

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1077 of 2013**

- Kamal Kishore Patel S/o Chhatter Singh Patel Aged About 23 Years, Occupation Mechanical Engineer, R/o Telipali, P.O. Loharsingh, Civil/Revenue Distt. Raigarh C.G.

---- Appellant/claimant**Versus**

1. Puran Lal Jatwar S/o Phagulal Jatwar R/o Regapali Gandhi Nagar, Distt. Raigarh C.G., Chhattisgarh
2. Dukalu Sarthi S/o Nakul Sarthi Aged About 30 Years, Occupation Driver, R/o Village Khokra, P.S. Pussour, Civil/Revenue Distt. Raigarh C.G. (Driver)
3. Branch Manager HDFC Agro General Insurance Co. Ltd., Nagpur Maharashtra, 3rd Floor, Shri Ram-Shyam Tower, Sadhuwaswani Square, S.P. Patel Marg, Sadar, Nagpur, District : Nagpur, Maharashtra

---- Respondents

For Appellant	:	Shri HS Ahluwalia, Advocate.
For Respondent No.1	:	Shri Varunendra Singh, Advocate.
For Respondent No.2	:	None.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****08/05/2019:**

Aggrieved by the award dated 3.9.2013 passed by First Additional Motor Accident Claims Tribunal, Raigarh in Claim Case No.116/2011 whereby application u/s 166 of the Motor Vehicles Act, 1988 (in short "the Act") of the injured claimant has been dismissed, the appellant/claimant has filed the instant appeal u/s 173 of the Act.

02. As per averments in the claim petition, on 23.3.2010 at about 8 pm non-applicant No.1 Pooranlal Jatvar by driving truck bearing No.

CG 13 ZC 6695 in a rash and negligent manner dashed the motorcycle of the claimant from opposite side as a result of which claimant suffered grievous injuries including fracture in leg. At the time of accident, offending vehicle was owned by non-applicant No.1 and insured with non-applicant No.3.

03. On claim petition being filed by the injured claimant under Section 166 of the Act, the Tribunal dismissed the same on the ground that the claimant has failed to prove as to who was driver of the offending vehicle and that his statement runs contrary to his pleadings as in the claim petition the claimant has mentioned non-applicant No.1 Pooranlal as driver of the offending vehicle whereas in his affidavit under Order 18 Rule 4 of CPC he has stated that non-applicant No.2 Dukalu Sarthi was driver of the offending vehicle.

04. Learned counsel for the appellant/claimant submits that though in para-22 of the claim petition the claimant has inadvertently mentioned non-applicant No.1 as driver of the offending vehicle, but in its sub-para he has specifically stated Dukalu Sarthi (non-applicant No.2) as driver of the said vehicle against whom offence under Sections 279 and 338 of IPC has been registered and the case is pending before the Chief Judicial Magistrate, Raigarh as Criminal Case No.570/10. As per para-15 of the claim petition, Pooranlal Jatvar has been mentioned as owner of the offending vehicle. As per Ex.P/2 FIR was registered against the driver of the offending vehicle and after investigation, charge sheet was filed against non-applicant No.2 Dukalu Sarthi for the offence under Sections 279 & 338 of IPC vide Ex.P/1. As per seizure memo Ex.P/6, the offending vehicle was seized from the possession of non-applicant No.2. The claimant has proved all these above documents and the non-applicants did not adduce any evidence in rebuttal. In these circumstances, the Tribunal was not justified dismissing the claim petition merely on the ground of there being some typographical error in the claim petition in respect of mentioning the name of driver and owner of the offending vehicle. Hence the matter needs to be remanded to the Tribunal for decision afresh in accordance with law.

05. On the other hand, learned counsel appearing for respondents opposes the above submission of the appellant and support the impugned award.

06. Heard learned counsel for the parties and perused the material available on record.

07. From perusal of the claim petition, it is seen that in para-22 of the claim petition the claimant has mentioned non-applicant No.1 as driver of the offending vehicle, but in its sub-para he has specifically stated Dukalu Sarthi (non-applicant No.2) as driver of the said vehicle against whom offence under Sections 279 and 338 of IPC has been registered and the case is pending before the Chief Judicial Magistrate, Raigarh as Criminal Case No.570/10. In para-15 of the claim petition, Pooranlal Jatvar has been mentioned as owner of the offending vehicle. Vide Ex.P/2 FIR was registered against the driver of the offending vehicle and after investigation, charge sheet was filed against non-applicant No.2 Dukalu Sarthi for the offence under Sections 279 & 338 of IPC vide Ex.P/1 and the said vehicle was also seized from his possession vide seizure memo Ex.P/6.

Kamal Kishore Patel, injured eyewitness (AW-1) has categorically stated in his evidence that at the time of accident, non-applicant No.2 was driver of the offending vehicle against whom crime was registered and criminal case is pending before the Chief Judicial Magistrate, the said vehicle was owned by non-applicant No.1 and insured with non-applicant No.3. This statement remains unrebutted in cross-examination. Non-applicant No.2 has not been examined before the Tribunal who is the best person to give particulars about the accident. Therefore, looking to the overall oral and documentary evidence available on record, this Court is of the opinion that the Tribunal was not justified in dismissing the claim petition on technical ground that the claimant in his claim petition has somewhere mentioned non-applicant No.1 as driver of the offending vehicle and somewhere as owner of the same. The Tribunal ought to have considered the entire evidence, oral and documentary, as a whole keeping in view the benevolent provisions of the Motor Vehicles Act

and ought not to have dismissed the claim petition on such technical grounds. Hence the matter deserves to be decided afresh by the Tribunal after affording due opportunity of hearing to the parties in accordance with law.

08. In the result, the appeal is allowed. The impugned award is hereby set aside and the matter is remanded to the Tribunal with a direction to decide the claim case afresh after giving due opportunity of hearing and adducing evidence to both the parties, within a period of six months from the date of receipt of the records. The parties shall also be permitted to amend their pleadings, file additional documents, if so required, and adduce evidence thereon.

09. Registry is directed to send the record to the concerned Tribunal without delay.

10. Parties to appear before the concerned Tribunal on **24th June, 2019**.

It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal to decide the claim case strictly on the basis of material available before it in accordance with law.

Sd/

(Gautam Chourdiya)

Judge