

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No.206 of 2014**

Bholaram S/o Ramnandan Aged About 45 Years R/o Latori, P.S. Lakhanpur,
Distt. Surguja C.G., Chhattisgarh

---- Appellant

Versus

1. Vijay Das And Ors S/o Ramcharan Das Aged About 18 Years R/o Chainpur,
P.S. And Tah. Lakhanpur, Distt. Surguja C.G., Chhattisgarh
2. Satyanarayan S/o Jairam Aged About 45 Years R/o Latori, P.S. And Tah.
Lakhanpur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

For Appellant:	Shri Manoj Mishra, Advocate.
For Respondent No.1:	Shri Bharat Sharma, Advocate on behalf of Shri Manoj Paranjpe, Advocate.
For Respondent No.2:	Shri Vineet Pandey, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

20.09.2018

1. This Miscellaneous Appeal has been preferred by the driver of the offending vehicle under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') questioning the award dated 20.11.2013 passed by the 1st Additional Motor Accidents Claims Tribunal, Ambikapur, District Surguja (for short 'the Claims Tribunal') in Claim Case No.254/2011 by which, the learned Claims Tribunal has allowed the claim of Respondent No.1 herein-Vijay Das in part by fastening the liability upon the Appellant.

2. Briefly stated the facts of the case are that the accident occurred on 06.10.2011 when Respondent No.1 Vijay Das has gone to see the festival 'vijayadasami' at village Latori along with his friend Brisna Kujur on his motorcycle bearing its registration No.CG 15 E 5994. At the relevant time, Respondent No.1 and his friend both were standing near Darri tank at the said village along with the motorcycle and at that particular time, offending vehicle

– 'tractor' bearing its registration No.CG 15 Z 6062 was being driven in a rash and negligent manner by Appellant-Bholaram, owned by Respondent No.2- Satyaranarayan. It is pleaded in the Claim Petition that on account of rash and negligent driving of the offending vehicle, the alleged accident has taken place and owing to the said accident, Respondent No.1-Vijay Das injured badly and was immediately admitted into the hospital, where his right leg was amputated above the knee, while his friend Brisna Kujur was also injured badly. Respondent No.1 has thus claimed a total amount of compensation to the tune of Rs.35 lacs on various heads.

3. The aforesaid claim was contested by the driver and owner, the Appellant and Respondent No.2 respectively herein by submitting *inter alia* that no accident as such has taken place with the alleged offending vehicle 'tractor' as alleged by the Claimant and a case has wrongly been registered against Appellant-Bholaram.

4. After considering the evidence adduced by the parties, learned Claims Tribunal has come to the conclusion that the alleged accident has occurred due to rash and negligent driving of Appellant-Bholaram, the driver of the alleged offending vehicle "tractor" and a sum of Rs.8,01,800/- has been awarded to Respondent No.1-Vijay Das with interest at the rate of 7.5% p.a from the date of filing of the Claim Petition till its realization.

5. Being aggrieved, Appellant/Driver-Bholaram has preferred this Appeal. Shri Manoj Mishra, learned Counsel for the Appellant submits that while passing the award impugned, learned Claims Tribunal has committed an illegality in holding that the alleged accident has taken place due to rash and negligent driving of the driver of the offending vehicle. He submits further that at the relevant time, the vehicle in question was not being used and in fact,

was lying in the owner's house. However, without considering the said fact, learned Claims Tribunal has erred in awarding the compensation while implicating the Appellant Bholaram along with the insured-Satyanarayan.

6. Shri Bharat Sharma, learned Advocate appearing on behalf of Shri Manoj Paranjpe while supporting the impugned award, submits that after considering the evidence of Respondent No.1-Vijay Das vis-a-vis, the material documentary evidence, learned Claims Tribunal has rightly held that the alleged accident has occurred due to rash and negligent driving of Appellant Bholaram, the driver of the said offending vehicle.

6. I have heard learned Counsel for the parties and perused the entire record carefully.

7. Perusal of the record would show that Respondent No.1-Vijay Das entered into the witness box in order to establish the factum of alleged accident and stated very specifically that he was standing along with his friend near Darri tank, at that time, his vehicle was dashed vehemently by the offending vehicle 'tractor' which was being driven in a very rash and negligent manner by Appellant Bholaram. He was firm in his cross-examination also. *Prima facie* burden was therefore duly established by Respondent No.1-Vijay Das to prove the factum of alleged accident. Perusal of the record would show further that Appellant Bholaram has not entered into the witness box in order to establish the fact that no accident, as such has taken place by the said offending vehicle. In absence of any evidence adduced on behalf of the Appellant, it cannot be held that he was not responsible for the alleged accident. Therefore, the learned Claims Tribunal has not committed any illegality in holding that the alleged accident has occurred only on account of the rash and negligent driving of Appellant-Bholaram. The findings so

recorded by the learned Claims Tribunal, therefore deserve to be and are hereby, affirmed.

8. In view of the foregoing discussions, I do not find any substance in this Appeal. The Appeal being devoid of merits is accordingly dismissed. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge

Priya