

Miscellaneous Appeal No. 519 of 2008

.... Claimant-Appellant.

Vijay Tiwari son of Birendra Tiwari, resident of village – Barisawan,
P.S. Shahpur, District – Bhojpur.

.... Opp. Party-Respondent

For the Appellant/s :

Mr. Bhola Prasad

Mr. Tarun Prasad Mandal

For the Respondent/s :

None

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV JUDGMENT

Date: 2-02-2015

The present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as “M.V.Act”) has been preferred against judgment and award dated 26-07-2008 and 27-01-2009 respectively passed by the Additional District Judge Ist –cum- Motor Vehicles Claim Tribunal, Bhojpur at Ara (hereinafter referred to as “Tribunal”) in Motor Vehicle Claim Case No. 37 of 2001. By the said judgment and award, the learned Tribunal has rejected the claim application filed by the appellant under Section 166 of the M.V.Act.

Short fact of the case is that the appellant had filed a claim case in the court of learned Tribunal, vide M.V. Case No. 37 of 2001 claiming therein a compensation of

Rs. 5,00,000/- (five lacs) for his permanent disablement and **Rs. 1,61,265/-** (one lac sixty one thousand two hundred sixty five) for the expenditure, which has been incurred against his treatment. The appellant had received injuries due to rash and negligent driving by the driver of Maxi-407, bearing registration no. MKD-3007 (hereinafter referred to as “offending vehicle”). It was claimed that the appellant on 30-10-2000 was getting his vehicle repaired with the help of two mechanics on Ara-Sahpur road and he was standing on the road in the meanwhile, at about 8:15 P.M., the offending vehicle being driven rashly and negligently dashed the appellant. In the said accident, his left leg was badly injured and he was immediately carried to Referral Hospital, Sahpur. After being provided immediate first aid, he was referred to Sadar Hospital, Ara, from where, he was again on the same day referred to P.M.C.H., Patna. In the P.M.C.H., he got treatment up to 15-11-2000 and thereafter, he was got admitted in a private Nursing Home of Dr. Anil Kumar Verma, situated in Kankarbagh Colony, Patna. It has been stated that at the time of accident, driver of the appellant’s vehicle, namely; Sri Belas Sao was also present. Accident, as per the case of appellant, had occurred on 30-10-2000, however; on the basis of written application filed on behalf of



Sri Belas Sao, an F.I.R., vide Sahpur P.S. Case No. 181 of 2000 was registered on 27-01-2001. Subsequently, on 07-09-2001, the claim case i.e. M. V. Claim Case No. 37 of 2001 was filed. To substantiate the case of the appellant, the appellant examined altogether nine witnesses. Besides oral evidences, the appellant also got number of documents exhibited, such as; medical reports and bills, including copy of F.I.R. i.e. Sahpur P.S. Case No. 181 of 2000. Before the Tribunal, the sole respondent appeared and filed written statement refuting the claim of the appellant. The learned Tribunal, after examining the evidences in detail, did not agree with the case of the claimant-appellant and dismissed the claim case i.e. M.V. Claim Case No. 37 of 2001 by its judgment and award dated 26-07-2008 and 27-01-2009 respectively, which has been assailed in the present appeal.

Sri Bhola Prasad, learned counsel for the appellant has argued that despite the fact that there were sufficient materials on record to allow the claim of the appellant, the learned Tribunal, without appreciating those evidences, has rejected the claim of the appellant. He submits that the accident was witnessed by the informant (Belas Sao), who was driver of the vehicle of the appellant, which at the time of accident, was being got repaired. He submits that Sri



Belas Sao has been examined as PW-1. The PW-1, according to the appellant, has specifically given the number of offending vehicle i.e. Maxi, bearing registration no. MKD-3007. Besides this, the injured i.e. appellant has also specifically corroborated the case. It was argued that other witnesses have corroborated regarding the treatment of the appellant. In the case, number of medical reports as well as medical bills have been got exhibited to establish that due to untoward incident, which was caused by the rash and negligent driving of the offending vehicle, the appellant has become disabled and incurred huge expenditure. Besides this, the certificate issued by the medical board has also been got exhibited, which corroborates regarding the permanent disablement of the appellant in respect of left leg. Learned counsel for the appellant has also placed reliance on **Annexure 'A'** to the memo of appeal and submits that police after investigation has found the case true against the respondent, who was owner-cum-driver of the offending vehicle. It was submitted that it was a fit case for allowing the claim case and it is a fit case for directing the appellant to pay compensation amount of Rs. 5,00,000/- for his permanent disablement and Rs. 1,61,265/- for his expenditure, which has been incurred against the treatment

of the appellant.

Despite valid service of notice, the respondent/owner of the offending vehicle has preferred not to appear.

Besides hearing learned counsel for the appellant, I have also perused the materials available on record. On perusal of the evidences on record, it is evident that accident had occurred on 30th October, 2000 at about 8:15 PM. After the accident, as per the case of appellant, he was carried to Referral Hospital, Sahpur and after providing first-aid, he was referred to Sadar Hospital, Ara and finally, he was referred to P.M.C.H., Patna, where according to the appellant, he got treatment up-to 15-11-2000. From P.M.C.H., as per the case of the appellant, he was shifted to a private nursing home of Dr. Anil Kumar Verma, situated in Kankarbagh Colony, Patna. Even thereafter, from the appellant side, no step was taken to inform the police regarding the said accident. If it was a case of an accident, due to rash and negligent driving of the offending vehicle, it is difficult to understand the reason for not informing police immediately after the accident. The informant, who is PW-1, in paragraph-5 in his examination-in-chief, has categorically stated that in the next morning i.e. after the accident, he



returned to his house. Meaning thereby that after getting the appellant admitted in P.M.C.H., he immediately returned back to his house. The claimant's case was that on the same night of the accident, he was admitted to P.M.C.H., Patna from Sadar Hospital, Ara. Accident had occurred on 30-10-2000, but the PW-1 for the first time made an application before the Sahpur Police Station on 27-11-2000 disclosing the case of accident due to rash and negligent driving of driver of Tata (Maxi) 407, bearing registration no. MKD-3007. The appellant has been examined as PW-5. Either in his examination-in-chief or in his cross-examination, he has not asserted that he had noticed the number of vehicle, which dashed him, rather from his deposition, it is evident that he gathered information regarding the number of offending vehicle from his own driver i.e. PW-1 Sri Belas Sao, who is informant of the Sahpur P.S. Case No. 37 of 2000. Ofcourse, other persons have also been got examined on behalf of claimant before the Tribunal, their evidence has got not much relevance so far as identification of the offending vehicle is concerned. It is the case of the appellant that on the road side in the night at about 8:15 PM, the vehicle of the appellant was being repaired through two mechanics and at that very time, he

was dashed by the offending vehicle. The claim of PW-1 regarding noticing the registration number of offending vehicle and remembering the same, appears to be doubtful, particularly; in view of the fact that after 27 days of the occurrence, the F.I.R. was got lodged, wherein, the number of offending vehicle was disclosed. Since the identification of the offending vehicle is itself under cloud, which may not be believed for allowing the claim. The evidence of other witnesses, particularly; on the point of the treatment of the appellant & expenses incurred by him has got no relevance. The learned Tribunal has examined the case of the claimant/appellant in detail and has rightly rejected the claim case.

After going through the materials available on record and hearing learned counsel for the appellant, the Court is satisfied that the learned Tribunal has committed no error or illegality in rejecting the claim case of the appellant.

The appeal stands dismissed.

(Rakesh Kumar, J.)

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