



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 542 of 2018

1 - Bharti Axa General Insurance Company Limited Through Authorized Signatory Sajit Ku. Ray, Aged About 27 Years R/o Ii Floor, Jeet Towers Ge Road, Raipur, P.S. Azad Chowk District Raipur Chhattisgarh (Non Applicant No 3), District : Raipur, Chhattisgarh

...Appellant

versus

1 - Jagdish @ Bhurva S/o S/o Lt. Kanhai Ram Aged About 40 Years R/o Chanderi Po Damakheda, District Balodabazar Chhattisgarh. Present R/o New Rajendra Nagar, Urla (Rameshwar Sahu S House) Raipur, P.S. Urla District Raipur, Chhattisgarh (Claimant), District : Raipur, Chhattisgarh

2 - Jaishankar S/o S/o Gaurishankar Patel Permanent R/o Village Jagora, P.S. Lalganj, District Mirzapur, Present R/o House No. 612, Gali No. 2 Phaphadih, Tahsil And District Raipur, Chhattisgarh (Non Applicant No. 1), District : Raipur, Chhattisgarh

3 - Joginder Pal Bedi S/o Shri Mohanlal Bedi, R/o House No. 612 Gali No. 2 Phaphadih, Tahsil And District Raipur, Chhattisgarh (Non Applicant No. 2), District : Raipur, Chhattisgarh

... Respondent(s)

(Cause Title is taken from CIS System)

For Applicant : Mr. Palash Agrawal, Advocate

Hon'ble Mr. Justice Amitendra Kishore Prasad

Order on Board

20/04/2026

1. Heard on I.A. No. 02 of 2018, an application for condonation of delay in filing the instant appeal.
2. On due consideration of the reasons mentioned in the application, the same is allowed. Delay of 336 days in filing the present appeal is hereby condoned.
3. None appears for the respondents. Accordingly, the appeal is heard finally at the stage of admission.
4. The present appeal has been preferred by the appellant/Insurance Company under Section 173 of the Motor Vehicles Act, 1988, challenging the legality, validity and correctness of the award dated 03.01.2017 passed by the learned II Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No.155/2013, whereby a sum of Rs.3,49,000/- along with interest @ 9% per annum from the date of application till realization has been awarded in favour of the claimants.
5. The brief facts, as borne out from the record, are that the claimants filed an application under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.10,50,000/- on account of the death of the deceased, who succumbed to injuries sustained in a motor accident dated 28.02.2012. It was

the case of the claimants that on the date of incident, at about 11:00 AM, the deceased was getting down from a trolley near Village Bemta Road, Simga, when the offending vehicle, driven in a rash and negligent manner by non-applicant No.1, came from behind and dashed against him, resulting in grievous injuries. The deceased was taken for treatment but ultimately succumbed to the injuries. It was further pleaded that the deceased was about 54 years of age and was engaged in carpentry work, earning his livelihood and supporting his family. On account of his untimely death, the claimants suffered immense financial loss as well as mental agony. The incident was reported to the concerned Police Station and a criminal case was registered against the driver of the offending vehicle.

6. The non-applicants, including the present appellant/Insurance Company, filed their replies denying the allegations. The Insurance Company, in particular, raised various defences, including alleged breach of policy conditions, absence of valid permit and fitness, and that the driver did not possess a valid driving licence at the relevant time. It was also contended that the deceased himself was negligent. The learned Tribunal framed issues and, after appreciating the oral and documentary evidence adduced by the parties, recorded findings holding that the accident occurred due to rash and negligent driving of the offending vehicle and that the vehicle was duly insured with the

present appellant. The Tribunal further held that there was no breach of policy conditions and consequently fastened liability upon the Insurance Company, awarding compensation of Rs.3,49,000/- with interest. Being dissatisfied with the said award, the present appeal has been filed.

7. Learned counsel for the appellant/Insurance Company submits that the impugned award is arbitrary, illegal and contrary to the facts and evidence available on record. It is contended that the learned Tribunal has failed to properly appreciate the material on record and has erroneously fastened liability upon the appellant. Learned counsel further submits that there were material contradictions and omissions in the evidence led by the claimants, which have not been properly considered by the Tribunal. It is also contended that the deceased himself was negligent and had contributed to the accident, and therefore, the principle of contributory negligence ought to have been applied. However, the Tribunal has failed to consider this aspect. Learned counsel further argues that the vehicle was being used in violation of policy conditions, including absence of valid permit and fitness certificate, and therefore, the Insurance Company ought to have been exonerated from liability. Hence, it is prayed that the impugned award be set aside and the appellant be absolved of liability.

8. I have heard learned counsel for the appellant and perused the entire record with due care.
9. The primary contention raised by the appellant is with regard to alleged negligence on the part of the deceased and consequent liability fastened upon the Insurance Company.
10. From a careful perusal of the record, it is evident that though the Insurance Company has taken a plea that the deceased himself was negligent, no cogent, reliable or substantive evidence has been adduced before the learned Tribunal to substantiate the said plea. It is well settled that the burden to prove contributory negligence lies upon the party asserting the same. Mere pleading without supporting evidence is not sufficient to establish such a defence. In the present case, the appellant/Insurance Company has failed to discharge this burden. No material has been brought on record to demonstrate that the deceased had contributed to the occurrence of the accident in any manner. In absence of any such evidence, this Court is of the considered view that it cannot be held that the deceased himself was negligent. Consequently, the learned Tribunal has rightly recorded a finding that the accident occurred due to rash and negligent driving of the offending vehicle and has correctly fastened liability upon the Insurance Company.

11. So far as the other grounds raised by the appellant regarding breach of policy conditions are concerned, no sufficient evidence has been produced to substantiate such allegations. The findings recorded by the learned Tribunal on these aspects are based on proper appreciation of evidence and do not suffer from any illegality. This Court finds that the learned Tribunal has meticulously examined the evidence available on record and has arrived at a just and reasonable conclusion.
12. The scope of interference in an appeal under Section 173 of the Motor Vehicles Act is limited, and unless the findings recorded by the Tribunal are perverse or based on no evidence, the same do not warrant interference. In the present case, no such perversity or illegality is demonstrated. From perusal of the record, it clearly appears that so far as the plea taken by the Insurance Company is concerned, no evidence has been produced to prove negligence on the part of the deceased. As such, without there being any evidence, it cannot be held that the deceased himself was negligent. The Insurance Company has not adduced any evidence in respect of negligence on the part of the deceased. Therefore, the learned Tribunal has rightly passed the award and fastened liability upon the Insurance Company, which does not call for any interference.
13. In view of the foregoing analysis, this Court is of the considered opinion that the impugned award dated 03.01.2017 passed by the

learned II Additional Motor Accident Claims Tribunal, Raipur (C.G.) is just, proper and in accordance with law. No ground is made out for interference in the said award. Accordingly, the present appeal being devoid of merit is hereby **dismissed**. The award passed by the learned Tribunal is affirmed.

No order as to costs.

Sd/-

(Amitendra Kishore Prasad)
Judge

Shayna