

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 296 of 2012**

Manoharlal Kaushik S/o Ramlal Kaushik, aged about 35 years, R/o Village Belmundi, Post Sakrra, Tah. Takhatpur, Dist. Bilaspur C.G.

---- Appellant**Versus**

1. Gopal Das Manikpuri S/o Sudha Das Manikpuri, aged about 40 years, R/o Amsena, Post Sakrra, PS Chakarbhata, Tahsil Takhatpur, Distt. Bilaspur (CG).
2. Bhuneshwar Prasad Sharma, S/o Late B.L. Sharma, aged about 50 years, R/o Amsena, Post Sakrra, P.S. Chararbhatha, Dist. Bilaspur C.G.
3. New India Insurance Co. Ltd. Through Divisional Branch Manager Office, Second Floor, Rama Trade Center, Opposite To Rajive Plaza, Bus Stand Road, Bilaspur C.G.

---- Respondents

For Appellant	:	Shri RK Jain, Advocate.
For respondent No.3	:	Shri Pankaj Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****27.02.2018.**

1. The present is a claimant's appeal under Section 173 of the Motor Vehicles Act (in short, the MV Act) against the award dated 30.09.2011 passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur (for short, the Tribunal) in Claim Case No.233 of 2011. Vide the said impugned award, the Tribunal has rejected the claim application of the claimant.
2. The case of the appellant is that, on 13.04.2007 after duty hours when he was going from his office at Bilaspur to home at village Belmundi on bicycle, near village Mendra a Tractor bearing registration No. CG-10-ZG-0292 and Trolley bearing registration No. CG-10-ZG-0293 driven by the respondent No.1 and owned by the respondent No.2

dashed him on account of which he sustained grievous injuries all over his body. He was taken to CIMS Hospital at Bilaspur and a report was lodged at Police Outpost, Chakarbhata where a case under Sections 229 and 337 IPC was registered against the respondent No.1. Later on, offence under Section 339 IPC was also added. Thereafter, the injured was shifted to a private Hospital where he underwent treatment from 14.04.2007 to 20.07.2007. The claimant subsequently filed a claim application under Section 166 of the Motor Vehicles Act which stood decided vide impugned order where the claim application has been rejected. While rejecting the application, the finding of the Tribunal was that the claimant has not been able to establish that the accident on 13.04.2007 was arising from the use of aforementioned Tractor and Trolley of the respondents.

3. It was also the findings of the Tribunal that there was a considerable delay in the lodging of the FIR which also weakens the case of the claimant. The Tribunal also reached to the conclusion that even the MLC of the injured had got done after about five months time from the alleged date of incident. Further, the claimant also failed to lead evidence of any of the eyewitness who is said to have witnessed the incident. It is these findings which are under challenge in the present appeal.
4. The contention of counsel for the appellant is that merely because there was a delay in lodging the FIR by itself should not be considered a vital factor for disbelieving the accidental claim which the appellant had raised. According to appellant, the condition of the claimant was

such that he could not have gone for lodging the FIR and finally after some period of initial treatment given to the injured claimant, the family members have lodged the FIR. It was further contended by the counsel for the appellant that the very fact that the injured claimant was under treatment for a considerable period of time, the delay in lodging the FIR stands fully explained and justified.

5. The fact that the driver of the offending vehicle was prosecuted in a criminal case is also a substantial piece of evidence to establish the accident. Lastly it was contended that the claim cases are normally considered to be a liberal piece of legislation and that the Tribunal must take a pragmatic approach while considering the claim applications. Moreover, the Tribunal should have also looked into the fact that the standard of proof required for proving the accident under the Motor Vehicles Act is different than the standard of proof required for proving the criminal case. According to him, so far as criminal case is concerned, the standard of proof required is the evidence which establishes the offence beyond all reasonable doubts whereas, in a claim case the standard of proof is based on the preponderance of probability.
6. There is a criminal case registered against the driver of the offending vehicle and to further support, there is a statement of the claimant which further corroborates from the contents of the FIR, and therefore taking into consideration all these facts the Tribunal ought to have entertained the claim application and should have decided the case on its merit.

7. Having heard the contentions put forth by the counsel for the appellant and on perusal of records, what clearly reflects is that, the accident in the instant case is alleged to have been taken place on 13.04.2007. FIR was lodged on 03.05.2007. The vehicle involved in the accident was seized after about 8 months time from the date of accident. So also, the MLC of injured claimant was conducted after more than 6 months from the date of accident. The further finding which have come before the Tribunal was also the fact that the claimant has failed to lead evidence of a single eyewitness of the incident who could have substantiated the contents of the FIR.
8. Moreover, there was material omissions in the claim application filed by the claimant when compared to the facts available in the FIR and as such there was a great element of doubt on the case put forth by the claimant. During the course of hearing, this court also got verified the outcome of the criminal case which was lodged against the respondent No.1-driver and it has been informed to the court that the respondent No.1 has since been acquitted of all the charges which were levelled against him. Thus, now since in the criminal case also the driver having been acquitted of all the charges, and there being material flaw on the part of the claimant to give satisfactory explanation for the delay caused in lodging the FIR, the delay in the MLC being conducted and also the delay in the seizure of vehicle involved in the accident, weakens the case of the appellant-claimant. In the absence of any sufficient evidence led by the appellant, it cannot be said that the findings of the Tribunal was, in any manner,

erroneous or contrary to law.

9. In view of the same, the appeal of the claimant being devoid of merit deserves to be and is hereby dismissed.

Sd/-

(P.Sam Koshy)
Judge

inder