Hemlal Sahu And Ors Vs Dayaram @ Diyal Shori And Ors

Court: Chhattisgarh High Court

Date of Decision: Oct. 20, 2020

Acts Referred: Motor Vehicles Act, 1988 â€" Section 39, 66, 166, 173, 192
Indian Penal Code, 1860 â€" Section 279, 304A, 337

Hon'ble Judges: Sanjay S. Agrawal, J

Bench: Single Bench

Advocate: Pravin Kumar Tulsyan, Sourabh Sharma

Final Decision: Allowed

Judgement

,,

Sanjay S. Agrawal, J",,

1. This Miscellaneous Appeal has been preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the",,

'Act of 1988') questioning the legality and propriety of the award dated 28.10.2014 passed by the Motor Accident Claims Tribunal, North Bastar Place",,

Kanker in Claim Case No.72/2013, whereby, the learned Tribunal while allowing the claim in part, has awarded a total amount of compensation to the",,

tune of Rs.1,20,500/- (Rupees One Lakh Twenty Thousand And Five Hundred Only) with 6% interest per annum from the date of filing of the claim",,

petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Tribunal.,,

2. Briefly stated, the facts of the case are that on 01.05.2013, deceased Omprakash Sahu, was going by a motorcycle along with his friend Abhishek",,

Chandel to village Aturgaon. At the relevant time, he was hit vehemently from its opposite side by the offending vehicle 'Tata Magic', owing to the",,

rash and negligent driving by its driver, namely, Dayaram @ Diyal Shori/Non-Applicant No.1. It was owned by Non-Applicant No.2/Mohd. Ikbal and",,

was insured with Non-Applicant No.3/ICICI Lombard General Insurance Company Limited. As a result of the alleged accident, the deceased",,

sustained serious multiple injuries and died on the same day in hospital during the course of his treatment. The matter was reported to the Police,,

Station Kanker and based upon which, the offence punishable under Sections 279 and 337 of I.P.C. was registered against the driver of the alleged",,

offending vehicle in connection with Crime No.108/13 and after its investigation, the charge sheet was submitted before the Chief Judicial Magistrate,",,

Kanker, while registering the offence punishable under Sections 279, 337 and 304-A of I.P.C. along with under Section 39/192 of the Act of 1988.",,

3. On account of the aforesaid accident, a Claim enumerated under Section 166 of the Act was made by the Claimants, who are parents of the",,

deceased, submitting inter alia that their son, 18 years old, was a labourer and used to earn Rs.4,500/- per month and, thus, claimed total amount of",,

compensation of Rs.7,78,000/-, under various heads.",,

4. According to the driver and owner of the vehicle in question, the deceased himself was responsible for the alleged accident as he dashed the",,

alleged vehicle, while driving his motorcycle in a very high speed rashly and negligently. It is contested further on the ground that as the alleged vehicle",,

was insured with the ICICI Lombard General Insurance Company Limited, therefore, in case of any liability being fastened, they would be entitled to",,

be indemnified by the said company. While, the insurer of the alleged offending vehicle took a defence that the vehicle in question was a 'Transport",,

Vehicle' insured as a Ã¢â‚¬Å“Passenger Carrying Package PolicyÃ¢â‚¬, was, however, being driven without any permit and fitness certificate by a driver,",,

who was even not possessing the effective and valid driving licence in violation of the policy. As such, no liability could be fastened upon it.",,

5. The claimants have examined as many as two of their witnesses, while none was examined by the driver and owner of the alleged offending",,

vehicle and, the insurer has examined one of its witness, in order to show the use of the alleged offending vehicle in violation of the policy.",,

6. After considering the evidence led by the parties, it was held by the Tribunal that the alleged accident occurred due to the contributory negligence",,

of the driver of the alleged offending vehicle as well as the deceased, as he (deceased) was 15 years old and was driving his motorcycle without",,

possessing any kind of driving license and also for the reason that it occurred due to head on collusion. In consequence both were held to be equally,,

responsible for it at the ratio of 50% each. It observed further that the vehicle in question was being used in violation of the policy, as neither the driver",,

was authorised to drive the alleged Ã¢â‚¬Å“Transport VehicleÃ¢â‚¬ nor was it being used with permit and fitness certificate and that by considering the,,

monthly income of the deceased to the extent of Rs.2,000/-, yearly Rs.24,000/-, and by deducting half of it awarded total amount of compensation",,

along with its interest as mentioned herein above, while exonerating the Insurance Company from its liability.",,

7. According to Shri Pravin Kumar Tulsyan, the learned counsel for the Appellants/Claimants, the finding of the Tribunal holding that the deceased",,

was equally responsible for the alleged accident is contrary to the materials placed on record. Further contention of him with regard to the exoneration,,

of the insurance company is also not sustainable as the insurer has failed to establish its defence by way of cogent and reliable evidence. It is,,

contented further that while determining the amount of compensation, the Tribunal has erred in assessing the income of the deceased only to the",,

extent of Rs.2,000/- per month, and thereby erred in awarding a meagre amount of compensation even without considering the future prospects of his",,

income. In support, he placed his reliance upon the decisions rendered by the Supreme Court in the matter of National Insurance Company Limited vs.",,

Pranay Sethi and Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram And Others reported in (2017) 16 SCC 680 and,,

(2018) 18 SCC 130, respectively.",,

8. On the other hand, Shri Sourabh Sharma, learned counsel for Respondent No.3 has supported the award impugned as passed by the Tribunal.",,

9. I have heard learned counsel for the parties and perused the entire record carefully.,,

10. According to the Claimants, the deceased Omprakash Sahu, on the fateful day, was hit vehemently from its opposite side by the offending vehicle",,

'Tata Magic', when he was going by the motorcycle along with his friend Abhishek Chandel. The initial burden to establish the occurrence of the",,

alleged accident and/or, the rash and negligent act of the driver of the offending vehicle was upon the claimants. In order to establish the said fact, the",,

claimants have examined the deceased's friend Abhishek Chandel as AW-2, who, in turn, has deposed that on the said date, deceased was driving the",,

motorcycle and he was sitting behind him and were going by their side, when the alleged accident took place. It was stated specifically by him that it",,

had occurred due to the fault of the driver of the said offending vehicle Ã¢â‚¬Å“Tata MagicÃ¢â‚¬. He was stuck in his cross-examination and no suggestion,",,

whatsoever, was put to him, in order to disprove his version that the driver of the alleged offending vehicle was not driving his vehicle in a rash and",,

negligent manner. That apart, the driver of the alleged offending vehicle namely, Dayaram has not entered into the witness box in order to throw the",,

light regarding the factum of alleged accident. In such circumstances, the unrebutted statement of the said eyewitness cannot be disbelieved.",,

11. It, however, appears that the Tribunal without considering the said evidence led in order to prove the factum of the alleged accident and even in",,

absence of any legal evidence led by the driver of the alleged offending vehicle has erred in holding that the drivers of both the vehicles were equally,,

liable for the same merely on the ground that it was occurred due to head on collusion and also for the reason that the deceased, who was 15 years",,

old, was driving his motor cycle without any licence. The approach of the Tribunal in arriving at such a conclusion appears to be hyper technical and,",,

cannot be held to be sustainable. At this stage, the observation made by the Supreme Court in the matter of T.O. Anthony versus Karvarnan And",,

Others reported in (2008) 3 SCC 748 is to be seen where it was observed at paragraph 7 as under:-,,

Ã¢â‚¬Å“7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence,",,

and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the",,

injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his",,

contributory negligence. Therefore, where the injured is himself partly liable, the principle of Ã¢â‚¬Å“composite negligenceÃ¢â‚¬ will not apply nor can there",,

be an automatic.....Ã¢â‚¬â€‹,,

12. Yet, in the matter of Sudhir Kumar Rana v. Surinder Singh and Others reported in A.I.R. 2008 S.C. 2405, it has been observed at para 8 as",,

under:-,,

Ã¢â‚¬Å“If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence",,

as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It,,

is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler,,

rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was",,

not having a licence, he would be held to be guilty of contributory negligence.Ã¢â‚¬â€‹",,

13. Besides, it appears that an F.I.R. (Ex.P-2) was lodged against the driver of the alleged offending vehicle immediately upon the occurrence of the",,

alleged accident and a charge sheet (Ex. P-1) was submitted accordingly by the Investigating Officer before the Chief Judicial Magistrate, Kanker",,

under Sections 279, 337 and 304-A of I.P.C. along with under Section 39/192 of the Act of 1988, which prima-facie establishes the fact that he (driver",,

of the offending vehicle) alone was responsible for the alleged accident and in absence of any evidence led by him, I do not find any reason to",,

disagree with the opinion of the Investigating Agency in filing the said charge sheet against him. It would, thus, lead to an irresistible conclusion that",,

the driver of the alleged offending vehicle alone was responsible for the alleged accident. In view of the said background, the finding of the Tribunal",,

holding the contributory negligence of both the drivers is, thus, liable to be and, is, hereby set aside, and it, accordingly, held that the alleged accident",,

occurred due to the rash and negligent driving by the driver of the alleged offending vehicle alone which led to the sad demise of Omprakash Sahu, the",,

unmarried son of the claimants.,,

14. In so far as the driving license of the driver of the alleged offending vehicle is concerned, it however appears that he was authorised to drive the",,

Light Motor Vehicle only, as evidenced from his driving licence marked as Ex. D-2. Although, the vehicle in question, i.e., Ã¢â‚¬Å“Tata MagicÃ¢â‚¬ was a",,

Ã¢â‚¬Å“Transport VehicleÃ¢â‚¬, but since it was a kind of a Light Motor Vehicle, as evidenced by the statement of Akash Kashyap (N.A.W.-1), the law",,

officer of the insurer, where he has admitted this particular fact at para 4 of his testimony, therefore, it cannot be said that he was not authorised to",,

drive the same in view of the principles laid down by the Supreme Court in the matter of Ã¢â‚¬Å“Mukund Dewangan Vs. Oriental Insurance Company,,

LimitedÃ¢â‚¬â€‹ reported in (2017) 14 SCC 663. As in the said matter, a similar issue, as to, whether a driver who was holding a license to drive the Ã¢â‚¬Å“light",,

motor vehicleÃ¢â‚¬ and was driving the Ã¢â‚¬Å“transport vehicleÃ¢â‚¬ of that class in absence of such an endorsement, was considered and it was held therein",,

at paragraphs 60.1, 60.2 and 60.4 as under:-",,

60.1. Ã¢â‚¬Å“Light motor vehicleÃ¢â‚¬ as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21),,

read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment,,

Act 54 of 1994.,,

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also",,

motor car or tractor or a roadroller, Ã¢â‚¬Å“unladen weightÃ¢â‚¬ of which does not exceed 7500 kg and holder of a driving license to drive class of Ã¢â‚¬Å“light",,

motor vehicleÃ¢â‚¬ as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not",,

exceed 7500 kg or a motor car or tractor or roadroller, the Ã¢â‚¬Å“unladen weightÃ¢â‚¬ of which does not exceed 7500 kg. That is to say, no separate",,

endorsement on the license is required to drive a transport vehicle of light motor vehicle class as enumerated above. A license issued under Section,,

10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.,,

60.4. The effect of amendment of Form 4 by insertion of Ã¢â‚¬Å“transport vehicleÃ¢â‚¬ is related only to the categories which were substituted in the year,,

1994 and the procedure to obtain driving license for transport vehicle of class of Ã¢â‚¬Å“light motor vehicleÃ¢â‚¬ continues to be the same as it was and has,,

not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light",,

motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.",,

15. It is, thus, clear that the driver of the alleged offending vehicle, though was authorised to drive the light motor vehicle was, however, entitled to",,

drive the alleged offending vehicle as well in the light of the principles laid down in the aforementioned judgment. Therefore, it cannot be held that he",,

was not possessing the effective and valid driving licence as held by the Tribunal. The said finding of the Tribunal is thus liable to be and is hereby set,,

,Mode of Compensation,Amount (in Rs.)

(I),"For loss of filial consortium to parents @ Rs.40,000/-","40,000/-

(ii),For funeral expenses,"15,000/-

(iii),For loss of estate,"15,000/-

,Total,"Rs.70,000/-