

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 1587 of 2015**

Lokesh @ Lekeshwer Verma S/o Hemshingh Verma, Aged About 22 Years R/o Village Bharewa, Thana Dharsiwa, District Raipur Chhattisgarh.

---- Appellant**Versus**

1. Krishnapuri Goshwami S/o Panchampuri Goshwami, Aged About 23 Years R/o Village Nayapara, Ward No. 12, Bemetara, Thana Bemetara, District Durg Chhattisgarh

Driver of the offending vehicle Motor Cycle No. H.R.20Q/0209.

2. M. S. Gopi Krishn Infrast Pra. Limited, Through Ajay Singh Rajput, Aged About 35 Years, R/o Arora Building Durg Road Bemetara, District Durg Chhattisgarh.

Registered Owner of the offending vehicle Motor Cycle No. H.R.20 Q/0209.

3. The National Insurance Company Limited, Through Branch Manager, Mobin Mahal, G.E. Road, Raipur Chhattisgarh

Insurer of the offending vehicle Motor Cycle No. H.R./20Q/0209.

---- Respondents

For Appellant : Mr. Arjun Lal Singroul, Advocate

For Respondents No. 1 & 2 : Mr. Yash Mourya, Advocate on behalf of Mr. Sunil Otواني, Advocate

For Respondent No. 3 : Mr. Shivendu Pandya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****24/06/2019**

1. This appeal has been filed by appellant/claimant under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award

dated 13/10/2015 passed by First Additional Motor Accident Claims Tribunal, Raipur District Raipur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.98/2014, whereby learned Claims Tribunal dismissed the claim application.

2. Brief facts relevant for disposal of this appeal are that on 21/05/2010, claimant was travelling on a motorcycle bearing registration No.CG04/CF/3748 and going to village Sindhori from village Bahera at about 9.00 P.M. When he reached near Ramdeo temple, one another motorcycle bearing registration No.HR20/Q/0209 dashed motorcycle of claimant. In the aforementioned accident, appellant/claimant suffered multiple injuries over his person. He suffered fracture injury over his jaw along with other injuries. Matter was reported to concerned Police Station, based on which, crime was registered against Krishnapuri Goshwami, driver of motorcycle bearing registration No.HR20/Q/0209. After completion of investigation, charge-sheet was also filed against him.
3. Appellant after recovery from the injuries filed claim application before the Claims Tribunal at Raipur initially under Section 163-A of M.V. Act claiming Rs.15,00,000/- as compensation on the grounds mentioned therein.
4. During pendency of claim application, claim application was amended and cause title of application has been changed to be an application under Section 166 of M.V. Act.

5. Respondents/non-applicants No.1 and 2 despite service of notice did not appear before the learned Claims Tribunal and they were proceeded *exparte*.
6. Respondent/non-applicant No.3 submitted reply to claim application and pleaded that accident did not take place due to rash and negligent act of non-applicant No.1 who is driver of motorcycle No.HR20/Q/0209, claimant himself is responsible for the accident and he did not suffer injuries as pleaded by him in his claim application. It was also pleaded that on the date of accident, there was no valid and effective driving licence with non-applicant No.1, therefore, there is violation of conditions of insurance policy and Insurance Company is not responsible for payment of any amount of compensation to the claimant.
7. Learned Claims Tribunal recorded that the claimant has first filed claim application i.e. Claim Case No. 33/2011 before the Fourth Additional Motor Accident Claims Tribunal, Raipur, which was returned to claimant for filing the same before the Claims Tribunal at Bemetara, but instead of filing claim application before the Claims Tribunal at Bemetara, he again filed claim application before this Claims Tribunal. Learned Claims Tribunal, Bemetara in another claim application bearing No.110/2010 (*Krishnapuri v. Lokesh Verma*), arising out of same accident filed by non-applicant No.1, has passed final award on 25/01/2012 and held that drives of both the motorcycles to be contributory negligent.

8. Further learned Claims Tribunal held that claimant failed to prove the fact of accident on account of negligence on the part of driver of motorcycle, injuries said to be suffered by appellant/claimant, permanent disability, violation of conditions of insurance policy by the driver of motorcycle No. H.R./20Q/0209 and dismissed claim application holding that though claim application has been filed under Section 166 of M.V. Act by way of amendment but claimant failed to make appropriate amendment in pleadings of claim application showing rash and negligent act of non-applicant No.1 for causing accident. It has been further held that as heading of claim application has been mentioned as “claim application under Section 166 of M.V. Act”, after amendment but body of claim application shows pleading with respect to Section 163-A of M.V. Act, therefore, claim application under both the Sections i.e. 166 and 163-A of M.V. Act is not maintainable.
9. Learned counsel appearing for appellant/claimant submitted that learned Claims Tribunal committed error in dismissing application on the ground that application has been filed under both the Sections i.e. 166 and 163-A of M.V. Act. He further submitted that claimant has very specifically amended the cause title of claim application with the permission of Court and substituted Section mentioned in cause title of appeal i.e. 163-A of M.V. Act by Section 166 of M.V. Act. He lastly submitted that the learned Claims Tribunal ought to have given an opportunity to make necessary amendment and making specific

pleading with respect to rash and negligent driving of non-applicant No.1 by his motorcycle in view of fact that evidence to this effect is already available on record and relied upon by appellant/claimant since the date of accident itself.

10. Per contra, learned counsel appearing for respondents No.2 and 3 supported the impugned award and submitted that learned Claims Tribunal has not committed any error in dismissing claim application for the reasons mentioned in the award. They further submitted that as in the claim application, there is no specific pleading with respect to rash and negligent act of non-applicant No.1, therefore, application under Section 166 of M.V. Act is not proved and the Claims Tribunal has rightly held so.
11. I have heard learned counsel appearing for parties and perused the record carefully.
12. Perusal of claim application would show that appellant/claimant has initially filed claim application under Section 163-A of M.V. Act, which was amended on 14/10/2014. Subsequently, respondent No.3/Insurance Company has also corrected its reply on 16/10/2014. True, it is that the claimant though has amended the cause title of claim application and filed application under Section 166 of M.V. Act after amendment, but consequential amendment has not been made in the body of claim application by making specific pleadings with respect to rash and negligent act of non-applicant No.1 i.e. driver of motorcycle No.HR20/Q/0209.

13. *Dehati Nalishi* (Ex. P-3) lodged by Dohai Lal Verma on 21/05/2010 at about 9.30 P.M. i.e. immediately after half an hour of accident in Police Station Bemetara wherein it has been mentioned that accident took place due to rash and negligent driving of motorcycle No. HR20/Q/0209 by non-applicant No.1. Based on *Dehatinalshi*, First Information Report (Ex.P-2) has been registered, in which, it has been mentioned that accident took place due to rash and negligent act of non-applicant No.1 and the non-applicant No.1 has been made accused specifically in the First Information Report. After conclusion of investigation, Police submitted final report vide Ex.P-1 against non-applicant No.1, in which, it has been mentioned that non-applicant No.1 while driving his motorcycle rashly and negligently, dashed motorcycle of appellant/claimant.
14. Appellant/claimant- Lokesh @ Lekeshwar Verma has been examined as (AW-1). Perusal of his evidence would show that in his affidavit under Order 18 Rule 4 of CPC, he has specifically stated that it was non-applicant No.1 who drove his motorcycle rashly and negligently and caused accident. In support of his evidence, he has also filed relevant documents of criminal case.
15. Perusal of aforementioned documentary as well as oral evidence of appellant/claimant-Lokesh @ Lekeshwar Verma (AW-1) would show that there is specific mention in the record of criminal case i.e. First Information Report, which has been lodged immediately after the

accident, that accident took place due to rash and negligent driving of non-applicant No.1.

16. The claimant after filing of claim application has amended claim application to be under Section 166 of M.V. Act, but he failed to amend the body of application by way of amendment and making specific pleading that the accident took place due to rash and negligent driving of non-applicant No.1.
17. M.V. Act is a beneficial piece of legislation. The Claims Tribunal have to make proper enquiry to arrive at a finding on the basis of oral and documentary evidence placed by respective parties. Documentary evidence relied upon by claimant clearly mentions with respect to rash and negligent act of non-applicant No.1 and in evidence also, appellant/claimant specifically stated that the accident took place due to rash and negligent driving of motorcycle by non-applicant No.1. In these circumstances, learned Claims Tribunal ought to have granted an opportunity to appellant/claimant to make specific pleading in his claim application particularly when application has been converted into one under Section 166 of M.V. Act subsequently by way of amending cause title of claim application.
18. Since the accident is not disputed, the documents relied upon by claimant which are documents recorded by Police Officials and even not disputed by counsel for respondents, claim of the appellant/claimant who suffered injuries in the accident cannot be defeated on account of mistake of counsel representing him. It is the

duty of the counsel representing appellant/claimant to make consequential amendment in view of amendment, if made, in the cause title of claim application. The purpose and object of M.V. Act cannot be left to be frustrated on account of fault of others.

19. Considering the facts and circumstances of the case, I allow this appeal, set-aside the impugned award passed by learned Claims Tribunal, remand back the matter to the Court of First Additional Motor Accident Claims Tribunal, Raipur District Raipur (C.G.) for deciding the claim application afresh after affording an opportunity to all the parties to amend their pleadings, file documents, lead evidence in support thereof and thereafter to decide the claim application in accordance with law.
20. Parties are directed to appear before the Court of First Additional Motor Accident Claims Tribunal, Raipur District Raipur (C.G.) on 20/08/2019. If any of the parties could not make their presence on the said date then the Claims Tribunal shall issue notices for their presence and proceed to decide the case in accordance with law.
21. Records be sent back forthwith to concerned Claims Tribunal.

Sd/-

(Parth Prateem Sahu)
Judge