

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 353 of 2014**

1. Tamrdhwaj Sahu, S/o Lalaram Sahu, Aged About 33 Years, R/o Village And Post- Chherkapur, Thana And Tah. Pallari, Distt. Baloda Bazar-Bhatapara C.G., (**Driver**)
2. Lala Sahu, S/o Bakhariya Sahu, Aged About 58 Years, R/o Village And Post- Chherkapur, Thana And Tah. Pallari, Distt. Baloda Bazar-Bhatapara C.G., (**Owner**)

---- Appellants

Versus

- Omprakash Sahu S/o Khorbahara Sahu Aged About 47 Years R/o Village And Post- Chherkapur, Thana And Tah. Pallari, Distt. Baloda Bazar-Bhatapara C.G., (**Claimant**)

---- Respondent

For Appellants	:	Shri Rewa Shankar Patel along with Shri Malay Jain, Advocate
For Respondent	:	Shri Samir Singh, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Award On Board****23.08.2019**

1. This Miscellaneous Appeal has been preferred by Non-applicants, i.e., Driver and Owner of the offending vehicle under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the Award dated 10.02.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Baloda Bazar in Accident Claim Case No.56/2013, by which, the Claims Tribunal, while allowing the claim in part, has awarded a total sum of Rs.85,384/- with 6% interest per annum from the date of filing of claim petition till its realisation. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 28.10.2012 at 11:30 AM the applicant Om Prakash Sahu was going on his motorcycle bearing registration No.C.G.-04-DD-9116 along with his labourer Kriparam Sahu for looking after his field and as soon as he reached near *Bayara* of one Kishore Sahu, at the same time, the offending vehicle "Tractor" bearing registration No. C.G.-04-DM-6115, owned by Lala Sahu, was being driven rashly and negligently by its driver, namely, Tamradhwaj Sahu, and dashed the motorcycle. As a consequence of it, the claimant received multiple injuries and was admitted into the Hospital at Baloda Bazaar and thereafter he was shifted to the Medishine Hospital at Raipur for his treatment where he was admitted from 30.10.2012 upto 05.11.2012. It is pleaded further in the claim petition that he was working in the Provision Store and also involved in agricultural work and used to earn Rs.10,000/- per month, therefore, a total amount of compensation to the tune of Rs.10,00,000/- has been claimed.
3. The aforesaid claim has been contested by non-applicants No. 1 & 2, driver and owner of the offending vehicle by submitting inter alia that the applicant Om Prakash Sahu himself was responsible for the cause of alleged accident as he was coming on his motorcycle along with two persons, namely, Kriparam Sahu and Rajaram Sahu at a high speed. It is pleaded further that the applicant did not sustain the grievous injuries and the claim as made by him is extremely on higher side.
4. After considering the evidence led by the parties, it has been held by the Claims Tribunal that due to rashness and negligent driving of the driver of the offending vehicle, it dashed the motorcycle causing injuries to the applicant and that by considering the medical bills like Ex.P.16 and Ex.P.17, awarded a total sum of Rs.85,384/- with 6% interest per annum

from the date of filing of claim petition till its realisation.

5. Being aggrieved, Non-applicants have preferred this appeal. Shri R.S.Patel, learned counsel for the Non-applicants submits that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the driver of the offending vehicle was responsible for the cause of alleged accident. According to him, the claimant Om Prakash was riding his motorcycle along with two persons, namely, Kriparam Sahu and Rajaram Sahu at a high speed without following Rules of Road Regulations and dashed the offending vehicle. In such circumstances, the Claims Tribunal ought to have held that the claimant himself was responsible for the cause of alleged accident. He submits further that perusal of the judgment dated 12.09.2013 (Ex.N.A.3) shows that the driver of the offending vehicle has been acquitted in relation to the offence punishable under Sections 279 and 337 IPC. However, without considering all the material evidence adduced by the parties in its proper manner, the Claims Tribunal has erred in holding that the driver of the offending vehicle alone was responsible for the cause of alleged accident. He submits further that in absence of the evidence of Doctor, the medical bills (Ex.P.16 & Ex.P.17) ought not to have been taken into consideration and particularly when the applicant, who has not suffered any permanent disability, as alleged by him, received just simple injuries.
6. On the other hand, Shri Samir Singh, learned counsel for the applicant (Claimant), while supporting the award impugned submits that after considering the evidence led by the parties, the Claims Tribunal has not committed any illegality in holding that the driver of the offending vehicle alone was responsible for the cause of alleged accident. He submits

further that the medical bills (Ex.P.16 & Ex.P.17) were rightly considered and after considering the said bills and that by awarding a sum of Rs.15,000/- towards pain and suffering, the Claims Tribunal has rightly awarded the amount of compensation to the tune of Rs.85,384/- with 6% interest per annum from the date of filing of claim petition till its realisation. The award impugned is, therefore, not liable to be interfered, as contended by the learned counsel for the appellants.

7. I have heard learned counsel for the appellant and perused the entire record carefully.
8. The main contention of the appellants herein is that the driver of the offending vehicle, namely, Tamradhwaj Sahu was not responsible for the cause of alleged accident occurred on 28.10.2012 at 11:30 AM. In order to substantiate the said contention, the burden was heavily upon the appellants to establish the said fact. However, from perusal of the record, it appears that the claimant Om Prakash Sahu, who was examined as applicant's witness No.1, has stated in his evidence that the alleged accident occurred because of rashness and negligent act of the driver of the offending vehicle. Although this fact was denied by the driver of the offending vehicle in his evidence, but the statement of Kishore Kumar, examined as N.A.WNo.2, would show that the alleged accident took place the moment when the front portion of the Tractor just entered the main road and at the same time, the motorcycle being driven by the applicant also reached the same spot was dashed by the offending vehicle. It was, however, the duty of the driver of the offending vehicle to come on the main road after watching both sides of the road. Having failed to do so, it cannot be held that he was not responsible for the alleged accident. True, it is that he was acquitted from the alleged

offence but merely on this ground alone it cannot be held that he was not responsible for the cause of alleged accident, particularly, when the first information report was lodged immediately after the occurrence of the alleged accident and the charge-sheet was submitted by the Investigating Officer after investigating the case against him under Sections 279 and 337 IPC. Consequently, the finding so recorded by the Claims Tribunal holding the driver solely responsible for the cause of alleged accident deserves to be and is hereby affirmed. As far as the quantum of amount of compensation is concerned, I do not find any illegality in the same because after considering the medical bills (Ex.P.16 & Ex.P.17) which could not have been rebutted by the non-applicants, the Claims Tribunal has properly taken into consideration those medical bills while awarding the amount of compensation.

9. In view of the foregoing discussions, the appeal being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge