

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M. A. No. 201 of 2010

M/s Oriental Insurance Company Ltd., Ranchi **Appellant**

Versus

1. Smt. Kalawati Devi
2. Rina Kumari
3. Suraj Kumar Pandey
4. Arun Kumar Pandey
5. Sachin Kumar Pandey
6. Smt. Seeta Devi
7. Umesh Kumar Rai @ Umesh Prasad Rai
8. Mansur Mian
9. Shyam Dev Singh
10. The New India Assurance Co. Ltd., Jamshedpur

.... **Respondents**

With

M. A. No. 212 of 2010

Umesh Kumar Rai @ Umesh Prasad Rai **Appellant**

Versus

1. Smt. Kalawati Devi
2. Rina Kumari
3. Suraj Kumar
4. Arun Kumar Pandey
5. Sachin Kumar Pandey
6. Smt. Seeta Devi
7. Mansur Mian
8. The Oriental Insurance Company Ltd., Ranchi
9. Shyam Deo Singh
10. The New India Assurance Co. Ltd., Jamshedpur

.... **Respondents**

With

M. A. No. 09 of 2011

M/s The New India Assurance Co. Ltd., Jamshedpur **Appellant**

Versus

1. Smt. Kalawati Devi
2. Rina Kumari
3. Suraj Kumar Pandey
4. Arun Kumar Pandey
5. Sachin Kumar Pandey
6. Smt. Seeta Devi
7. Umesh Kumar Rai @ Umesh Prasad Rai
8. Mansur Mian
9. The Oriental Insurance Company Ltd., Ranchi
10. Shyam Dev Singh

.... **Respondents**

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellants : M/s Prashant Vidyarthi, Vishal Tiwari, Shailendra Jit, Nalini Jha & Nisha Thakur, Advocates

For the Respondents : M/s Basav Chatterjee, Arvind Kr. Lall, D.C. Ghose & Abhay Kumar Mishra, Advocates

C.A.V. ON 23.03.2022

PRONOUNCED ON 13 / 04 / 2022

1. All these three appeals arise out of the common Judgment and award of compensation, they are heard together and shall be disposed by common Judgment.
2. As per the claimant's case filed under Section 163A of the Motor Vehicle Act 1988 (MV Act), on 1.6.05 the deceased Dina Nath Pandey died in a motor vehicle accident when he was going with his daughter Rina Kumari by Mahindra Savari vehicle bearing No. JH-12A-6430 involving a truck bearing registration No. HR-38D-7766. It is claimed that both the vehicles were being driven rashly and negligently.
3. In the claim application one Mansur Mian (O.P.2) was initially impleaded as driver of the passenger vehicle bearing registration No. JH-12A-6430, but later his name was expunged vide order dated 20.5.06 after the charge-sheet was filed against Umesh Rai (O.P No.1) the owner of this vehicle with the finding that he was driving the vehicle at the relevant time of accident.
4. O.P. No.1 Umesh Kumar Rai is the owner of Mahindra Savari Vehicle bearing registration No. JH-12A-6430 has contested the claim by pleading that the accident was caused due to the rash and negligent driving by the truck bearing registration No. HR-38D-7766.
5. O.P. No.3 M/s Oriental Insurance Company the insurer of the passenger vehicle has contested the claim on the ground that the accident did not take place due to rash and negligent driving by the driver of this vehicle rather it was on account of head-on collision with Truck No. HR-38D – 7766. The basic documents like driving license, permit have not been produced. It is claimed that the claimants have deliberately shifted the liability on the owner and insurer of the passenger vehicle.
6. O.P.No.5 the New India Assurance Co. Ltd., the insurer of the truck has contested the claim on the plea that the driver of this vehicle was not having a valid and effective driving license. The other documents with

respect to the vehicle has also not been filed. It has, however, been admitted that this vehicle was under its insurance cover.

7. On the basis of the pleadings of the parties the following main issues were framed:

Issue No. III – Whether the death of Dina Nath Pandey was caused on 1.6.05 at 13.00 p.m. by the use of Mahindra Savari vehicle bearing registration No. JH-12A-6430 and Truck No. HR-38D-7766?

Issue No. IV-Whether the opposite parties – owner and driver possessed the vehicular documents such as driving license, permits, fitness certificates etc. as required Under Section 149 (2) of the M.V. Act?

8. The learned Tribunal awarded compensation to the claimants by recording a finding of composite negligence on the part of the drivers of both the vehicles in equal share.

9. M. A. No. 212 of 2010 has been filed by the owner (O.P.1) of the Mahindra Savari Vehicle bearing No. JH-12A-6430. The finding of composite negligence on the part of the driver of Mahindra Savari Vehicle No. JH-12A-6430 and Truck No. HR-38D-7766 in the ratio of 50:50 has been assailed on the ground that Mansur Mian was driving the vehicle is not supported by evidence on record. In the FIR the name of the driver of the vehicle appears to be Mansur Mian but after investigation the charge-sheet (Ext.3) has been submitted against Umesh Kumar Rai @ Umesh Prasad Rai who was the owner cum driver of the offending vehicle. After cognizance charge was framed and he was put on trial and convicted by the trial court in G.R. Case No. 1005 of 2005 by the Judicial Magistrate, Giridih (Ext. F) vide judgment dated 26.06.2009. In this view of matter, it is argued that the finding that the driver of the vehicle was Mansur Mian is perverse. The vehicle was under insurance cover at the relevant point of time and there has not been any breach of the terms and conditions of the Insurance Policy so as to entitle the Insurance Company to right to recovery.

10. It has been submitted by Mr. Abhay Kumar Mishra, learned counsel for the Insurance Company, that at the stage of enquiry before the Motor Vehicle Accident Claim Tribunal, the driving license was not the

part of record and no document regarding license had been filed with respect to driver Mansur Mian. Therefore, right to recovery has been rightly given to the Insurance Company.

11. M.A. No. 09 of 2011 has been filed by the New India Assurance Co. Ltd against the award of compensation on the ground that the driver of the Truck No. HR-38D-7766 has not been charge-sheeted after investigation. The accident has been attributed to the driver of Mahindra Savari Vehicle No. JH-12A-6430. Under the circumstance, the Tribunal was in error to record a finding of composite negligence.

12. M.A. No. 201 of 2010 has been filed by the Oriental Insurance Company on the ground that the driver of the passenger vehicle Mansoor was not having a valid and effective driving licence. Therefore, in view of breach of terms of the insurance policy, the Insurance Company should not have been held liable and the liability should have been fastened on the owner of Mahindra Savari Vehicle No. JH-12A-6430.

13. The main question that has been raised in these appeals is whether the findings of the Tribunal regarding composite negligence is sustainable in view of the inconsistent evidence on the point?

Further, where there is any breach in the terms and condition of the insurance policy so as to give the insurance company the right of recovery?

14. The F.I.R in Birni PS Case No. 56 of 2005 (Ext.2) was registered under Sections 279/338/337/304 A of the IPC against the drivers of the passenger vehicle JH-12A-6430 and Truck No. HR-38D-7766 on the basis of the statement of Rajesh Kumar Verma. Name of the driver of the passenger vehicle has been stated to be Mansoor in the F.I.R. Police on investigation submitted charge-sheet against Umesh Kumar Rai (O.P. no.1) the owner-cum-driver of the JH-12A-6430 (Ext 3). After cognizance of the offence charge was framed and the Umesh Kumar Rai was put on trial and convicted vide Judgment dated 26th June, 2009 in T.R.730/09 (Ext F).

15. During inquiry before the M.A.C.T three witnesses have been examined on behalf of the claimants but no witness has been examined on

behalf of the opposite parties. P.W.2 and P.W.3 are the eyewitnesses to the accident. P.W.3 Harihar Pandey has claimed himself to be the eye witness to the accident and he has deposed that he was on his motor cycle at the time of accident near the place of occurrence. He has described the manner of accident and has stated that the truck was coming at a high speed and the passenger vehicle was also being driven at a high speed. Both the vehicles came to a head on collision. He has stated the passenger vehicle was being driven in a 'rough' manner. In his cross-examination he has deposed that his statement was not recorded by the police.

PW3 Rina Kumari the daughter of the deceased who was travelling in the vehicle along with her father has deposed that a truck came at a high speed and dashed against the bus. In her cross-examination she has deposed that the bus was being driven by the driver Mansoor. The accident took place 15 years ago in 2005 whereas the evidence was recorded in 2020 when she has stated her age to be 12 years and a student of Class-V. Going by stated her age as deposed by her, she should not have even been born at the time of accident. In view of the discrepant statement, no value can be attached to her testimony.

16. The inference whether a vehicle was being driven rashly or negligently is an inference that has to be drawn by the Courts on the basis of different particulars that come up regarding the manner of accident that emerge on the basis of the evidence on record, both oral and documentary. It is for the Courts to piece together the evidence and draw an inference on the manner of accident. Mere assertion by a witness that a particular vehicle was being driven rashly and negligently cannot be the last word on the basis of which a Court will draw its conclusions. Different factors to be considered are the speed of vehicle, the type of vehicle, whether it was loaded or not, road conditions, the place of occurrence i.e. whether it was a high way or a crowded area, the side of road on which the accident took place etc. Inquiry under M. V. Act, being civil and summary in nature, the onus of proof is lighter and based on preponderance of probability than that in criminal cases.

17. In the present case as discussed above, the testimony of P.W.3 that the driver of the passenger vehicle was Mansoor cannot be accepted as her testimony is riddled with contradiction. We have to fall back on the testimony of P.W 2 who has only deposed that both the vehicles were

driven at a high speed and added that the passenger vehicle was being driven in a rough manner. Testimony of P.W.2 is in accord with the conclusion of the police investigation wherein the charge-sheet has been submitted against the driver Umesh Kumar Rai of the passenger vehicle. In the absence of any other contrary evidence by preponderance of probability the only and only inference that can be drawn is that the accident took place due to rash and negligent driving of the Mahindra Savari Vehicle bearing registration no. JH-12A-6430 by its driver Umesh Kumar Rai. This is also the conclusion of the criminal Court which convicted the driver Umesh Kumar Rai after trial in T.R.730/09. It may be added at this juncture that there is no two view on the proposition of law the finding of a criminal court is not binding on a civil court. But, they may be relevant in terms of Section 43 of the Evidence Act. It was in this context the Hon'ble Apex Court referred to the observation of Madras High Court in ***Seth Ramdayal Jat v. Laxmi Prasad, (2009) 11 SCC 545***

12. In *Perumal v. Devarajan* [AIR 1974 Mad 14] it was held: (AIR p. 15, para 2) “But it is not correct to state that even the factum that the first and the second defendants were charged under Sections 454 and 380 IPC and they were convicted on those charges could not be admitted. The order of the criminal court is, in my opinion, clearly admissible to prove the conviction of the first defendant and the second defendant and that is the only point which the plaintiff had to establish in this case.”

18. From the above discussion the only inescapable conclusion that can be drawn regarding the manner of accident is that it took place due to rash and negligent driving of vehicle No. JH-12A-6430 by its driver Umesh Kumar Rai. There is no room for drawing any other conclusion regarding the factum of accident. The finding of the Tribunal of composite negligence is therefore not sustainable and is accordingly set aside.

19. From the above it follows that owner of the passenger vehicle O.P. No.1 shall be principally liable to pay the compensation. Now the matter for consideration is whether insurer O.P. No.3 (appellant in M.A. 201/10) of the passenger vehicle shall be liable to indemnify the owner and to satisfy the award of compensation under Section 149 of the MV Act?

20. It is not in dispute that the passenger vehicle was under the insurance cover of O.P. No.3 at the relevant time of accident. The policy

of insurance has been adduced into evidence and marked as Ext.9/A, Ext. B to B/2 Tax token, Ext.D temporary permit, Ext.E Driving licence of Umesh Kumar Rai. On these evidences there is nothing in support of the plea of the Insurance Company regarding breach of terms of the insurance policy. O.P. No.3 the Oriental Insurance Company insurer of Mahindra Savari vehicle bearing No. JH-12A-6430 shall be liable to pay the compensation amount to the claimant.

M.A. No. 201 of 2010 is dismissed whereas M.A No. 212 of 2010 and M.A. No. 9 of 2011 are allowed as at above.

The Insurance Companies are permitted to withdraw the statutory amount deposited at the time of filing of appeal.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 13th April, 2022

AFR / AKT