

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 324 of 2014****Reserved on 28.11.2019**
Pronounced on 06.12.2019

- Miss Himani Baghel, D/o Shivram Baghel, Aged About 10 Years, R/o Matnar, P.S. Mardum, Distt. Bastar C.G., Through- Natural Guardian Father Shivram Baghel, S/o Late Raituram., (Claimant)

---- Appellant**Versus**

1. Bhimsen, S/o Donda Ram Aged About 32 Years R/o Village- Matnar, P.S. Mardum, Distt. Bastar C.G., (Driver)
2. Kurso Ram Kashyap S/o Lachhura Kashyap Aged About 40 Years R/o Godampara Belar, P.S. And Post- Lohandiguda, Distt. Bastar C.G., (Owner)
3. The Branch Manager, Thru- The United India Insu.Co.Ltd., Anupama Chowk, Jagdalpur, Distt. Bastar C.G., (Insurer) (Non-Claimants)

---- Respondents

For Appellant	:	Shri Praveen Kumar Tulsyan, Advocate
For Respondents 1 & 2	:	None, though served.
For Respondent 3	:	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V.Award/Order**

1. This Miscellaneous Appeal has been preferred by the Claimant 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 22.01.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Bastar place at Jagdalpur in Claim Case No.14/2013 whereby the claim petition filed by the Claimant has been dismissed. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 29.09.2012 at about 2.30 PM, Claimant Ku. Himani Baghel and others were going by tractor owned by one Banshilal for the immersion of lord Ganesha. On way, in order to meet her call of nature, while she was getting down from the vehicle, at the relevant time, she was vehemently hit from backside by the offending vehicle 'Tractor attached with its Trolley' bearing Registration Nos.C.G.17-G/4098 and C.G.17-G/4042 respectively, which was owned by Non-Applicant No.2 Kursoram Kashyap and insured with Non-Applicant No.3, the United India Insurance Company Limited. It was being driven in a rash and negligent manner by its driver Bhimsen, Non-Applicant No.1. Owing to which, the alleged accident occurred whereby the Claimant was injured badly and suffered permanent disability giving rise to the institution of the claim petition under Section 166 of the Act of 1988 by her claiming total amount of compensation to the tune of Rs.11,61,000/- under various heads.

3. The aforesaid claim has been contested by Non-Applicants No. 1 & 2, the driver and owner of the alleged offending vehicle mainly on the ground that the Claimant herself was responsible for the alleged accident and pleaded further that since it was insured with Non-Applicant No.3/the United India Insurance Company Limited, therefore, in case of any liability being fastened, the same could be indemnified by the insurance company. While, Non-Applicant No.3, the insurer, while disputing the involvement of the alleged offending vehicle, pleaded that the driver of it was not holding the valid and effective driving license, therefore, no liability could be fastened upon it.

4. After considering the evidence led by the parties, it has been held by the Claims Tribunal, while considering the reports (Ex.A.1 & Ex.A.2), that the vehicle in question, which was seized much after the occurrence of the alleged accident on 27.10.2012 vide Ex.A.5, owned by said Kursoram Kashyap, was not involved

in the alleged accident. As a consequence, it was held that the alleged accident did not take place due to rash and negligent driving of the driver of the offending vehicle and the claim petition was thus dismissed.

5. Being aggrieved, the Claimant has preferred this appeal. Shri Praveen Kumar Tulsyan, learned counsel for the applicant submits that the award impugned as passed by the Claims Tribunal dismissing the claim petition on finding that the vehicle in question was not involved in the alleged accident is apparently contrary to law. According to him, the Claims Tribunal has misinterpreted the documentary evidence like Exs.A.1, A.2 and A.5 in arriving at such a conclusion. However, the concerned Investigating Officer, based upon the said reports, investigated the matter and has submitted its charge-sheet against the driver of the alleged offending vehicle under Sections 279 and 338 IPC. In any case, the approach of the Claims Tribunal, considering the matter while applying the strict rules of evidence and thereby dismissing the claim, is highly unjustified. In support, he placed his reliance upon a decision rendered by the Supreme Court in the matter of *Dulcina Fernandes and Others vs. Joaquim Xavier Cruz and Another* and *Bimla Devi and others vs. Himachal Road Transport Corporation and others* reported respectively in (2013) 10 SCC 646 and (2009) 13 SCC 530.

6. On the other hand, Smt. Chitra Shrivastava, learned counsel for Respondent No.3 has supported the award impugned.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. Perusal of the record would show that on account of the alleged accident, occurred on 29.09.2012, the first information report was lodged by the

Claimant's father – Shrivram on the same date, i.e., 29.09.2012. It is, true, from a bare perusal of the said reports (Ex.A.1 and Ex.A.2), the vehicle in question appears to be held by one Laloram and a case was registered against his driver for an offence punishable under Sections 279 and 337 IPC in connection with Crime No. 52/2012. However, a close scrutiny of it would reveal the fact that the alleged reports were lodged by the Claimant's father based upon the telephonic information, which he collected from others at his village Matnar Meaning thereby, he was not the eye-witness to the said incident and has lodged the alleged report on the basis of the said information. Therefore, much relevance cannot be placed upon these reports.

9. True, it is, as observed by the Claims Tribunal, that the vehicle in question owned by Kursoram, Non-Applicant No.2, was seized on 27.10.2012 vide Ex.A.5, i.e., 28 days after the occurrence of the alleged accident during the investigation in connection with the said crime. However, that was not the only vehicle which was seized during said investigation but the vehicle of said Banshilal was also seized on 03.11.2012 vide Ex.A.6. Both these vehicles were seized by the Investigating Officer in order to ascertain the involvement of the actual vehicle. Therefore, the conduct of the Investigating Officer cannot be doubted merely on the ground that the alleged offending vehicle of Kursoram was seized much after the occurrence of the alleged accident. It reveals further that after completing the investigation as such, the Investigating Officer has submitted its final report on 10.11.2012 vide Ex.A.8 before the concerned Judicial Magistrate First Class, Jagdalpur, while registering the offence punishable under Sections 279, 337 and 338 IPC against the driver of the offending vehicle, i.e., Bhimsen.

10. Pertinently to be noted here that in order to establish the factum of alleged accident, the Claimant has examined one Om Prakash (A.W.2), the eye-

witness to the alleged incident. In his examination-in-chief, it is stated specifically by him, that the alleged offending vehicle was being driven by said Bhimsen, the driver of said Kursoram, in a rash and negligent manner and owing to which, it dashed the Claimant (Ku. Himani) from its backside. A suggestion was put to him in his cross-examination at paragraph 4 by the counsel for the driver and owner of the offending vehicle that said Bhimsen, the driver had driven the alleged offending vehicle, owned by said Kursoram, slowly and cautiously, which was, however, denied by the said eye-witness Om Prakash. The suggestion as such would however reveal the fact that the owner Kursoram himself has admitted that his vehicle was involved in the said accident.

11. That apart, this Court for its own satisfaction, vide order dated 09.01.2019 requisitioned the concerned record pertaining to the said Crime No. 52/2012 “State of Chhattisgarh vs. Bhimsen”, where driver of said Kursoram was tried by the concerned Magistrate under Sections 279, 337 and 338 IPC. A bare perusal of the said record would show that a certificate was issued therein by said Kursoram where it was marked as Ex.P.11 revealing the fact specifically that on the fateful day, i.e., 29.09.2012, his vehicle was being driven by his driver Bhimsen. It appears further from a perusal of the said record that said Bhimsen, who was facing trial under the said crime, was convicted by the Judicial Magistrate First Class, Bastar place at Jagdalpur vide its judgment dated 26.04.2014 and which was affirmed further by the learned 3rd Additional Sessions Judge, Bastar vide judgment dated 22.12.2014 in Criminal Appeal No. 16/2014.

12. At this juncture, the principles laid down by the Supreme Court in the matter of **Dulcina Fernandes and Others vs. Joaquim Xavier Cruz and Another** (supra) are to be seen. In the said matter, the evidence of Claimants' eyewitnesses was discarded by the Tribunal and the Respondent in that case

was acquitted in the criminal case. Based upon this factual scenario, it was opined therein at paragraph-12, which is relevant for the purpose, is reproduced as under:-

12. “xxxxxxx. Though it is submitted at the Bar that the first respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, prima facie, materials showing negligence were found to put him on trial.”

13. Yet, in the matter of ***Bimla Devi and Others vs. Himachal Road Transport Corporation and Others*** reported in (2009) 13 SCC 530 are to be seen where it has been observed by the Supreme Court while dealing with the Claim Petition in terms of Section 166 of the Act of 1988 that the Tribunal *stricto sensu* is not bound by the pleadings of the parties and its function is to determine the amount of fair compensation. In paragraphs 11 and 13 to 15, it has been observed as under:-

11. “While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition.”

13. “The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate Respondents 2 and 3. The claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.”

14. “Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.”

15. “In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

14. Applying the aforesaid principles to the case in hand and in view of the foregoing discussions, the finding of the Claims Tribunal dismissing the Claim Petition while entertaining Issue No.1 by holding that the alleged accident has not occurred due to rash and negligent driving by the driver of the alleged offending vehicle cannot be sustained. It accordingly set aside and it is held that the alleged accident occurred on 29.09.2012 due to rash and negligent driving by Bhimsen, the driver of the said offending vehicle. Issue No.1 is, thus, answered in positive.

15. Consequently, the appeal is allowed and the matter is remanded back to the concerned Tribunal, who in turn, shall issue fresh notices to Non-Applicant No. 1 (Bhimsen) and Non-Applicant No.2 (Kursoram) and decide the matter in relation to the rest of the issues, except Issue No.1, in accordance with law, as soon as possible preferably within a period of 9 months from receiving the copy

of this order as the matter is pertaining to the accident, which took place in the year 2012. The Claimant and the insurance company present over here are directed to remain present before the concerned Claims Tribunal/1st Additional Motor Accidents Claims Tribunal, Bastar place at Jagdalpur on 03.01.2020.

16. Needless to mention here that the parties shall be allowed to amend their pleadings and to adduce further evidence again in the matter. The Registry is hereby directed to transmit the entire record forthwith to the concerned Tribunal. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge