

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 251 of 2014**

- Dhanesh Kumar S/o Vijay Satnami Aged About 14 Years R/o Nandani Khundani, P.S. Nandani Nagar, Distt. Durg C.G., Minor, Through- His Father Vijay Satnami, S/o Mataru, R/o Nandani Khundani, P.S. Nandani Nagar, Distt. Durg C.G.

----Appellant**Versus**

1. Mukesh Kumar S/o Vishram Mahilang Aged About 19 Years R/o Nandani Khundani, P.S. Nandani Nagar, Distt. Durg C.G. (Driver of Tractor No.HR-14-1948)
2. Rajvansh Singh Keshari S/o Heera Singh Keshari Aged About 49 Years R/o Nandani Nagar, Ward No. 12, P.S. Nandani Nagar, Distt. Durg C.G. (Registered Owner of Tractor No. HR-14-1948)
3. Vishram Mahilang S/o Roop Singh Mahilang Aged About 52 Years R/o Nandani Khundani, P.S. Nandani Nagar, Distt. Durg C.G. (Owner at the time of accident Tractor No.HR-14-1948)

---- Respondents

For Appellant

Shri C.P. Soni, Advocate on behalf of Shri
Jitendra Gupta, Advocate.

For Respondent no.1

Shri M.L. Saket, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment On Board****21/02/2019**

1. This is claimant's appeal against the award dated 26.08.2013 passed by 6th Additional Motor Accidents Claims Tribunal, Durg, C.G. (for short 'the Tribunal') in claim case No. 50/2012, whereby the claim petition has been dismissed.
2. As per averments in the claim petition on 26.02.2012, claimant/injured Dhanesh Kumar, aged about 14 years, student, suffered grievous injuries in the motor vehicular accident caused due to rash and negligent driving of Tractor bearing registration no.HR14-1948 by non-

applicant No.1. At the time of accident, non-applicant no.2 was registered owner of the offending vehicle and non-applicant no.3 was in possession of the same as an owner.

3. As against the compensation of Rs.8,00,000/- claimed by the appellant/claimant, by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the injuries sustained by him in the motor accident on 26.02.2012, the Tribunal after considering the evidences dismissed the claimant's claim petition.
4. Learned counsel for the appellant submits that as per evidence of eye witness Gowcharan AW-1 in para 2 he has specifically stated that on the date of accident he along with the injured was travelling in the offending vehicle which was being driven non-applicant no.1 in a rash and negligent manner and as a result thereof the vehicle got uncontrolled and entered the agricultural field and he as well as injured claimant Dhanesh Kumar suffered injuries on various parts of their body. FIR was also lodged against non-applicant no.1 by the claimant vide Ex.P-2, the offending vehicle was seized from non-applicant no.1 vide Ex.P-3 and after investigation charge sheet was filed against non-applicant no.1 for the offence under Section 279, 337 and 338 of IPC. As per Ex.P-5 to Ex.P-9 continuous treatment was taken by the claimant and bills of the medical treatment i.e. Ex.P-10 to Ex.P-36 were produced and proved by the claimant before the Tribunal. Father of the claimant namely Vijay Satnami was also examined by the claimant who has duly proved the manner in which the accident occurred and the claimant suffered injuries and medical treatment was done. In cross-examination, the evidence of this witness remains uncontroverted. However, the Tribunal dismiss the claim petition of the claimant without properly appreciating the evidence of the AW-1 Gowcharan and further on the ground that the claimant did not examine himself before the Tribunal as well as non-applicant no.1 Mukesh Kumar and the report of the accident has also been

lodged after one month of the accident.

5. On the other hand, learned counsel appearing for the respondent No.1 oppose the contention made by the appellant's counsel and supports the award impugned.
6. I have heard learned counsel appearing for the parties and perused the record of the Tribunal as well as award impugned.
7. From the pleadings of the claimant as well as the statement of AW-1 Gowcharan, AW-2 Vijay Satnami father of the claimant, FIR Ex.P-2, seizure memo Ex.P-3 and charge sheet Ex.P-1, it stands proved that on the date of accident, the claimant was travelling in the offending vehicle which was driven by non-applicant no.1 in a rash and negligent manner and as a result of which, the claimant suffered injuries. The claimant has also filed medical documents Ex.P-5 to Ex.P-9 which shows that the claimant received continuous treatment for the injuries suffered by him and Ex.P-10 to Ex.P36 also showing that the claimant was medically treated for the injuries sustained by him. In these circumstances, the Tribunal was not justified in dismissing the claim petition on the grounds mentioned in the impugned award. However, considering the over all facts and circumstances of the case, the nature and quality of evidence adduced by the parties, the provisions of the Motor Vehicles Act and also considering the reasons assigned by the Tribunal for dismissing the claim petition, this Court is of the opinion that the claim petition needs to be decided afresh by the Tribunal.
8. In the result, the appeal is allowed, the award impugned is set aside and the matter is remitted back to the concerned Tribunal to decide the claim petition afresh on its own merits, after affording full opportunity of hearing to the parties, as expeditiously as possible, preferably within a period of 6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on **26.03.2018**.
9. 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.

10. Record of the Tribunal be sent back forthwith.

11. With the aforesaid observations, the appeal stands disposed of.

12. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh