

Phangeshwar @ Mangesh @ Fankesh And Ors Vs Laxmi Bai And Ors

Court: Chhattisgarh High Court

Date of Decision: Feb. 8, 2018

Acts Referred: Indian Penal Code, 1860 " Section 39, 55, 66, 192
Motor Vehicles Act, 1988 " Section 146, 173, 196

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Samir Singh, Aman Kesharwani, Dashrath Gupta

Final Decision: Dismissed

Judgement

P. Sam Koshy, J

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the driver and owner assailing the award dated

02.05.2011 passed by the IIInd Additional Motor Accident Claims Tribunal, Rajnandgaon (in short, the Tribunal) in Claim Case No.51 of 2011.

2. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.4,19,000/-to the claimants along with interest @ 6 percent

per annum from the date of application. While passing the award, the Tribunal has exonerated the insurance company of its liability and have

fastened the same upon the appellants-driver and owner of the offending vehicle.

3. It is a case where the deceased Chandrabhan is said to have met with an accident from Bus the belonging to the appellants bearing

registration No.CG-08-ZA-2001. The contention of the appellant is that the said vehicle was duly insured with the respondent-insurance

company and therefore any liability, if at all, should had been shifted upon the insurance company. He submits that though in the FIR a

different vehicle number was given but the said vehicle did not belong to the appellants and therefore the impugned award deserves to be

modified by shifting liability upon the insurance company.

4. According to appellants, they had adduced evidence of appellant himself before the Tribunal and has produced document Ex. D/7 showing

details of the different vehicles owned in the family of the appellants and where the vehicle No. CG-04-ZA-4858 is not reflected which shows

that the said vehicle was not belonging to the appellants. He further submits that infact the vehicle which was involved in the accident was

CG-08-ZA-2001 which was duly insured and not the vehicle No.CG-04-ZA-4858.

5. On the other hand, the counsel for the respondent-insurance company as well as claimants opposes the appeal on the ground that there is

no sufficient evidence was led by the owner, to establish that the accident did not occur from CG-04-ZA-4858, however, since the said

vehicle was not insured, they have created a story projecting the vehicle bearing registration No.CG-08-ZA-2001 to be the vehicle involved in

the accident. Counsel for the respondents submits that this proposition which was floated by the appellants has been rightly rejected by the

Tribunal accepting the same to be an afterthought theory created by the appellants. Thus, prayed for rejection of the appeal.

6. Having heard the counsel on either side and on perusal of records, indisputably the FIR was lodged on the date of accident itself i.e.

11.02.2009 at Police Station, Chhuriya, District Rajnandgaon, where the case was registered as Crime No.41/2009 for the offence under

Section 304 IPC and Sections 39,56,66/192 and 146/196 of Motor Vehicles Act against the appellant No.1-Phangeshwar. In the said FIR, the

particulars of the vehicle involved in the accident was shown to be as CG-04-ZA-4858. Further, what also is reflected is the specific finding of

the Tribunal itself that the FIR has been recorded by one Shankar Ramteke who was a Teacher by profession and therefore since he was an

educated person, there was no reason for him to have given incorrect vehicle number while lodging FIR.

7. Further, what is also reflected is that except for the evidence of the appellant himself, there is no sufficient cogent evidence adduced by the

appellants to disprove the contention of the claimants or establishing the fact that the accident did occur from the vehicle bearing registration

No. CG-08-ZA-2001.

8. This court finds the award of the Tribunal to be just, reasonable and a speaking award, dealing with all the issues raised before the Tribunal

and hence does not find scope of any interference with the impugned award and the findings of the liability of payment of compensation being

fastened upon the appellants.

9. This court is not inclined to interfere with the award also on the ground that there were bunch of claim cases arising out of the same

accident and in all the cases the award has been passed against the appellants and except for the present appeal, there was one more appeal

preferred by the appellants, however, the said appeal got dismissed and as such the said award have attained finality. Moreover no appeal

was filed in the other cases where the award was passed against the present appellant.

10. The appeal of the appellants-driver and owner thus being devoid of merit deserves to be and is accordingly rejected.