " Act of 1988") challenging the impugned award dated 12.12.2014 passed by learned Additional Member of Additional Motor Accident Claims Tribunal, Ramanujganj, District-Balrampur-Ramanujganj C.G. in claim case no. 12/2013, whereby learned Claims Tribunal awarded Rs. 3,89,200/- as total compensation in a fatal accident case.

2. Facts of the case in nutshell are that, on 04.10.2011, at about 07:00 p.m., Saifulla Ansari was walking on roadside along with Mohd. Irshad, Israil Ansari and Yunus Ansari alongwith cattle, while so, one Bolero Jeep bearing registration no. JH03E2645 (offending vehicle) driven by appellant/ non-applicant dashed Saifulla Ansari and his two cattle near Gulariya Ghati. In the said accident, Saifulla Ansari suffered grievous injuries and died on spot. Respondent 1 to 9/ claimants filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 47,30,000/-.
3. Appellant/ non-applicant submitted reply to the claim application, while denying the pleadings therein further pleaded that on 04.10.2011, his vehicle was parked at his house. On the date of accident he did not ply it on road. Accident was reported against unknown vehicle. Claimants, in collusion with the employees of police department, have implicated him in false case. Non-applicant is hopeful of his acquittal in criminal case. Non-applicant is an agriculturist and has kept the offending vehicle for his personal use.
4. Claims Tribunal, upon appreciation of pleadings, oral and documentary evidence placed on record by respective parties, held that on 04.10.2011, non-applicant was driving the offending vehicle at Gulariya Ghati. Saifulla Ansari died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant and awarded Rs. 3,89,200/- as total compensation.
5. Mr. A.K. Prasad, learned counsel for the appellant submits that appellant has been falsely implicated in the case. There is absolutely no material and evidence available on record to connect the appellant in the alleged accident stated to be taken place on 04.10.2011. Appellant is owner of the offending vehicle as mentioned in the claim application but on the date of accident, it was not used but parked in the house itself. Offending vehicle

was not plied on public road. Claims Tribunal overlooked the pleadings in reply to claim application, oral evidence brought on record by the appellant wherein all the witnesses have stated that the offending vehicle was parked in the house of appellant on the date of accident. Liability to prove the accident and involvement of vehicle is upon the claimants to which they utterly failed, hence, Claims Tribunal erred in holding that the accident took place due to rash and negligent driving of offending vehicle by appellant/ non-applicant. Finding recorded by the Claims Tribunal is perverse to the material available on record. He further pointed out that the Claims Tribunal awarded much more amount of compensation than to what the claimants/ Respondent 1 to 9 are entitled for. He also pointed out that the person who lodged F.I.R. was examined by the claimants before the Claims Tribunal but he has not stated the date of accident and registration number of offending vehicle which itself shows that non-applicant has been falsely implicated in the accident.

6. Mr. A.L. Singroul, learned counsel for Respondent 1 to 7/ claimants submits that the Claims Tribunal, taking into consideration the entire evidence available on record, has arrived at a categorical finding that the offending vehicle owned by appellant is involved in the accident and awarded the amount of compensation. He submits that the amount of compensation awarded by Tribunal is on lower side, hence, the impugned award of compensation passed by Claims Tribunal does not call for any interference.
7. No one appeared on behalf of other respondents.
8. We have heard learned counsel for the respective parties and also perused the record of the claim case.
9. Claimants in their claim application have pleaded that the motor accidental injuries suffered by deceased Saifulla Ansari with the offending vehicle. Claimants have placed on record copy of F.I.R. as Ext. P-1, Final report as

Ext. P-2. Perusal of F.I.R. would show that it was lodged on same day within three hours of accident wherein under the description of the vehicle, it is mentioned as “unknown vehicle”. Police after investigating the crime has made appellant/ non-applicant as accused and submitted the final report before the Court of competent jurisdiction. From the aforementioned documents, it is apparent that though the F.I.R. has been lodged against the unknown vehicle but after completion of investigation, vehicle owned by appellant was found to be involved in the accident. Claimants have examined Aysa Khatun as AW-1, Mohd. Israel as AW-2, Fariyad Hussain as AW-3, in support of their case. Appellant/ non-applicant examined himself as NAW-1, besides, Shankar Prasad as NAW-2, Rajdhan Baitha as NAW-3, Abdul Gaffar as NAW-4 and Israil Miya as NAW-5. Appellant in his pleading has stated that on the date of accident, he has not plied the offending vehicle anywhere and it has been kept in his house. In support of his pleadings non-applicant/ appellant has examined himself as NAW-1 and other witnesses as above. Appellant has taken a plea that the offending vehicle was kept for his personal use and on the date of accident it was not plied on public road. Evidence which is brought on behalf of appellant/ non-applicant would show that witnesses examined by the appellant in support of his case has very categorically stated that non-applicant/ appellant himself was engaged in plying the offending vehicle as passenger carrying vehicle. Appellant's statement is contrary to the statement made by his witnesses which creates suspicion over the credibility of evidence and defence of appellant.

10. If the case projected by appellant/ non-applicant in his reply and evidence is taken into consideration, it would reveal that appellant has not placed correct facts before the Tribunal but it is apparent that he, for one or other reason, tried to hide the facts from the Tribunal, particularly, the fact that he himself was plying the offending vehicle as Taxi/ passenger carrying vehicle whereas he stated that the vehicle was kept for private use.

11. The case, under the Motor Vehicles Act, which is beneficial piece of legislation, is to be decided on doctrine of preponderance of probability. There is no requirement of strict proof as required in the criminal cases to be proved beyond reasonable doubt. Hon'ble Supreme Court in cases of **Postgraduate Institute of Medical Education and Research, Chandigarh v. Jaspal Singh and others** reported in (2009) 7 SCC 330, **Bimla Devi and others v. Himachal Road Transport Corporation and others** reported in (2009) 13 SCC 530 has held thus:

In **Jaspal Singh (supra)**, it is held as under:-

“17. In *Syad Akbar v. State of Karnataka* (1980) 1 SCC 30 this Court dealt with in details the distinction between negligence in civil law and in criminal law. It has been held that there is a marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man, beyond all reasonable doubt.”

In **Bimla Devi (supra)**, it is held as under:-

“11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition.

* * *

15. In a situation of this nature, the Tribunal

has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

12. If in the light of the aforementioned rulings of the Hon'ble Supreme Court, facts of the present case are taken into consideration, it would be apparent that deceased died on account of motor accidental injuries suffered by him. Initially the registration number of vehicle has not been mentioned in the F.I.R. which later on came on record during the course of police investigation. Appellant who is owner of offending vehicle has not stated correct facts before the Claims Tribunal and has tried to hide that the offending vehicle was running/ plying on road by appellant himself as passenger carrying vehicle. All the witnesses have stated use of vehicle as passenger carrying vehicle. One more aspect of the case is that appellant has not challenged the registration of criminal case before any Court or forum against his false implication. As stated, more than three witnesses examined by the appellant have stated that the appellant himself was plying the offending vehicle as taxi/ passenger carrying vehicle.
13. For the foregoing reasons, we are of the considered view that the appellant has not approached the Claims Tribunal with clean hands. He has not placed on record the correct facts. As the application for grant of compensation under the Act of 1988 is to be decided on the touchstone of preponderance of probability, we do not find any force in the submission made by learned counsel for the appellant that the death of late Saifulla Ansari is not on account of motor accidental injuries suffered by him with the offending vehicle owned by appellant. The submission made by learned counsel for the appellant, on this count, is hereby repelled.

14. Now we will consider the second submission made by learned counsel for appellant with regard to quantum of amount of compensation awarded by the Claims Tribunal. On the date of accident, deceased was shown to be in age group of 56-60 years. Claims Tribunal assessed income of deceased as Rs. 3,000/- per month. Accidental death of deceased took place on 04.10.2011, he has been shown to be engaged in business of cattle selling. Taking into consideration the age, date of accident and occupation of deceased, we do not find that Claims Tribunal assessed monthly income of deceased on higher side. Claims Tribunal has awarded Rs. 1,30,000/- as compensation on other conventional heads which in the facts of the case appears to be on higher side, but looking to other aspect of the case that the Claims Tribunal has assessed income of the deceased only Rs. 3,000/- p.a., not awarding any amount towards future prospects, submission made by learned counsel for appellant that amount awarded on other conventional heads is on higher side, particularly, the loss of consortium of Rs. 1,00,000/- and funeral expenses of Rs. 25,000/-, we do not find that the amount of compensation awarded by the Claims Tribunal, if tested and considered, in the facts and circumstances of the case and the object of Act of 1988 to be excessive.

15. Upon taking into consideration the entirety of the case, we do not find that the Claims Tribunal has awarded excessive amount of compensation. Deceased was survived by his widow, children and parents. Parents have been shown to be aged about 78 years and 70 years. There are total nine-claimants, hence, if the amount of compensation on other conventional heads to be considered in the light of ruling of Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in (2017) 16 SCC 680 and **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in (2018) 18 SCC 130, claimants are entitled for Rs. 40,000/- each towards loss of spousal consortium, loss of parental consortium and loss of filial consortium and

Rs. 15,000/- each towards loss of estate and loss of funeral expenses which makes the total amount of compensation on other conventional heads as Rs. 1,50,000/-, whereas learned Claims Tribunal has awarded only Rs. 1,30,000/-. In view of above, second submission made by the learned counsel for appellant is also repelled.

16. For the foregoing reasons, we do not find any merit in the appeal which is liable to be and is hereby dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge