

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 255 of 2014

- Ramprasad S/o Bachcha Lal Aged About 26 Years R/o Salgawankala, Tah. And P.S. Sonhat, Distt. Koriya C.G.

---- Appellant/claimant

Versus

- Bajinath Singh S/o Shivratan Singh Aged About 31 Years R/o Village Karri, Tah. And P.S. Sonhat, Distt. Koriya C.G.

---- Respondent

For Appellant	:	Shri DN Prajapati, Advocate.
For Respondent	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08/02/2019:

This appeal is by the claimant under Section 173 of the Motor Vehicles Act, 1988 against the award 9.1.2014 passed by Motor Accident Claims Tribunal, Koriya (Baikunthpur) in Claim Case No. 70/2011 whereby the claim petition has been dismissed by the Tribunal.

02. As per averments in the claim petition, on 31.12.2010 at around 11 am while appellant/claimant Ramprasad was riding his motorcycle Bajaj Discover (Sold), in which his brother-in-law Suresh was sitting as a pillion rider, his vehicle was dashed by non-applicant Bajinath who was riding motorcycle Yamha Crux bearing No. CG 15 D 9079 in a rash and negligent manner. As a result thereof, the claimant suffered grievous injuries including fracture of tibia and fibula bones. On report being made by the claimant on 14.1.2011, offence under Sections 279, 337 of IPC was registered against the non-applicant under Crime No.06/2011 and charge sheet under Sections 279, 337 & 338 of IPC

was filed against him before the Judicial Magistrate First Class, Baikunthpur.

03. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties dismissed the claim petition by the impugned award.

04. Learned counsel for the appellant/claimant submits that as per the FIR and charge sheet filed against the non-applicant for the offence under Sections 279, 337 & 338 of IPC, it is evident that he was riding the offending vehicle motorcycle in a rash and negligent manner and caused the accident in which the claimant suffered grievous injuries as per MLC filed by him. However, the Tribunal without considering the evidence available on record in its proper perspective dismissed the claim petition and therefore, the award impugned is liable to be set aside and the matter needs to be remanded to the Tribunal for decision afresh in accordance with law.

05. Heard learned counsel for the appellant and perused the material available on record including the impugned award.

06. In this case, the FIR (Ex.P/2) was lodged by the injured claimant on 14.1.2011 i.e. after 15 days of the accident. Though charge sheet was filed against non-applicant Baijnath for the offence under Sections 279, 337 & 338 of IPC, however, as per Ex.D/1 i.e. judgment dated 28.11.2011 the Chief Judicial Magistrate, Baikunthpur, Distt. Koriya acquitted him of all the charges on the ground that the prosecution has utterly failed to prove its case on the basis of evidence led by it. Statements of the witnesses in the said criminal case have also been filed by the non-applicant before the Tribunal as Ex.D/2 to Ex.D/4. The claimant Ramprasad who examined himself as AW-1 before the Tribunal, has stated in cross-examination that he is not aware as to by which vehicle the accident was caused and he is also not aware of number of the offending vehicle. In para-5 the claimant has stated that his brother-in-law Suresh, who was sitting in his motorcycle on the date of accident as a pillion rider, chased the offending vehicle but unfortunately Suresh could not get any information regarding the

offending vehicle and therefore, he is not aware of the particulars of the offending vehicle. However, as per Ex.P/1 i.e. FIR lodged by the claimant, he has specifically mentioned the number and name of rider of the offending vehicle. In this case, the important eyewitness, as per claim petition of the claimant, namely Suresh who was accompanying the claimant at the time of accident, has not been examined by the claimant.

07. As per judgment dated 28.11.2011 of Chief Judicial Magistrate, Baikunthpur (Ex.D/1), the prosecution has miserably failed to prove its case against the accused/non-applicant herein; the evidence of the witnesses goes to show that on the date of accident he was on his duty; as per Ex.D/8C i.e. attendance register of the teachers also it is clear that on the date of accident the accused Baijnath, Shikshakarmi Grade-III, was on his duty at Primary School, Salgaon. Non-applicant Baijnath has also rebutted the statement of the claimant in his statement before the Tribunal by stating that he has wrongly been implicated in this case as his vehicle was not involved in the accident. NAW-2 Mukti Jyotsna Lakda has also proved Ex.D/8 i.e. attendance register which fortifies the defence of the non-applicant No.1 that on the date of accident he was on his duty in his school at Salgaon.

08. The Tribunal in its award from paras 10 to 16 has exhaustively considered the entire evidence adduced by the respective parties including the evidence adduced in the criminal case and the judgment of acquittal of the non-applicant by the trial Court, and recorded a finding that there is nothing on record which could show that the accident occurred with the vehicle of the non-applicant Baijnath. In view of the nature and quality of evidence available on record as well as the conduct of the claimant, this Court finds no illegality or perversity in the findings recorded by the Tribunal dismissing the claim petition.

09. In the result, the appeal being without any substance is liable to be dismissed and is hereby dismissed.

Sd/
(Gautam Chourdiya)
Judge