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**(2023) 04 CHH CK 0066**

**In the Chhattisgarh High Court**

**Case No : Miscellaneous Appeal (C) No. 249 Of 2016**

New India Assurance Company Limited

APPELLANT

Vs

Kanti Yadav

RESPONDENT

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**Date of Decision : 24-04-2023**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166, 173  
Indian Penal Code, 1860 — Section 304A

**Citation : (2023) 04 CHH CK 0066**

**Hon'ble Judges : Arvind Singh Chandel, J**

**Bench : Single Bench**

**Advocate : B.N. Nande, Mahesh Kumar Mishra**

**Final Decision : Dismissed**

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## **Judgement**

1. This appeal has been preferred by the Appellant-Insurance Company under Section 173 of the Motor Vehicles Act, 1988 being aggrieved by the impugned award dated 02.11.2015 passed by Chief Motor Accident Claims Tribunal, Dhamtari, District-Dhamtari (C.G.) (hereinafter referred to as 'the Claims Tribunal') in Claim Case No. 10/2015, whereby the Claims Tribunal passed an award of compensation of Rs.35,43,268/- in favour of the Claimants and fastened liability upon the Insurance Company.

2. Facts of the case are that on 17.04.2014, allegedly the deceased Vijay Kumar Yadav, after completing his election duty was returning towards his home on a motorcycle bearing Registration No. CG 04 DL 3189, at around 10 PM, when he reached at Sambalpur railway crossing at Dhamtari-Raipur road, a bus bearing Registration No. C.G. 09 F 6030 (for short 'the offending vehicle') rashly and negligently driven by Respondent No.4, dashed the motorcycle of the deceased due to that the deceased sustained serious injuries and resultantly he died. The offending vehicle owned by Respondent No.5. On the next date of incident i.e. 18.04.2014, a report was made regarding the said incident by brother of the deceased. On the basis of said report, offence under Section 304-A of the Indian

Penal Code has been registered and after completion of investigation, charge-sheet has been filed.

3. The Claimants that are Respondents No.1 to 3 filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Claims Tribunal claiming compensation to the tune of Rs.90,10,000/-. It was pleaded by the Respondents/Claimants that at the time of accident the deceased was aged about 50 years and was working as Sahayak Vikas Vistar Adhikari in Janpad Panchayat Dhamtari (C.G.) and was getting monthly salary of Rs.36,148/-. He also owned some agricultural land at village Saloni (C.G.).

4. Respondents No.4 & 5, Driver and Owner of the offending vehicle filed their written statements before the Claims Tribunal denying the averments made by the Claimants in claim petition. It was pleaded by Respondents No.4 & 5 that though they are the driver and owner respectively of the offending vehicle but, the offending vehicle was not involved in the accident and false case has been registered against them. It was further pleaded by them that on the date of accident, the offending vehicle was running on road as per the time schedule of Road Permit and on the fateful day, the offending vehicle had already arrived to its destination on time schedule whereas, the accident was occurred much more of the time schedule. It was further pleaded by them that the offending vehicle was insured with the Appellant-Insurance Company, therefore, the Insurance Company is liable to pay compensation, if any.

5. Appellant-Insurance Company also took the defence that on the date of accident, the offending vehicle was running on road as per the time schedule of Road Permit and on the fateful day, the offending vehicle had already arrived to its destination on time schedule. As the offending vehicle was not involved in the accident, therefore, insurance company is not liable to pay any compensation.

6. After hearing the parties and recording the evidence, the Claims Tribunal vide impugned award dated 02.11.2015, passed an award of Rs.35,43,268/- in favour of the Claimants and fastened the liability upon the Appellant-Insurance Company. Hence, this appeal has been preferred by the Appellant-Insurance Company.

7. Learned Counsel appearing for the Appellant-Insurance Company submitted that there are sufficient evidence available on record which shows that the vehicle which has been alleged for accident was not involved in the accident. From time schedule of the vehicle itself established that the vehicle was already reached to its destination prior to the timing of the accident despite the Claims Tribunal has held that the vehicle was involved in the accident. According to the Counsel, the accident was occurred on 17.04.2014 at 10 PM and the FIR has been lodged by brother of the deceased against unknown person on the next day i.e. 18.04.2014 and the alleged offending vehicle was seized after five months of the accident i.e. on 02.09.2014. Statement of eye-witness namely Dinesh Kumar has also recorded after four months of the accident, therefore, looking to the

entire evidence, it is well established that the alleged vehicle was not involved in the accident. In this regard, reliance has been placed by the Counsel on Allahabad High Court's judgment in Oriental Insurance Co. Ltd. vs. Motor Accident Claims Tribunal, Baghpat and Others, 2009 (1) T.A.C. 126 (All.), and reliance have also been on the judgment passed by Hon'ble Supreme Court in Anil and Others Vs. New India Assurance Co. Ltd. and others, (2018) 1 T.A.C. 355 (S.C.) and Amrit Paul Singh vs. TATA AIG General Insurance Co. Ltd. and Others, 2018 (3) T.A.C. 1 (SC). With regard to the quantum part of the compensation, it was further argued by the Counsel that looking to the age of the deceased, multiplier of 11 would be applied in place of multiplier of 13 as the age of the deceased at the time of accident was 50 years not more than 50 years.

8. Learned Counsel appearing for the Respondents No.1 to 3/ Claimants supported the impugned award and submitted that looking to the entire evidence available on record, the Claims Tribunal has rightly fastened the liability upon the Insurance Company.

9. I have heard learned counsel appearing for the parties and perused the impugned award and other material available on record.

10. Undisputedly, the accident was occurred on 17.04.2014 about 10 PM and the FIR has been lodged by one Mahendra Yadav, brother of the deceased on 18.04.2014. Mahendra Yadav has been examined as Witness No.2 of Non-Appellant No.3-Insurance Company, in his Court statement he deposed that on information being received from his nephew, he lodged a report in concerned Police Station against unknown vehicle. One Dinesh Kumar has also been examined before the Claims Tribunal as eye-witness i.e. Appellant/Claimant Witness No.2., in his Court statement, he deposed that at the time of accident, he was present on spot and the accident was occurred in front of him. According to this witness, vehicle bearing Registration No. CG 09 F 6030 dashed the deceased, however, he admitted that he did not inform anyone about the accident. In paragraphs 8 & 10, he categorically deposed that the accident was occurred in front of him, and 'Kanker Roadways' was written on the accident causing vehicle whose Registration No. is CG 09 F 6030. Driver of the offending vehicle Deepak Kumar Tandiya has also been examined as Witness No.3 of Non-Appellant No.3-Insurance Company, he admitted that he was the driver of the offending vehicle, according to statement of this witness, as per time schedule of vehicles, the vehicles leaves Konta at 6 in the morning and reaches Raipur at 8:15 at night. Vijay Kumar Ber Witness No.6 of Non-Appellant No.-3-Insurance Company, deposed that he is a Steno Typist in R.T.O., Jagdalpur, according to the statement of this witness, as per time schedule of vehicles, it leaves Konta at 6 in the morning and reaches Raipur at 19:40 at night. As per the statements of Deepak Kumar Tandiya and Vijay Kumar Ber, it only established that as per the time schedule, the offending vehicle have to reach Raipur at 19:40 but, there is no specific evidence available on record which shows that the vehicle actually reached at Raipur at the same time on the date of accident. It is not necessary

that the vehicle reaches on its scheduled time every day. On this point judicial notice can be taken that sometimes the time schedule of vehicles are also violated. Therefore, only on the ground of time schedule, it can not be assumed that the offending vehicle was actually arrived on time on the date of accident.

11. In case of *Bimla Devi and others vs. Himachal Road Transport Corporation and others* reported in (2009) 13 SCC 530 ,it is held by the Supreme Court in paragraphs 11 & 15 which reads 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. In case of *Gurdeep Singh Versus Bhim Singh and Others*, (2013) 11 SCC 507 dealing with the issue it has been held by the Hon'ble Supreme Court in paragraph 15 which reads as under:

"15. It is a matter of common knowledge that in motor road accident's claim cases, it is very difficult to get witnesses. The eyewitnesses are also not readily available. Even if available, they are not easily ready and willing to come and depose in Court of law for many reasons. Thus, we have to go by the oath of the claimant only. From the materials available on record, it is established and crystal clear that the appellant had definitely met with the accident. He was also traveling in the bus, operated by M/s Kataria Tours and Travelers. It is also proved that the accident was between two buses on the intervening night of 28.09.1994 and 29.09.1994."

13. Looking to the above law laid down by Supreme Court, in case in hand also there is no evidence available on record which can show that on the date of accident, time schedule has actually been followed by the offending vehicle and the vehicle was positively reached at Raipur in its scheduled time, therefore, it is not established that the vehicle has falsely implicated in the present case. Hence,

I do not find any perversity in the order of the Claims Tribunal.

14. With regard to the quantum part of the compensation, it was argued by learned Counsel for the Appellant-Insurance company that looking to the age of the deceased multiplier of 11 may be applied inspite of multiplier of 13. On perusal of the evidence and material available on record clearly shows that on the basis of statement of Virendra Kumar Yadav (Appellant Witness No.1) son of the deceased and on the basis of post-mortem report, the Claims Tribunal arrived on the conclusion that age of the deceased at the time of accident was 50 years. Looking to the law laid down by the Supreme Court in case of Sarla Verma Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121, the Claims Tribunal has applied the multiplier of 13 which is also appropriate. Thus, on this point also, I do not find any substance on the argument of learned Counsel appearing for the Appellant-Insurance Company.

15. Resultantly, I do not find any perversity in the order impugned passed by the Claims Tribunal. Accordingly, the appeal is dismissed as no merit.