

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 41 of 2016**

1. Lekhan Ram S/o Shri Ashok Kumar Sahu, Aged About 22 Years R/o Village Sangli, P. S. Gurur, District Balod (C.G.).

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

1. Heeruram Sahu S/o Shri Agardas Sahu, Aged About 29 Years R/o Mudipar Nawagaon, P. S. Somni, Tahsil And District Rajnandgaon(C.G.) (Driver)
2. Jitendra Bhandari S/o Shri R. S. Bhandari, R/o Ganjapara Durg, Tahsil And District Durg (C.G.) (Owner)
3. The Manager National Insurance Company Ltd., Gill Complex, Gurudwara, Station Road, Durg, Tahsil And District Durg (C.G.) (Insurer)

---- Respondents

For Appellant	:	Shri P.R. Patankar, Advocate.
For Respondent No. 1	:	None, though served.
For Respondent No. 2	:	Shri Vikas Shrivastava, Advocate on behalf of Shri Arvind Kumar Dubey, Advocate.
For Respondent No. 3	:	Shri B.N. Nande, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****30/04/2019**

- 1) This appeal is preferred by the claimant injured under Section 173 of the Motor Vehicles Act, 1988 against the award dated 21/09/2015 passed by First Additional Motor Accident Claims Tribunal Durg (C.G.) in Claim Case No. 118/2013. After considering the evidence of the parties learned Tribunal dismissed the claim petition filed by the claimant.
- 2) As per averments of claim petition, on 20/10/2012 at around 07:20 P.M. claimant Lekhan Ram Sahu, 22 years of age, earning

Rs. 6000/- per as Mason, **was** sitting on vehicle DI 207 bearing No. CG04 J 5951 near Purnima Rice Mill Kolihapari non-applicant No. 1 Heeruram Sahu driver of Truck bearing No. CG07 ZC 2718 driven the Truck (Offending Vehicle) rashly and negligently and dashed the vehicle of the claimant. As a result of this accident Lekhan Ram sustained grievous injury. At the time of accident the offending vehicle was owned by non-applicant No. 2 and insured with Non-applicant No. 3.

- 3) On claim petition being filed by the claimant injured Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties, dismissed the claim petition filed by the claimant.
- 4) Learned counsel for the appellant/claimant submits as under:
 - i. As per final report filed by the Investigating Officer of Police Station Pulgaon, Durg under section 279, 337 and 338 of IPC against the offending vehicle involved in this accident bearing No. CG07 ZC 2718 and that vehicle involved in this accident unfortunately. Ex.P-2 FIR lodged by the another person Balbir Singh mentioned the vehicle No. CG07 ZC 2727 only on this ground the learned Tribunal considering the evidence on basis of FIR ignoring the Ex. P-3 Seizure memo, the vehicle involved in this accident bearing No. CG07 ZC 2718 is sized from some Dinesh Mishra alongwith R.C. Book, Insurance Policy and permit of offending vehicle.
 - ii. As per written statement of Heeruram Sahu Non-applicant No.1 driver of offending vehicle also admitted that the accident happened between the two vehicle in which the claimant is sitting in vehicle DI 207 bearing No. CG04 J 5951 and vehicle driven by non-applicant No. 1 /Heeruram Sahu Truck bearing No. CG07 ZC 2718. Looking to the admission of the driver of offending vehicle, no other evidence is adduced.
 - iii. Learned Tribunal wrongly dismissed the claim petition on the basis of FIR. Therefore, it needs to be decided afresh and on the

other issues no finding regarding the breach of policy and entitlement of claim is considered by the learned Tribunal.

- iv. that issues No. 4, 5 & 6 framed by the learned Tribunal have been decided without appreciating evidence adduced by the parties and not on merits.
 - v. that as per admission of the parties, accident occurred by Truck bearing No. CG07 ZC 2718, therefore, the matter needs to be decided afresh.
- 5) On the other hand, learned counsel for respondent/Owner and Insurance Company vehemently opposed the contention made by the learned counsel for the appellant support the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly dismissed the petition which needs no interference by this Court.
 - 6) Heard learned counsel for the parties and perused the material available on record.
 - 7) It is not disputed and as per admission of non-applicant No. 1 Heeruram Sahu, he is driver of offending vehicle Truck bearing No. CG07 ZC 2718. Looking to the admission of non-applicant No. 1 in his written statement in para 5, 8 & 12 and as per Ex. P-2 FIR is lodged against the vehicle No. CG07 ZC 2727 but after completing the investigation, Ex. P-1 - Final Report is submitted against the driver of offending vehicle No. CG07 ZC 2718 and offending vehicle is also sized as per Ex. P-3 vehicle bearing No. CG07 ZC 2718. Driver of offending vehicle Heerram Sahu was also not examined, looking to the admission of Heeruram Sahu and the entire evidence adduced by the claimant and statement of witness claimant Lekhan Ram Sahu on the basis of FIR dismissed the claim of claimant is not sustainable and other issues No. 3, 4, 5 & 6 is not decided on merits, no any finding and appreciation of evidence by the learned Tribunal.

- 8) Keeping in view the pleading of the claimant, the evidence adduced by him in the light of the aforesaid mentioned reasons and the manner in which the Tribunal dismissed the claim petition of the claimant, this court is of the opinion that the matter deserves to be remanded to the Tribunal to decide the claim case afresh and give the findings on all issues on merits after providing sufficient opportunity of hearing to the parties.
- 9) In the result, the appeal is allowed, the impugned order is set aside and the matter is remanded to the concerned Tribunal to decide the claim petition afresh on all issues on its own merits after affording full opportunity of hearing to the parties, as expeditiously as possible preferably within a period of six months from the date of first appearance of the parties in accordance with law. Parties are directed to appear before the concerned Tribunal on 18/06/2019.
- 10) Needless to mention, the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.
- 11) Record of the Tribunal be sent back forthwith.

-Sd/-
(Gautam Chourdiya)
Judge