

(2011) 07 CHH CK 0017
In the Chhattisgarh High Court
Case No : M.A. (C) No. 302 of 2008

Shushila Mishra and others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and another

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 209
Motor Vehicles Act, 1988 — Section 166, 173
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2012) ACJ 1188 : AIR 2011 Chh 177 : (2011) 1 CGBCLJ 340

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Abhay Tiwari, for the Appellant; Sudhir Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

G. Minhajuddin, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 has been filed against the award of the Twelfth Motor Accidents Claims Tribunal (FTC), Durg (in short "the Tribunal"), dated 27.4.2006 passed in Claim Case No. 51 of 2005, dismissing the claim petition of the appellants-claimants filed u/s 166 of the Motor Vehicles Act, 1988 (in short "the Act") as not maintainable in law. Brief facts of the case are that appellant No. 1 is the wife of deceased Haridev Mishra and appellant Nos. 2, 3 and 4 are children of the deceased. Respondent No. 2 is the driver of truck bearing registration No. MP 23-D 4362, which was insured with respondent No. 1 on the date of accident. Deceased Haridev Mishra is the registered owner of the said truck, who used to accompany the driver and helper in the truck. On the date of accident, i.e., 16.2.2001 deceased Haridev Mishra having loaded the goods in the said truck left his home situated at Kumhari. The truck was being driven by the respondent No. 2. However, Haridev Mishra died due to accident on public road at village Khurighat, PS Ratanpur, Distt. Bilaspur. When the appellants-claimants could not trace the deceased and the said truck for a considerable time, they lodged a missing report at Police Station Kumhari, Distt. Durg. During investigation, firstly the appellants came to know that on the

date and time of accident, Haridev Mishra had died on account of being accidentally run over by the said truck.

2. At the time of accident, the deceased was a healthy man of 49 years and was earning Rs. 15,000 to Rs. 20,000 per month. The appellants were fully dependent upon the deceased and they have no other source of income. On account of unfortunate demise of Haridev Mishra, they are suffering a great financial crisis. Therefore, the appellants being legal heirs of the deceased filed a claim petition u/s 166 of the Act claiming a total compensation of Rs. 42,60,000 for the death of Haridev Mishra.

3. However, the learned Tribunal after hearing counsel for the parties, on a close scrutiny of the evidence led by them, by the impugned award dismissed the claim petition on the ground that the same is not maintainable because the deceased did not die due to motor accident, but, in fact, he was murdered by the driver and the helper of the truck.

4. Heard learned counsel for the parties, perused the LCR as also the impugned award.

5. The main thrust of the argument of learned counsel for appellants-claimants is that even if the death of Haridev Mishra is taken to be a murder, then also as the same has arisen out of the use of motor vehicle, therefore, it comes within the ambit and purview of accidental murder and as such, the claim petition u/s 166 of the Act is maintainable. In support of his contention, learned counsel for the appellants has submitted a judgment of the Hon'ble Supreme Court in the matter of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another,

6. On the contrary, contention of learned counsel for respondent No. 1/insurance company is that the incident in question is not an accident, but an intentional murder, as is evident from the material available on record as well as from perusal of the impugned award, especially paras 13, 14 and 27. Learned counsel contends that on account of some altercation, which had taken place between deceased Haridev Mishra and driver and helper/cleaner of the truck in question, the deceased was struck by an iron rod on the head by the cleaner of the truck, namely, Lakhkhu alias Lakheshwar and when the deceased had fallen down, the driver of the truck Harishanker, with an intent to cause disappearance of evidence of the offence and for screening themselves, had moved the truck to and fro over the body of the deceased, so that the body could not be identified. Learned counsel further contends that in these circumstances, it is not a case of accident, but of murder simpliciter and hence the claim petition filed by the appellants-claimants has rightly been dismissed by the Tribunal as not maintainable.

7. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, .

8. The core question before this court for consideration is--whether the death of Haridev Mishra was caused on account of accident arising out of the use of motor vehicle or it was a case of murder simpliciter?

9. From perusal of the material available in the LCR as well as the impugned award, it is clear beyond any doubt that on the fateful day, deceased Haridev Mishra, who was owner of the truck in question, after loading the goods which were to be transported, had accompanied driver Harishanker and cleaner Lakhkhu alias Lakheshwar in the said truck. On way to the place of destination, some altercation took place between the deceased/owner of the truck on the one hand and driver as well as cleaner on the other, whereupon the cleaner Lakhkhu struck the deceased by an iron rod on his head, as a result of which the deceased fell down on the ground and after that, in furtherance of common intention of both the driver and the cleaner, the driver had moved the truck to and fro over the body of Haridev Mishra with the object of causing disappearance of evidence of the offence and for screening themselves. A report of the incident was lodged at Police Station Ratanpur, on the basis of which an F.I.R. u/s 154 of Criminal Procedure Code was registered for the offence punishable under sections 302//201 of the Indian Penal Code and after investigation, charge-sheet was filed before the court of Judicial Magistrate First Class, Bilaspur, who, in turn, committed the case u/s 209 of Criminal Procedure Code to the Court of Sessions Judge. The said case was registered as S.T. No. 267 of 2001, which resulted in conviction of driver Harishanker and cleaner Lakheshwar under sections 302/34 and 201 of the Indian Penal Code and they were sentenced to undergo imprisonment for life. The convicts are undergoing the sentence of imprisonment.

10. In the case of Rita Devi (supra), a driver of the autorickshaw employed by the owner for driving autorickshaw for carrying passengers on hire was duty-bound to have accepted the demand of fare-paying passengers to transport them to the place of their destination. During the course of this duty, the passengers had decided to commit an act of felony of stealing the autorickshaw and in furtherance thereof, they committed murder of driver of the autorickshaw and stole the autorickshaw. In these circumstances, the Hon''ble Apex Court held that the death of autorickshaw driver was an accident within the meaning of the Motor Vehicles Act and as such, the claimants--wife and children of the deceased driver--are entitled for compensation under the Act. The Hon''ble Apex Court has held in para 10 as under:

(10) The question, therefore, is: can a murder be an accident in any given case? There is no doubt that murder, as it is understood in the common parlance, is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the act of felony is to kill any particular person then

such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act, then such murder is an accidental murder.

Whereas in the present case, there was no intention to commit any other felonious act, but the intent of driver Harishanker and cleaner Lakheshwar was to kill owner of the truck Haridev Mishra, and as such, it cannot be said that the death of Haridev Mishra was accidental murder. The above judgment relied upon by the appellant is distinguishable on facts.

11. By any stretch of imagination, causing of death of Haridev Mishra cannot be termed as accidental murder, but is murder simpliciter. As such, even as held by the Supreme Court in the above-mentioned judgment in para 10, causing of death of Haridev Mishra was not an accident arising out of use of motor vehicle, but an intentional murder. Thus, in view of above, the finding of the Claims Tribunal that the claim petition of the appellants-claimants is not maintainable u/s 166 of the Act cannot be faulted with.

12. In the result, the appeal fails and is hereby dismissed. Impugned award dated 27.4.2006 passed by the Claims Tribunal is affirmed.

13. No order as to costs. Certified copy as per rules.