

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Miscellaneous Appellate Jurisdiction)
M.A. No. 434 of 2023

The Legal Manager, ICICI Lombard General Insurance Co. Ltd.,
First Floor, Lake View, Kadru Bye Pass Road, Opposite Canara
Bank, Doranda, P.O. Doranda, P.S. Doranda, District Ranchi,
through its Manager Legal, Amit Jaiswal, aged about 30 years,
son of Shri M. Bhagat, having its Branch at Kadru Bye Pass
Road, P.O. Doranda, P.S. Doranda, District-Ranchi

.... Versus Appellant

Versus

1. Sundari Bibi, wife of Late Ijarat Ansari.
2. Ajidan Khatun, wife of Late Ijarat Ansari
3. Md. Moin Ansari, son of Late Ijarat Ansari
4. Md. Mazhar Alam, son of Late Ijarat Ansari
5. Md. Aashique Ansari, son of Late Ijarat Ansari
6. Md. Mobin Ansari, son of Late Ijarat Ansari

All residents of village Jangalpur Masjid Tola, P.O. Jangalpur,
P.S. Govindpur, District-Dhanbad, Jharkhand

7. Safiur Rahman, son of Matiur Rahman, resident of village
Jangalpur, P.O. Jangalpur, P.S. Govindpur, District-Dhanbad,
Jharkhand (Owner of vehicle No. JH10BQ/9650)

.... Respondents

P R E S E N T

HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant : Mr. Bibhash Sinha, Advocate
For the Respondents : Mr. Md. Nasim Akhtar, Advocate

C.A.V. on 23.10.2024 : Pronounced on 14.11.2024

The instant Misc. Appeal has been directed on behalf of
the Insurance Company-claimant/appellant against the
impugned Judgment/Award dated 29.08.2023 passed by the
learned Principal District Judge-cum-P.O.M.A.C.T., Dhanbad
in Motor Accident Claim Case No. 94 of 2022.

2. The brief facts leading to this Misc. Appeal are that the
claimant had filed the Claim Petition with these averments

that on 24.12.2021 at about 4:30 p.m. one Ijarat Ansari (hereinafter referred to as the deceased) was going towards Govindpur Bazar. When he reached at Rangabandh More, G.T. Road, P.S. Govindpur and crossing the road, all of a sudden, a motorcycle no. JH-10BQ/9650 being driven by its driver rashly and negligently dashed him as a result of which he sustained severe injuries. He was rushed to S.N.M.M.C.H., Dhanbad from there he was referred to RIMS, Ranchi where he succumbed to injuries on 02.01.2022. The deceased was Carpenter and was earning 700/- rupee per day and the offending vehicle was insured with Opp. Party No.2.

3. On behalf of the Res. No.6 owner of Motorcycle No. JH-10BQ/9650 the written statement was filed in which it was stated that the said vehicle was driven with a valid and effective driving licence. There was no rashness or negligence on his part. The said vehicle was insured by Insurance Company-Opposite Party No.2 (Appellant herein) and if any liability is found, for the same the Insurance Company is liable.

4. The insurer also filed the written statement in which the averments of the claim petition were denied and stated that it is the claimants and the owner who have proved the pleadings of their case and if the owner of the offending vehicle had

committed any breach of the policy for the same Insurance Company would not be liable to pay.

5. The learned Tribunal had framed the six issues and on the basis of the oral and documentary evidence on record passed the impugned Award directing the Insurance Company to pay the amount of compensation 11,45,932/- @ 7.5% interest to the claimants.

6. Aggrieved from the impugned Award the Appellant-Insurance Company has preferred this Misc. Appeal on the ground that indeed no accident was caused by the offending motorcycle and the motorcycle has been falsely implicated in the accident in order to get the compensation on fake case while the said accident was caused by the Bus which is evident from the inquest report itself which was prepared after the death of deceased. The learned Tribunal had not considered the same fact and fastened the liability wrongly upon the appellant.

7. Per contra, the learned Counsel for the claimant and the learned counsel for the owner vehemently opposed the contentions made by the learned Counsel of the appellant.

8. The learned Tribunal to this effect had framed the issue No.1 and held that the said accident was caused by the offending motorcycle on account of rash and negligent driving.

9. Herein it would be pertinent to re-appreciate the evidence oral and documentary on record on this issue No.1 framed by the learned Tribunal.

9.1 On behalf of the claimant in oral evidence examined **P.W.1-Azidan Khatun** (wife of the deceased), **P.W.2-Md. Khalid Ashraf** (eye-witness of the accident) and in documentary evidence filed the **Exhibit-2 F.I.R., charge-sheet Ext.3, postmortem report Ext. X.**

9.2 **P.W.1-Azidan Khatun** is the claimant wife of deceased. In her cross-examination this witness has stated that she did not witness the accident.

9.3 **P.W.2-Md. Khalid Ashraf** is the eye-witness of the accident. This witness in his Examination-in-chief has stated that the accident took place on 24.12.2021 at 4:30 of evening. The place of occurrence was Rangabandh More, G.T. Road, Govindpur, P.S. Govindpur, District-Dhanbad (Jharkhand). **At that time of accident, he was standing near the place of occurrence and was to go to his house. In the meantime, a motorcycle bearing registration No. JH-10BQ-9650 which was driven by its driver rashly and negligently came and dashed to the deceased from behind; whereby he sustained grievous injuries. The injured was Ijarat Ansari of Jungalpur. The local persons took him to S.N.M.M.C.H.,Dhanbad from there he was referred to RIMS**

where he succumbed to injuries. He had seen the occurrence from his own eyes. In cross-examination by the Insurance Company no contrary conclusion could be drawn from him and **no cross-examination was done by the O.P.No.1-owner of the vehicle.** As such the statement given in examination-in-chief shall be relied upon being uncontroverted.

9.4 From the very perusal of the F.I.R. which is on record, it is found that in the F.I.R. the date of occurrence is shown 24.12.2021 Time is shown 16 hours 30 minutes and the informant is Md. Moin Ansari. In this F.I.R. it has been alleged that on 24.12.2021 at 4:30 late Ijara Ansari was standing for the Tempo to go to Govindpur Bazar at the Rangabad More, G.T. Road, was being crossed by him a motorcycle No. JH-10BQ-9650 dashed to him whereby he sustained injuries and he was referred to the Hospital S.N.M.M.C.H., Dhanbad from there he was referred to RIMS, Ranchi where on 02.01.2022 the injured died. It is also mentioned that the driver of the vehicle which was driven by him rashly and negligently dashed from behind to the deceased. This F.I.R. was lodged at Govindpur **P.S. Case No. 0005 of 2022 on 08.01.2022 against the driver of motorcycle No. JH-10BQ-9650.**

9.5 The I.O. after concluding the investigation also filed charge-sheet which is also on record and this **charge-sheet**

was filed in the very case crime number against the driver of the offending motorcycle namely Mukhtar Ansari. In the very charge-sheet Md. Khalid Ashraf is also shown the eye-witness of the accident. The postmortem report also corroborates the oral evidence and F.I.R. version.

10. On behalf of Insurance Company to rebut this evidence admittedly no contrary evidence has been adduced oral or documentary.

10.1 The learned Counsel for the appellant has relied only upon the inquest report marked Ext. Y/1 in which cause of death is shown that the deceased sustained injury on account of accident caused by Hywa truck.

10.2 This **inquest report was prepared by the I.O. of Govindpur P.S. Case No.05 of 2022 under Sections 279/304-A of I.P.C. and after concluding the investigation the I.O. found that the said accident was caused by the driver of the offending motorcycle Mukhtar Ansari against whom the charge-sheet has been filed.**

10.3 On behalf of Insurance Company before the learned Tribunal no application was moved to summon the Investigating Officer of Govindpur P.S. Case No. 05 of 2022 to explain the contradiction in regard to the accident being between the F.I.R. and the inquest report. **The best witness was the Investigating Officer of Govindpur P.S. Case No.**

05 of 2022 who could explain under what circumstances it was mentioned in the inquest report that the accident was caused by the Hywa Truck and how he reached to the conclusion that the said accident was caused by the offending motorcycle.

10.4 There being laches on the part of the Insurance Company by neither adducing any contrary evidence nor moving any application to call the Investigating Officer of Govindpur P.S. Case No. 05 of 2022, **the adverse inference would be drawn against the Insurance Company for the same; while from the documentary and oral evidence on record adduced by the claimant this fact is well proved that the said accident was caused by the offending motorcycle No. JH-10BQ-9650.**

10.5 Therefore, the finding recorded by the learned Tribunal on the issue No.1 in regard to the accident being caused by the rash and negligent driving of the offending vehicle JH-10BQ-9650 has been rightly decided in favour of the claimant and against the owner and the Insurance Company and same needs no interference.

11. In view of the above analysis of the evidence on record on this very point of determination, this Misc. Appeal deserves to be dismissed.

12. Accordingly, this Misc. Appeal is dismissed. The impugned Award passed by the learned Principal District Judge-cum-P.O.M.A.C.T., Dhanbad in Motor Accident Claim Case No. 94 of 2022 is affirmed.

(Subhash Chand, J.)

P.K.S./A.F.R.