

**HIGH COURT OF CHHATTISGARH AT BILASPUR****MAC No. 906 of 2022**

The Oriental Insurance Company Ltd. Hotel Laxman Avenue, Jagdalpur, District Bastar (C.G.) Represented Through In Charge, T.P. Hub, T.P.Hub Office Rama Trade Centre 1st Floor Opposite Rajeev Plaza Near Old Bus Stand, Bilaspur,

---- Appellant

Versus

1. Smt. Gangi Mandavi W/o Late Narsingh Mandavi Aged About 27 Years R/o Village Dabbakonta, Tehsil Konta, Police Station Chintagupha,, District : Sukuma, Chhattisgarh
2. Ku. Chandni Mandavi, D/o Late Narsingh Mandavi Aged About 5 Years Represented Through Next Friend And Natural Guardian Smt. Gangi Mandavi (Respondent No. -1)r/o Village Dabbakonta, Tehsil Konta, Police Station Chintagupha,, District : Sukuma, Chhattisgarh
3. Sheikh Manirudin, S/o Karimuddin Aged About 32 Years R/o Near Masjid Patnampara, Sukma, Thana Sukma, (Driver), District : Sukuma, Chhattisgarh
4. Nandkishore Tawari S/o Mohanlal Tawari Aged About 47 Years R/o Maheshwaripara, Sukma, Thana Sukma, (Owner), District : Sukuma, Chhattisgarh

---- Respondents

For Appellant	:	Mr. R. N. Pusty, Advocate
For Respondent No.1 & 2	:	Mr. Praveen Dhurandhar, Advocate
For Respondent No.3 & 4	:	Ms. Ranjana Tiwari, Advocate

Hon'ble Mr. Justice P. Sam Koshy

Order on Board

18/10/2022

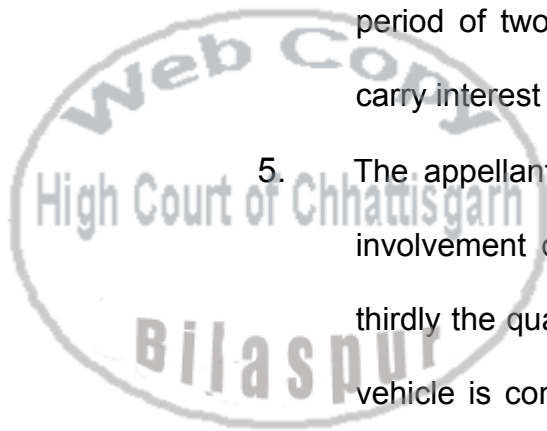
1. The present is an Insurance Company's appeal under Section 173 of the Motor Vehicles Act.
2. The appeal is filed with a delay of 32 days along with an application I.A. No.2, which is an application for condonation of delay.
3. On due consideration of the submissions made by the appellant and also considering the submission made by the counsel on I.A. No.2 a strong case for allowing the application has been made out. Accordingly, I.A. No.2 stands allowed. Delay of 32 days in filing the appeal stands condoned.



4. With the consent of the parties, the appeal was heard on admission, It is a case where an accident occurred on 29.08.2020 and as a result of the said accident the deceased Narsingh Mandavi aged around 30 years succumbed to the injuries suffered from the said accident. It is said that deceased was traveling on his motor cycle and when he had halted the motor cycle and was answering the call of the nature, a rash and negligent bolero jeep came and dashed the deceased causing grievous injuries resulting in his death later on 31.08.2020. The widow and the daughter of deceased have filed the claim application under Section 166. The Tribunal after considering the evidence on record have allowed the same by awarding a compensation of Rs. 54,68,200/-. While passing the impugned award the tribunal also granted interest at the rate of 4% per annum and with penal clause that in case if the amount is not paid within a period of two months then the amount beyond a period of two months shall carry interest at the rate of 6% till its actually paid.

5. The appellant while assailing the impugned award has questioned firstly the involvement of vehicle. Secondly, the liability of the insurance company and thirdly the quantum of compensation awarded. As regards the involvement of a vehicle is concerned, contention of the learned counsel for the appellant was that it is a case where perusal of the entire facts leads to much suspicions, as regards the occurrence of the accident itself by the offending vehicle. According to the counsel for the appellant it is a case where accident is said to have occurred on 29.08.2020 and the deceased having died on 31.08.2020 the FIR was lodged at a much belated stage on 20.10.2020 i.e. after about 52 days from the date of accident.

6. It is the further contention of the appellant that even the statement of the alleged eye witness Madvi Kosa AW-2 also gives rise to many suspicions. As regards the occurrence of accident and also as regards his having witnessed the accident. Learned counsel for the appellant insurance company referred to his statement so far as his ignorance to the number of vehicle at the time of accident and that he was subsequently informed by the Police Authorities as

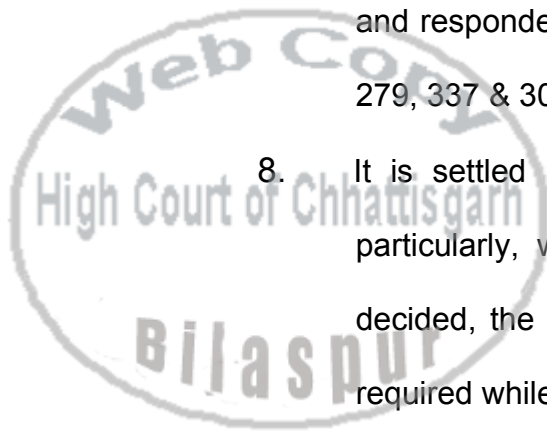




regards the vehicle number is concerned. Further, according to the appellant, the suspicion becomes stronger so far as deposition and statement of the eye witness Madvi Kosa AW-2 for the simple reason in spite of being an eye witness, he had not disclosed the involvement of the offending vehicle to any person till the FIR was lodged for the first time on 14.10.2020.

7. All said and done, what is reflected from the perusal of the impugned award is that on 29.08.2020 the deceased constable with the Chhattisgarh Police met with an accident. He was hospitalized and he succumbed to the injuries on 31.08.2020. Subsequently on 14.10.2020, the statement of AW-2 was recorded before the Police Authorities and it is thereafter that FIR was lodged on 20.10.2020. What is also admitted from the factual matrix of the case is that, based on the FIR, a final report was submitted and charge-sheet was also filed and respondent no.1 was prosecuted for the offence punishable under Section 279, 337 & 304 A of the IPC and charge-sheet was also filed against him.

8. It is settled position of law that in a case under the Motor Vehicles Act, particularly, when the claim application arising out of an accident is to be decided, the standard of proof required is not of the same standard which is required while proving of a criminal case. It is the principles of preponderance of probability that has to be applied while the claim application under the Motor Vehicle Act. The registration of FIR, the prosecution of the driver of the offending vehicle, subsequent filing of the charge-sheet are all strong materials to establish the accident and death of the deceased person from the said accident. In addition, there is also this evidence of AW-2 who claims himself an eye witness of the said incidence. Only because the statement of eye witness was recorded at a belated stage or eye witness having not disclosed this fact to any other person till the statement was recorded before police authorities cannot be a ground to disbelieve his version for the reason that it could be also a case where AW-2 must have disclosed it to the family members but because of the atmosphere prevailing in the family at that point of time when the whole family must be grieving on the death of the deceased. The





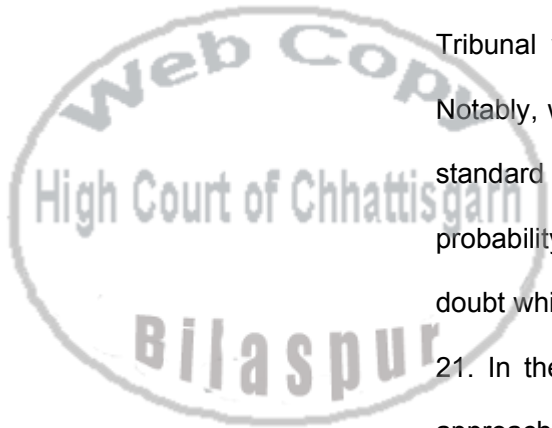
recording of a statement or the disclosure of facts to the police officer at a later stage under the prevailing circumstances cannot be ruled out. More particularly, taking note of the place of incidence and place of residence of the claimants and said eye witness.

9. The view of this Court stands fortified from the decision of the Hon'ble Supreme Court in the case of Sunita and others V. Rajasthan State Road Transport Corporation and another, AIR 2019 SC 994, where in paragraph 20,21 & 25 held as under :

"20. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

21. In the present case, we find that the Tribunal had followed a just approach in the matter of appreciation of the evidence/materials on record. Whereas, the High Court adopted a strict interpretation of the evidence on the touchstone of proof beyond reasonable doubt to record an adverse finding against the appellants and to reverse the well considered judgment of the Tribunal in a cryptic manner.

25. The Tribunal's reliance upon FIR 247/2011 (Exh. 1) and chargesheet (Exh. 2) also cannot be faulted as these documents indicate the complicity of respondent No.2. The FIR and chargesheet, coupled with the other evidence on record, inarguably establishes the occurrence of the fatal accident and also point towards the negligence of the respondent No.2 in causing the said accident. Even if the final outcome of the criminal proceedings against respondent No.2 is unknown, the same would make no difference atleast for the purposes of deciding the claim petition under the Act. This Court in Mangla Ram (supra), noted

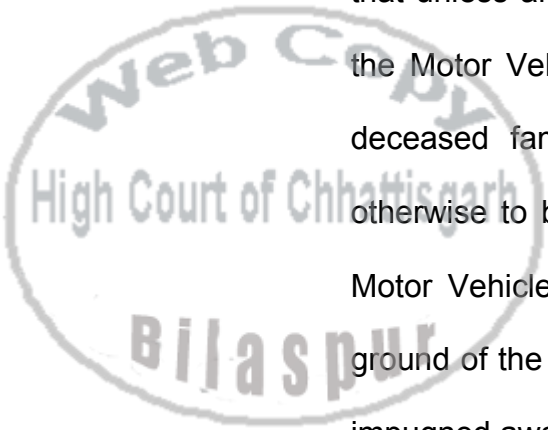




that the nature of proof required to establish culpability under criminal law is far higher than the standard required under the law of torts to create liability. “

Thus this ground raised by the insurance company does not have any force.

10. As regards, the quantum of compensation is concerned, learned counsel for the appellant submits that it is a case where claimants have received ex-gratia payment of 3 Lakhs from the State Government and therefore the said amount ought to had been deducted from the total compensation payable. This ground raised by the appellant also does not have any merits in the light of the decision rendered by the Hon'ble Supreme Court in the case of Sebastiani Lakra & Others Vs. National Insurance Company Limited and Another, (2019) 17 SCC 465 wherein it has been emphatically laid down by the Hon'ble Supreme Court that unless any payment has been made towards compensation arising out of the Motor Vehicles Act. Any other payment received by the members of the deceased family cannot be adjusted or deducted from the compensation otherwise to be computed in the structured formula under Section 166 of the Motor Vehicle Act or under Section 163 A of the Motor Vehicles Act. This ground of the appellant also does not find force calling for interference with the impugned award.
11. Other contention of the appellant was that amount of compensation awarded by the Tribunal was more than the amount that has been claimed by the claimants in the claim application. This again does not find favour from this Court for the reason that it is settled position of law that while entertaining the claim application under the Motor Vehicles Act it is the bounding duty of the Tribunal to ensure that the claimants received just and reasonable compensation. Merely because, the claimants have raised an amount as compensation but does not restrict the claim of the claimants which they are otherwise entitled for in the process of quantification of compensation.
12. The appellant lastly contended the fact that it is a case where in addition to the awarding of the consortium amount the tribunal has also awarded an amount of





compensation towards loss of consortium to the claimant no.2 i.e. the daughter of the deceased. This ground of the appellant also is not sustainable in the light of the recent decision of the Hon'ble Supreme Court in the case of United India Insurance Company Limited V. Satinder Kaur & Others, (2021) 11 SCC 780, wherein it has been specifically held that children of the deceased also would be entitled for parental consortium.

13. At this juncture learned counsel for the appellant further raised an objection in respect of the penal interest imposed by the tribunal i.e. awarding of 6% interest in case if appellant insurance company fails to deposit the amount of compensation awarded within a period of two months. Though, this issue has been settled by the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Keshav Bahadur and others, (2004) 2 SCC 370, but this Court at this juncture does not want to interfere with the said finding of the tribunal for the reason that Tribunal as it has given only 4% of interest while passing the impugned award and it is only in case if said award is not honoured within further period of two months with penal interest of 6% has been inflicted which again is not on the higher side in any manner and it is rate of interest which is otherwise prevailing normally under the banking transactions. Moreover, even the penal interest awarded is also for the subsequent period and not from the date of application. Under the circumstances, this Court is not inclined to interfere with the said part of the order so far as grant of interest is concerned.

14. For all the aforesaid reasons, the appeal fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge