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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 584 of 2016

- Vijay Kumar Sahu S/o Bhagatram Sahu, aged about 24 years, R/o Village-Manikchauri, Police Station – Pipariya, Tahsil – Kawardha, Civil and Revenue District- Kabirdham (C.G.)

---- Appellant/Claimant

Versus

1. Pawan Kumar S/o Rajelal Patel, aged about 32 years, R/o Village-Bhagutola, Police Station & Tahsil – Kawardha, Civil & Revenue District – Kabirdham (C.G.)

(Driver-cum-owner of the offending vehicle Hero Honda Motorcycle bearing registration No. CG-09/A/1040)

(Non-applicant No.1)

2. The Branch Manager, The Oriental Insurance Company Ltd., Sunil Video World, Mahavir Swami Chowk, Main Market, Kawardha, District- Kabirdham (C.G.)

(Insurer of the offending vehicle Hero Honda Motorcycle bearing registration No. CG-09/A/1040)

(Non-applicant No.2)

---- Respondents

For Appellant	:	Shri C.P. Lahrey, Advocate
For Respondent No.1	:	None, though served
For Respondent No. 2	:	Shri R.N. Pusty, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

09.04.2019

1. This appeal is directed against the dismissal of the Appellant's/Claimant's claim petition vide award dated 04.03.2016 by the Motor Accident Claims Tribunal, Kabirdham (Kawardha), C.G. in MACC No 16 of 2015. The Claimant/injured claimed compensation of Rs.43,30,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the injuries sustained in the motor accident.

2. Facts of the case, in brief, are that the Claimant was doing the work of Mason. While on 05.02.2014 Claimant – Vijay Kumar Sahu was putting grits into the mixture machine, non-applicant No.1- Pawan Kumar rider-cum-owner of the offending vehicle Hero Honda Motorcycle bearing registration No. CG-09/A/1040,

insured with non-applicant No.2, riding the offending vehicle in a rash and negligent manner, dashed Vijay Kumar Sahu, as a result thereof, his hand got stuck into the mixture machine and was cut off below the elbow. Due to the said accident, as per Ex.-A-47 Claimant suffered 55% permanent physical disability.

3. Learned counsel for the Appellant/Claimant submits that on the date of accident, non-applicant No.1 driving the motorcycle in a rash and negligent manner dashed the Claimant due to which his right hand got stuck into the mixture machine and was cut off below the elbow from the mixture machine. As per charge-sheet (Ex.-A/1) filed against the non-applicant No.1, as per FIR (Ex.-A/2) lodged against non-applicant No.1 and as per spot map (Ex.-A/3), specific evidence adduced before the Tribunal mentioning all the relevant facts to the incident. As per seizure memo (Ex.-A/5), the offending vehicle was seized from the possession of the non-applicant No.1. He further submits that the medical papers, medical bills and permanent physical disability certificate were produced before the Tribunal i.e. Ex.-A/6 to Ex.-A/47 and proved by the Claimant, but the Tribunal has not considered the above documents and has dismissed the claim petition of the Claimant on the ground that the injury caused to the Claimant was not as a result of being hit by motorcycle ridden by non-applicant No.1. He also submits that the Tribunal has not considered or decided the issue Nos, 1, 2 and 4 except issue No.3 and has not awarded any amount of compensation to the Claimant. Therefore, appropriate compensation may be awarded in favour of the Claimant. Alternatively, he submits that in the facts and circumstances of the case, the matter may be remanded to the Tribunal for deciding all the issues in the claim petition afresh on merits after giving due opportunity of hearing and of adducing evidence to the parties.

4. Learned counsel for Respondent No.2/Insurance Company opposes the contention made by the learned counsel for the Appellant and alternatively submits that if the case is remanded to the Tribunal, appropriate opportunity for adducing evidence should be granted to the Insurance Company/non-applicant No.2.

5. Heard learned counsel for the parties and perused the material available on record.

6. Looking to the documents produced by the Claimant from Ex.-A/1 to Ex.-A/47, statement of Claimant- Vijay Kumar Sahu, it is apparent that on the date of accident i.e. 05.02.2014 the Claimant was doing the work of Mason, non-applicant No.1- Pawan Kumar, rider-cum-owner of the offending vehicle No. CG-09/A/1040, riding the offending vehicle in a rash and negligent manner, hit Vijay Kumar Sahu, as a result thereof, his right hand got stuck into the mixture machine and was cut off below the elbow and he suffered 55% permanent physical disability. The claim petition ought to have been decided keeping in view of the benevolent provisions of the Motor Vehicles Act by proper appreciation of overall material on record. Therefore, in the facts and circumstances of the case, the matter needs to be remanded to the Tribunal for deciding all the issues framed by the Tribunal in the claim petition on merits after giving due opportunity of hearing and of adducing evidence to the parties.

7. Considering the facts and circumstances of the case, the nature and quality of evidence adduced by the Claimant, the provisions of the Motor Vehicles Act, the summary nature of trial as also the fact that while deciding the claim petition strict rule of evidence is not to be insisted upon and it has to be decided on the basis of preponderance of probability, the finding so recorded by the Tribunal is not sustainable and this Court is of the opinion that matter needs to be decided afresh on merits by the Tribunal in accordance with law.

8. Accordingly, 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 on all the issues, in the light of observations made hereinabove, after affording full opportunity of hearing to the parties.

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. Records of the Tribunal be sent back forthwith. Parties are directed to appear before the concerned Claims Tribunal on 17th May, 2019. If necessary to issue fresh notice to non-applicant No.1 and 2, the Tribunal may do so.

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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