NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 691 of 2013

- Somnath Sahu, S/o Trilochan Sahu, Aged About 22 Years, R/o Kukra, P.S. Mandir Hasoud, Civ: & Rev: Distt. Raipur C.G., **---- Appellant**

Versus

1. Rampukar Singh, S/o Mahadev Singh, Aged About 57 Years, R/o Shyam Nagar, P.S. Telibandha, Civ: & Rev: Distt. Raipur C.G., Driver, Minibus No.CG-04-E-0589
2. Abdul Shafiq, S/o Late Abdul Hakim, R/o Besides Sahara Batries, Moudhapara, P.S. Moudhapara, Civ: & Rev: Distt. Raipur C.G., Owner, Minibus No.CG-04-E-0589
3. National General Insurance Co.Ltd., Besides Lal Ganga Shopping Mall, G.E. Road, Raipur, Civ: & Rev: Distt. Raipur C.G., Insurer, Minibus No.CG-04-E-0589 **---- Respondents**

For Appellant	:	Smt. Arpana Singh appears on behalf of Shri Devarshi Thakur, Advocate
For Respondents No.1 & 2	:	None appears
For Respondent No.3	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

15/03/2019

1. This Miscellaneous Appeal has been preferred by the appellant/claimant Somnath Sahu under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the propriety of the award dated 18.01.2013 passed by the 7th Additional Motor Accidents Claims Tribunal, Raipur (C.G.) in Claim Case No. 05/2012, by which, the Claims Tribunal, while allowing the claim in part, has awarded total amount of compensation to the tune of Rs.79,681/- with 6% interest per annum from the date of claim petition till its realisation.

2. Briefly stated the facts of the case are that on 05.10.2011 at 6:45 PM, the appellant Somnath Sahu was coming by his Motorcycle from Aarang to Village Kukra and as soon as he reached near the Rasni Overbridge, his Motorcycle was

dashed vehemently from its backside by offending vehicle (Bus) bearing its registration No. CG-04/E-589, which was being driven rashly and negligently by its driver, namely Ram Pukar Singh, respondent No.1 herein. The vehicle in question was owned by Abdul Shafiq, respondent No.2 and was insured with respondent No.3/National Insurance Company Limited. On account of alleged accident, the appellant sustained grievous injuries and was admitted into the Hospital on 05.10.2011 and was discharged thereafter on 18.10.2011.

3. Owing to the alleged incident, a claim enumerated under Section 166 of the Act of 1988 has been made by the appellant/claimant claiming total amount of compensation to the tune of Rs.6,40,000/- by submitting, inter alia, that he was employed in a Private Company and used to earn Rs.5000/- per month and on account of the alleged accident he suffered permanent disability.

4. Non-applicant No.1 was proceeded ex parte while non-applicant No.2 contested the claim on the ground that the appellant himself was responsible for the alleged accident, and pleaded further that since the vehicle in question was insured, therefore, in case of any liability being fastened, the same would be indemnified by respondent No.3, the insurer. The non-applicant No.3/insurer has contested the claim mainly on the ground that the vehicle in question was being driven by its driver without possessing valid and effective driving licence, and therefore, it was being used in utter violation of the policy of insurance and as such no liability could be fastened upon it.

5. The appellant has examined himself in order to establish his claim, however, none was examined by non-applicants No. 1 & 2 and insurance company, respondent No.3 herein, has produced one of its witnesses.

6. After considering the evidence led by the parties, the learned Claims Tribunal, vide its award impugned dated 18th January, 2013 has come to the conclusion that the alleged accident has occurred due to the contributory

negligence on part of both the drivers of the vehicles, i.e., the driver of the Motorcycle as well as the offending vehicle (Bus) in a ratio of 40% and 60% respectively and held further that the appellant has not suffered permanent disability. It held further that the insurance company has failed to establish the fact that the driver of the offending vehicle was not possessing the valid and effective driving licence and in consequence while taking into consideration the medical bills submitted by the appellant, has assessed the total amount of compensation to the tune of Rs.1,32,802/- and since the appellant was also responsible for the alleged accident to the extent of 40%, therefore, total amount of compensation has been reduced to the tune of Rs.79,681/-. The Claims Tribunal has, thus, awarded this much of amount with 6% interest per annum from the date of claim petition till its realisation.

7. Being aggrieved, the appellant has preferred this appeal. Smt. Arpana Singh, learned counsel for the appellant submits that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the appellant was also responsible for the alleged accident to the extent of 40% and thereby erred in reducing the amount of compensation as such. However, in absence of claimant's unrebutted statement, the Tribunal ought not to have held as such. The award impugned is, therefore, liable to be set aside/modified.

8. On the other hand, Shri Dashrath Gupta, learned counsel for respondent No.3/insurance company while supporting the award impugned submits that the documentary evidence, particularly, Ex.P.8 and Ex.P.10 reveals very specifically that the appellant has dashed the offending vehicle from its back side. The Tribunal has, thus, not committed any illegality in holding the contributory negligence of both the vehicles.

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

10. A claim enumerated under Section 166 of the Act of 1988 has been made by the appellant on account of accident occurred on 05.10.2011 at 06:45 PM when he was coming by his Motorcycle from Aarang to village Kukra. In order to establish the factum of alleged accident, the appellant entered into the witness box and deposed very specifically that he was neither responsible for the alleged accident nor has dashed the offending vehicle from its back side. It is true that documentary evidence, particularly, Ex.P.8 and Ex.P.10, shows that front side of his Motorcycle was damaged whereas the right side indicator of rear portion of offending vehicle was damaged. However, merely on the basis of these documents, it cannot be held that the appellant was also responsible for the alleged accident, as held by the Claims Tribunal. Initial burden to prove the factum of alleged accident was upon the appellant, however, his statement in this regard could not have been rebutted by the non-applicants No.1 & 2 as they failed to produce any of its witness in order to rebut the same. As a consequence, the finding of the Tribunal holding that the appellant was also liable for the alleged accident cannot be held to be sustainable. The finding so recorded in this aspect, therefore, deserves to be and is hereby set aside and, it is held that the driver of the offending vehicle alone was responsible for the alleged accident occurred on 05.10.2011. As far as the amount of compensation, as assessed by the Tribunal is concerned, I do not find any infirmity in the same.

11. In view of the foregoing discussions, the appeal is allowed in part and the appellant/claimant is entitled to sum of Rs.1,32,802/- with 6% interest per annum from the date of claim petition till its realisation. The said amount shall be paid by the respondents jointly and severally within a period of 3 months from today. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge

Anjani