

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 704 of 2004**

- Surendra Kumar Sahu, S/o Seva Ram Sahu, Age 22 years in 2002 : now 24 years : R/o Village Kharra; Tahsil Kurud : Distt. Dhamtari Chhattisgarh

---- Appellant/Claimant**Versus**

1. Virendra Kumar Verma, S/o Ram Narayan Verma, aged 33 years in 2002, now 35 years : R/o Siddharth Chowk, Tikrapara, Raipur (Driver) C.G.)
2. Pramod Dube, S/o G.N.Dube, aged 45 years in 2002 : now 47 years: R/o Brahman Para Raipur (C.G.) (Owner)
3. Manager, National Insurance Company Branch Office No.2, Mobin Mahal, G.E. Road, Raipur (C.G.)

---- Respondent

For Appellant	:	Shri R. N. Jha, Advocate.
For Respondent No. 1 & 2:	:	None appears
For Respondent No.3	:	Shri Qamarul Aziz, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order/Award On Board****04/11/2016**

This is claimant's appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred as 'the Act') against the award dated 01.04.2004 passed by the 6th Additional Motor Accidents Claims Tribunal, Raipur, in claim case No. 137/2002 whereby the Tribunal has awarded total amount of compensation of Rs.10,000/-.

2. Brief facts of the case are that on account of the accident which occurred on 22nd January, 2002 when the claimant Surendra Kumar Sahu was going by Minibus bearing its registration No. MP-23-J-0554 from Raipur to Rajim. At the

relevant time, the vehicle in question was being driven rashly and negligently by its driver – Virendra Kumar Verma, owned by Promod Dubey and insured with National Insurance Company Limited, non-applicants No. 1, 2, & 3 respectively. It is pleaded further that because of rash and negligent driving of the vehicle in question by its driver, it was tilted down near Abhanpur, as a result of which, the claimant sustained serious injuries, particularly, on his right hand, which was damaged seriously on account of said accident, and therefore, a claim has been made by him while exercising the powers enumerated under Section 166 of the Act by claiming the total amount of compensation to the tune of Rs.24,80,000/-.

3. The respondents have contested the claim stating that the compensation as claimed by the claimant is on higher side and that the injury sustained by the claimant is simple in nature, and therefore, he is not entitled to compensation as claimed by him. Non-applicant No.3, the insurance company has contested the claim on the ground that the driver was not possessing valid and effective driving licence at the time of accident, and therefore, the vehicle in question was being driven in violation of the terms and conditions of the policy and under such circumstances, the insurance company cannot be held to be liable to indemnify the insured.

4. In order to establish the fact that he has suffered serious injuries on account of the said accident, the claimant has examined Dr. A.A.Saifi (A.W.2), who has issued disability certificate, which was marked as Ex.P.10 in which it has been opined that the appellant/claimant has suffered permanent disability to the extent of 30%.

5. Upon due consideration of the facts and the injury as sustained by the claimant, the Tribunal has held that the alleged accident has occurred because of rash and negligent driving by its driver and held further that the driver was possessing a valid and effective driving licence at the time of accident, and

therefore, the insurance company cannot be exonerated on this count. While holding as such, the Tribunal while taking into consideration the statement of Dr. A.A.Saifi (A.W.2) and the document/permanent disability certificate (Ex.P.10) issued by him, has come to conclusion at paras 17 & 18 of its award that since the said Doctor was not the member of the Medical Board and the Certificate (Ex.P.10), issued by him six months after the said accident, therefore, the same cannot be relied upon and, in consequence, held further that the appellant has suffered the simple injury, and thus awarded total amount of compensation to the tune of Rs.10,000/-.

6. Shri R.N.Jha, learned counsel for the appellant has questioned the impugned award as passed by the Claims Tribunal on the ground that the appellant has suffered serious and grievous injuries and the Tribunal was not justified in not considering the statement of Dr. A.A.Saifi (A.W.2) properly and thereby erred in disbelieving the Certificate (Ex.P.10) issued by him on the ground that since the said Doctor is not the member of the Medical Board, and therefore, the award as passed by the Claims Tribunal is not sustainable and deserves to be set aside.

7. While filing this appeal, the claimant has also moved an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, 1908) by submitting a document (Annexure A/2 of the appeal), i.e., the certificate issued on 16th February, 2004 by the District Medical Board consisting of President and three other members and prayed for consideration of the said document.

8. On the other hand, Shri Qamarul Aziz, learned counsel for respondent No.3/insurance company submitted that the award as passed by the Claims Tribunal is just and proper and the Tribunal has rightly disbelieved the statement of Dr. A.A.Saifi as he was not the member of the District Medical Board and the

document (Ex.P.10) issued by him six months after the said incident was rightly disbelieved by the Claims Tribunal. It is submitted further that since the document (Annexure A/2) issued by the Medical Board was in fact issued on 16.02.2004 before the closing of claimant's evidence which was closed on 25.02.2004, and therefore, the said document (Annexure A/2) was in fact well within the knowledge of the claimant and could have been produced before the Claims Tribunal, therefore, application filed under Order 41 Rule 27 of the Code, 1908 deserves to be rejected.

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. True it is that Dr. A.A.Saifi examined as A.W.2 was not the member of the District Medical Board, but, the Certificate issued by him cannot be discarded merely on this count, particularly, when his evidence could not have been rebutted by the non-applicants. In any case, the document (Annexure A/2) sought to be produced by the Claimant before this Court while exercising the powers under Order 41 Rule 27 of the Code, 1908 shows that it was issued just before the closure of the evidence of the Claimant, and therefore, in my opinion, the document as produced by the Claimant before this Court requires to be considered in order to ascertain the fact that whether the Claimant had suffered grievous injury or not? I, therefore, allow the said application filed under Order 41 Rule 27 of the Code, 1908 and the said document (Annexure A/2) is now taken on record.

11. Since the document (Annexure A/2) is taken on record, therefore, the same is required to be examined by the Claims Tribunal in order to ascertain the fact whether the claimant had suffered serious injury or not. I, therefore, set aside the award passed by the Claims Tribunal and remand the matter to the concerned Claims Tribunal for consideration of the document (Annexure A/2)

along with other documents, if so filed in order to establish the said fact.

12. Parties are now at liberty to adduce their evidence before the Claims Tribunal in this regard. They are directed to remain present before the Claims Tribunal on 22nd December, 2016. Record of the Claims Tribunal be sent back forthwith.

13. In view of above, appeal is allowed in the above mentioned terms.

14. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge