

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No.756 of 2012**

Nohar Lal Banjare S/o Syam Lal Banjare Aged About 24 Years Vatagan, Post-Vatagan, P.S. Palari, Tah. Palari, Distt. Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Hemant Sahu S/o Fagu Sahu Aged About 20 Years Harenbhatta, P.S. Palari, Tah. Palari, Distt. Raipur C.G., Chhattisgarh
2. Rameswar Sahu S/o Latel Sahu Harenbhatta, P.S. Palari, Tah. Palari, Distt. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

For Appellant:	Shri Pawan Kesarwani, Advocate.
For Respondents:	None, though served.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

30.01.2019

1. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') questioning the propriety of the award dated 27.01.2012 passed by the 4th Additional Motor Accidents Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.198/2011 by which, the Appellant's claim in part has been allowed while awarding amount of compensation to the tune of Rs.59,561/- with 7 ½% interest per annum from the date of Claim Petition till its realization.

2. Briefly stated, the facts of the case are that on 31.10.2010, Appellant – Nohar Lal Banjare was coming by his motorcycle bearing its registration No.CG 04 CE 2045 from Village Vatagan to Village Palari and as soon as he reached Bharuwadih, his vehicle was dashed vehemently by its front side by the offending vehicle bearing its registration No.CG 04 DC 9621, which was being driven in a rash and negligent manner by Respondent No.1-Hemant

Sahu. On account of the aforesaid incident, a claim enumerated under Section 166 of the Act has been made by submitting *inter alia* that at the relevant time, the Appellant was driving the vehicle cautiously from his side, however, Respondent No.1-Hemant Sahu, while driving the offending vehicle, owned by Respondent No.2-Rameshwar Sahu, dashed his vehicle from the opposite side. As a result, the Appellant sustained grievous injuries and was admitted immediately into the hospital. It is pleaded further that the Appellant was a tailor by profession and used to earn Rs.10,000/- per month and has thus claimed total amount of compensation to the tune of Rs.12,50,000/-.

3. The Respondents have contested the aforesaid claim by denying very specifically that the alleged accident took place due to rash and negligent driving of Hemant Sahu-Respondent No.1 herein. It is contested further on the ground that Nohar Lal Banjare, the Appellant himself was responsible for the alleged accident as he was driving his vehicle in a drunken condition.

4. In support, the Appellant has examined himself while Hemant Sahu has been examined as defence witness in order to disprove the claim of the Appellant.

5. Having considered the evidence led by the parties, the learned Claims Tribunal, by its award impugned, has allowed the Claim in part by holding that the alleged accident has occurred due to rash and negligent driving of both the drivers i.e. the Appellant as well as Respondent No.1 and held further that both are equally liable for the alleged accident. It held further that Appellant Nohar Lal Banjare used to earn Rs.3,000/- per month and that by considering the medical bills to the tune of Rs.85,122/- and that by considering further the pain and agony, awarded total amount of compensation to the tune of Rs.1,19,122/-. Since the Appellant was equally held liable with regard to the

alleged accident, therefore, the said amount of compensation was reduced to the tune of Rs.59,561/- and thus, he was entitled to the said amount with 7 ½ % interest per annum, from the date of Claim Petition i.e. 04.04.2011 till its realization.

6. Being aggrieved with the aforesaid award, the Appellant has preferred this Appeal.

7. Shri Pawan Kesarwani, learned Counsel for the Appellant submits that the award impugned as passed by the learned Claims Tribunal holding that the Appellant was equally responsible for the alleged accident is apparently contrary to law. According to him, the Appellant has stated very specifically in his evidence that he was driving his vehicle on his side and the same was dashed vehemently by Hemant Sahu, Respondent No.1 herein from the opposite direction. Without considering the evidence of the Appellant in its proper manner, learned Claims Tribunal has erred in holding that the Appellant was equally responsible for the alleged accident. He submits further that the monthly income of the Appellant as assessed by the Claims Tribunal is apparently on lower side, however, it ought to have been assessed to the tune of Rs.10,000/- per month. The order impugned is therefore, liable to be modified accordingly.

8. I have heard learned Counsel for the Appellant and perused the entire record carefully.

9. A claim was made under Section 166 of the Act with regard to the accident occurred on 31.10.2010 when the Appellant Nohar Lal Banjare was coming from his motorcycle from Village Vatagan to Palari and as soon as he reached near Bharuwadih, his vehicle was dashed from the opposite side by the offending vehicle, which was being driven by Respondent No.1-Hemant

Sahu.

10. In order to establish his claim, the Appellant has examined himself while disproving his case, Hemant Sahu, the driver of the offending vehicle has also entered into the witness box.

11. Perusal of the statements of both these witnesses would show that both are alleging the responsibility of the alleged accident with each other. However, in order to establish the fact that the alleged accident occurred only on account of rash and negligent driving of Hemant Sahu, the burden was heavily upon the Appellant-Nohar Lal Banjare to establish this fact. But, he did not examine anyone except himself. Pertinently to be noted here that when the alleged accident took place, a complaint was lodged against driver of offending vehicle Hemant Sahu by one Netram Ratre, who was the pillion rider and was coming along with the Appellant. However, this Complainant was also not examined by the Appellant for the reason best known to him. As such, learned Claims Tribunal has not committed any illegality in coming to the conclusion that both the Appellant as well as Respondent No.1 were equally responsible for the alleged accident. The finding so recorded in this regard is therefore, liable to be and is hereby affirmed.

12. As far as the amount of compensation assessed by learned Claims Tribunal is concerned, I do not find any infirmity in the same.

13. In view of the foregoing discussions, I do not find any substance in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge