
(2022) 05 CHH CK 0051
In the Chhattisgarh High Court
Case No : MAC No. 489 Of 2015

Ghasnin Bai

APPELLANT

Vs

New India Insurance Company Limited

RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Motor Vehicles Rules, 1994 — Rule 226

Citation : (2022) 05 CHH CK 0051

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Sanjay Patel, Rahul Mishra, Chitra Shrivastava

Final Decision : Partly Allowed

Judgement

1. This appeal arises out of the award dated 30.03.2015 passed by the 2nd Additional Motor Accident Claims Tribunal, Korba in MACT No.24/2014, whereby the claim of the appellants to the tune of Rs.22,30,000/- with 18% per annum for loss of life of the deceased Bhagwat Prasad Sahu has been rejected by the learned Tribunal, against which the present appeal has been filed.

2. Brief facts of the case are that on 30.12.1993, when the deceased Bhagwat Prasad Sahu was riding his motorcycle bearing Registration No.MBR-6097, the offending vehicle bearing Registration No.MPL-8098 driven by Ravi Kumar Singh (died during trial) hit the motorcycle of the deceased due to rash and negligent driving of him, as a result of which the deceased sustained severe injuries, thereafter he was hospitalized in Korba Hospital, where he died, which resulted into filing of the claim petition before the 2nd Additional Motor Accident Claims Tribunal, Korba on the ground that since the deceased was the regular employee of NTPC and was posted at Jamnipali, Darri, therefore, the total claim of Rs.22,30,000/- on various heads with 18% per annum be awarded in favour of the appellants. The claim petition filed by the appellants was dismissed as barred by limitation vide order dated 04.07.2003 in Claim Case No.58/2002, against which the appeal bearing MA No.819/2003 was preferred before this Court. The

said appeal was allowed in part and the matter was remitted to the Tribunal to decide the claim of the appellants on merits. The learned Tribunal in the second round of litigation considered and rejected the claim of the appellants on merits vide order dated 30.03.2015 (Annexure-A/1), against which the present appeal has been filed.

3. Learned counsel for the appellants submits that the appellants/claimants moved an application on 27.04.2013 to get certified copy of the charge sheet and other documents of criminal case against driver Ravi Kumar pending before the CJM, Korba, but even after lapse of 7 months, he did not get certified copy of the charge sheet and other documents. Thereafter, the application of the appellants preferred before the Tribunal to summon the records/documents i.e. certified copy of charge sheet and other documents relating to Crime No.907/1993 registered at Police Station Kotwali, Korba against the driver of the offending vehicle for the purpose of adducing evidence before the Tribunal, has wrongly been rejected by the learned Tribunal and consequently petition of the appellants has been dismissed without providing opportunity of adducing evidence holding that number of opportunities have already been granted to the appellants to adduce evidence and file documents, but the appellants have failed to do so. The appellants in their all sincerity tried to find out the documents of challan, but the Police has also not given the copy of challan. The learned Tribunal also refused to summon the documents and outrightly dismissed the application of the appellants. He further submits that in absence of any documents, evidence cannot be adduced. Therefore, the present appeal be allowed and the appellants be awarded compensation for loss of life of Bhagwat Prasad Sahu.

4. Learned counsel for the respondent No.1/Insurance Company supports the impugned award.

5. Heard learned counsel for the parties and perused the material available on record.

6. The Hon'ble Apex Court in the matter of Jai Prakash vs National Insurance Company Limited and others 2010 (3) MPHT 326 (SC) has held in para 16 as under:-

“16. Directions to Police Authorities

The Director General of Police of each State is directed to instruct all Police Stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:

(i) Accident Information Report in Form No. 54 of the Central Motor Vehicle Rules, 1989 ('AIR' for short) shall be submitted by the police (Station House Officer) to the jurisdictional Motor Vehicle Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in

Form No. 54, the police should also collect and furnish the following additional particulars in the AIR to the Tribunal:

- (i) The age of the victims at the time of accident;
- (ii) The income of the victim;
- (iii) The names and ages of the dependent family members.

(ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or the Injury/Wound certificate (in the case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal.

(iii) Simultaneously, copy of the AIR with annexures thereto shall be furnished to the concerned insurance company to enable the Insurer to process the claim.

(iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim (in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing."

7. In the case in hand, it is clear from the order sheet of the Tribunal dated 15.01.2015 that the claimants filed an application before the learned Tribunal on 10.11.2014 praying that since they could not get the copy of charge sheet of accident case filed against Driver Ravi Kumar for the purpose of adducing evidence, therefore, case diary of Crime No.907/1993 registered at Police Station Kotwali, Korba be called for. The learned Tribunal dismissed the application of the claimants holding the same to be inappropriate and instead held that the appellants may get documents of any case from copying section, whereas the appellants also applied for certified copy of the charge sheet through Receipt No.1583/2013, but the same was also not taken into consideration and the application of the appellants was rejected and consequently the petition was also dismissed on this count alone vide award dated 30.03.2015 (Annexure-A/1).

8. The Hon'ble Apex Court in Jai Prakash (supra) has underlined the duties of the Police Authorities regarding filing of charge sheet. In the present case, the poor claimants did not get copy of charge sheet from the concerned Criminal Court and when they approached the concerned police station for copy of FIR, the same was denied. The claimants also filed Receipt No.1583/2013 of Copying Section for certified copy of charge sheet. But, the learned Tribunal did not appreciate the genuineness of the application and closed the opportunity of adducing evidence by the appellants and simply dismissed the application and consequently the petition of the claimants has also been dismissed merely on this ground.

9. In the matter of Arti Devi and others vs Jagatpal @ Jogo and others 2016 (4)

CGLJ 285, it has been held by this Court in para 7 as under:-

"7. In view of above mentioned facts and circumstances of the case, the Tribunal should have followed the provisions of Rule 226 and should have summoned the records from the Police, Medical and other authorities like RTO and then decide the claim petition on the basis of evidence and other relevant material on record in accordance with law but the Tribunal has not followed the provisions of Rule 226. Therefore, we are of the opinion that the matter requires reconsideration at the end of Tribunal."

10. Rule 226 of the Motor Vehicles Rules, 1994 reads as under:-

"226. Obtaining of information and documents necessary for awarding compensation under Section 40. - The Claims Tribunal shall obtain whatever information and documents which may be found necessary from the police, medical and other authorities and proceed to award the claim whether the parties who were given notice, appear or not, on the appointed date."

11. In light of the above provisions, it is quite vivid that in the case in hand, the Tribunal has not made any attempt to hold any enquiry or not invoked its power as provided under Rule 226 of the Motor Vehicles Rules, 1994 to call for the relevant records of criminal case i.e. case diary, charge sheet etc., whereas the Tribunal was obligated to obtain documents from Police and then only award could have been passed, but the same has not been done in the present case.

12. For the aforesaid reason, this appeal is allowed in part. The impugned award is quashed and the matter is remanded to the Claims Tribunal to hold due and proper enquiry by invoking its jurisdiction under Rule 226 of the Motor Vehicle Rules, 1994 and pass appropriate orders after affording opportunity of hearing to both the parties to adduce evidence. The Claims Tribunal is also directed to ensure that the claimants get all copies of criminal record and charge sheet and after adducing evidence pass the award accordingly.

13. It is also directed that the concerned District Judge shall enquire the matter as to why the relevant documents, in support of which Receipt No.1583/2013 of Copying Section was also filed before the Tribunal, were not provided to the claimants till 15.01.2015 and submit report thereof immediately before this Court. For ready reference, order sheet dated 15.01.2015 passed in Claim Case No.24/2014 be sent to the concerned District Judge.

14. Both the parties are directed to appear before the concerned Claims Tribunal on 27.06.2022. Records of Claims Tribunal be sent back forthwith to the concerned Claims Tribunal.