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HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 819 of 2013

Smt. Sakun Devi Agrawal W/o Shri Durga Prasad Agrawal Aged About 52 Years R/o. Village- Pendra, Thana And Tah. Pendra, Civil and Revenue Distt. Bilaspur C.G.

---- Appellant

Versus

1. Krishna S/o Tajju Singh Gond R/o. Village- Newasa Bartola, Thana- Pendra Road, Gaurella, Civil & Revenue Distt. Bilaspur C.G.
2. Ramesh Chandra Agrawal C/o Muralidhar Bhagawan Das, R/o Main Road, Pendra Road, Thana- Gaurella, Civil & Revenue Distt. Bilaspur C.G.
3. The Oriental Insurance Company Limited, Branch- Bilaspur, Distt. Bilaspur C.G.

---- Respondents

MAC No. 820 of 2013

Durga Prasad Agrawal S/o Kishan Lal Agrawal Aged About 52 Years R/o Village- Pendra, Thana & Tah. Pendra, Civil & Revenue Distt. Bilaspur C.G.

---- Appellant

Versus

1. Krishna S/o Tajju Singh Gond R/o. Village- Newasa Bartola, Thana- Pendra Road, Gaurella, Civil and Revenue Distt. Bilaspur C.G.
2. Ramesh Chandra Agrawal C/o Muralidhar Bhagawan Das, R/o Main Road Pendra Road, Thana- Gaurella, Civil & Revenue Distt. Bilaspur C.G.
3. The Oriental Insurance Company Limited Branch Bilaspur, Distt. Bilaspur C.G.

--- Respondents

MAC No. 819 of 2013

For Appellant	: Mr. Yogendra Chaturvedi, Advocate
For Respondents No. 1 and 2	: None
For Respondent No. 3	: Mr. Hanuman Prasad Agrawal, Advocate

MAC No. 820 of 2013

For Appellant	: Mr. Yogendra Chaturvedi, Advocate
For Respondents No. 1 and 2	: None
For Respondent No. 3	: Mr. Hanuman Prasad Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

09/05/2019

1. As the above two appeals arise out of same accident and common question is involved in it, therefore, they are being disposed of by this common judgment.
2. Challenge in above two appeals is to the award dated 30/01/2012 passed by Additional Motor Accident Claims Tribunal, Pendraroad, District Bilaspur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case Nos.64/2011 and 63/2011 whereby learned Claims Tribunal dismissed claim applications of respective appellants/claimants on the ground that they have failed to prove involvement of vehicle, driven and owned by respondents No.1 and 2 respectively, in the accident in question.
3. Brief facts for disposal of this appeal are that on 23/10/2004, at about 9.25 P.M., when appellant-Smt. Shakun Devi was traveling on a Motorcycle as pillion rider along with her husband-Durga Prasad Agrawal and going towards Jyoti Petrol Pump from his house, at that relevant time, in front of Petrol Pump, one Marshal Jeep (hereinafter referred to as 'offending vehicle'), dashed the Motorcycle driven by Durga Prasad Agrawal and ran away. The injured lodged *Dehatinalishi* against unknown vehicle based on which First Information Report was registered against driver of unknown vehicle. During course of investigation, Marshal Jeep bearing

No.CG10/ZD/0114 was seized on 12/02/2005 i.e. after more than 3^{1/2} months from the date of accident.

4. In the aforementioned accident, Durga Prasad Agrawal and Smt. Shakun Devi both sustained injuries on their persons. Appellant-Smt. Shakun Devi filed claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before learned Claims Tribunal mentioning therein that on account of injuries sustained by her in accident dated 23/10/2004 she become permanent disabled, for which, she took treatment in the Hospital at Pendra and thereafter, in the Hinduja Hospital at Mumbai and claimed Rs.11,78,000/- in total as compensation to respondents. Appellant-Durga Prasad Agrawal also filed claim application under Section 166 of M.V. Act claiming Rs.16,10,000/- as compensation to respondents.
5. Respondents No. 1 and 2 who are driver and owner of alleged offending vehicle denied all the adverse pleadings made against them and pleaded that on the date of accident i.e. 23/10/2004, there was Dashera festival and all family members of respondent No.2 were going to see Dashera procession at Dashera ground as pedestrian. It has been further pleaded that looking to excess crowd on the road, offending vehicle was parked in his house itself and denied involvement of offending vehicle in the accident. It has been lastly pleaded that respondent No.1 has left the driving of offending

vehicle of respondent No.2 prior to four months from the date of accident.

6. Respondent/Insurance Company submitted its separate reply to claim application and pleaded that no accident took place from alleged offending vehicle, there was violation of conditions of insurance policy and further pleaded that in the accident, Motorcycle of appellant was also involved, but driver and insurer of Motorcycle has not been arrayed as necessary respondents, therefore, claim application is not maintainable on account of non-joinder of necessary party.
7. Learned Claims Tribunal while appreciating pleadings and evidence produced by respective parties held that alleged offending vehicle was not involved in accident, therefore, appellants/claimants are not entitled for any amount of compensation.
8. Learned counsel appearing for appellants/claimants submitted that learned Claims Tribunal committed an error in passing impugned award. He further submitted that appellant-Smt. Shakun Devi in her evidence has categorically stated about description and number of offending vehicle to prove its case and also examined one Lalchand Vaisya eyewitness of the accident as AW-2, but even then, learned Claims Tribunal erroneously recorded the finding that appellants failed to prove involvement of offending vehicle in accident.
9. Per contra, learned counsel appearing for respondent No.3/Insurance Company submitted that initially report was lodged against unknown

Marshal Jeep, but offending vehicle as mentioned in claim application has been involved only on 12/02/2005 when vehicle was seized and respondent No.1 has also been shown to be arrested on 22/02/2005. He further submitted that appellants/claimants have not examined Investigating Officer to prove that on what basis offending vehicle was said to be involved in the accident.

10. I have heard learned counsel appearing for parties and perused entire record carefully.
11. In the instant case, appellant-Smt. Shakun Devi as well as her husband i.e. appellant-Durga Prasad Agrawal sustained grievous injuries who also preferred an appeal before this Court bearing MAC No.820 of 2013. Records of MAC No.820 of 2013 bears the copy of *Dehatinalishi* (Ex. A-33) and copy of First Information Report (Ex. A-34). Perusal of Ex. A-33 would reveal that *Dehatinalishi* has been lodged by Durga Prasad Agrawal, but in the said information, it has categorically mentioned that he could not able to see the number of offending vehicle. First Information Report (Ex. A-34) has been lodged on the basis of *Dehatinalishi* recorded by Police and in the column of offender, name of unknown driver of Marshal vehicle has been mentioned. The contents of First Information Report also not bears description of offending vehicle.
12. Appellant-Smt. Shakun Devi examined herself as AW-1, who in his statement clearly stated that after causing accident, driver of offending vehicle ran away and she could not read number of

offending vehicle, but colour of vehicle was identified by her as maroon/red.

13. Lalchand Vaisya (AW-2) in his cross-examination categorically stated that he has not seen accident and he reached on the spot after one minute of accident.
14. As it is a case of hit and run, therefore, evidence of Lalchand Vaisya (AW-2) is not reliable being suspicious because in his examination-in-chief, he stated that he saw the offending vehicle driven by respondent No.1 rashly and negligently dashed the Motorcycle of appellants/claimants whereas in cross examination he stated that he reached on spot after accident.
15. In view of above, when both the witnesses have not seen number of vehicle involved in the accident at night as well as it is a case of hit and run, evidence of Smt. Shakun Devi (AW-1) and Lalchand Vaisya (AW-2) cannot be said to be a reliable piece of evidence.
16. Learned Claims Tribunal has taken into consideration *Nazrinakasha* i.e. spot map and held that at the time of accident, Motorcycle of the appellants and alleged offending vehicle were moving in same direction, but as per the case of appellants, offending vehicle was coming from opposite direction and there was head on collision.
17. Other claimant Durga Prasad Agrawal also examined himself in his claim application as AW-1. He in his evidence stated that offending vehicle came from front side, his both headlights were on. After

accident, offending vehicle ran away. He did not mention number of offending vehicle in Ex.P-33 i.e. complaint to police.

- 18.** In claim application of Durga Prasad Agrawal also Lalchand Vaisya was examined as AW-2. He in cross-examination stated that he could not able to see the number of offending vehicle but only saw the colour of vehicle i.e. Maroon.
- 19.** There can be number of Marshal Jeep of Maroon colour running on and through Pendra. The accident took place on a main road, therefore, only on the basis of colour of the vehicle, it cannot be presumed that the vehicle alleged is the offending vehicle. The claimants failed to produce any other connecting evidence or the evidence showing that how they involved the offending vehicle in the accident, when offending vehicle fled away from spot.
- 20.** Learned Claims Tribunal has discussed in detail for arriving at a finding that alleged offending vehicle bearing No.CG10/ZD/0114 was not involved in accident.
- 21.** Learned counsel for appellants could not point out any illegality in the impugned award passed by learned Claims Tribunal.
- 22.** For the forgoing discussions as well as material and evidence available on record wherein appellants have failed to prove involvement of offending vehicle in the accident by producing cogent and reliable piece of evidence, learned Claims Tribunal has not committed any error in dismissing the appeals on the grounds mentioned therein.

- 23.** Learned counsel for appellants submitted that he has also filed an application under Order 41 Rule 27 of CPC to produce the sales certificate of offending vehicle. In sales certificate, it shows that Chassis number and Engine number of offending vehicle mentioned in it is of the same which was seized by the police. He further submitted that in the said sales certificate, colour of vehicle has been shown to be maroon. Even accepting the argument raised by learned counsel for appellants, in the opinion of this Court, appellants have failed to prove that when and in which year owner of offending vehicle got his vehicle repainted and whether there was only one Maroon vehicle in Pendra. No Maroon vehicle can run through main road of Pendra city.
- 24.** Appellants herein have not examined any of the Investigating Authority to prove that as to how and from which information Police had conducted the investigation to record the number of vehicle. In an application under Order 41 Rule 27 of CPC, appellants have failed to prove specific date and time when he or she got knowledge about the document and why it could not be filed before the learned Claims Tribunal. Application under Order 41 Rule 27 of CPC filed in MAC No.819/2013 is dismissed.
- 25.** In view of above incriminating material available on record as well as contents of First Information Report, I am not inclined to interfere with the finding recorded by learned Claims Tribunal as the view taken by

learned Claims Tribunal can be one of the views could be taken in the facts and circumstances of the case.

- 26.** In the result, both the appeals (MAC Nos.819/2013 and 820/2013) being devoid of merit, are liable to be and are hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh