

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1832 of 2018**

1. Pankaj Agrawal S/o Shri Kailash Agrawal Aged About 35 Years R/o - Near Old Punjab National Bank, Agroha Marg, Korba, Police Station, Tahsil And District - Korba Chhattisgarh.

---- Appellant/Claimant**Versus**

1. Raju Rai Yadav S/o Shriram Jee Rai Aged About 25 Years R/o Vaishali, Police Station - Daltanganj, District Hajipur, (Bihar), Presently Resided At C/o Quarter of Shri Sujit Kumar Rai, No. 38/K, Yadavpara, Yamuna Vihar, Lata, Police Station Darri, District - Korba, Chhattisgarh.
2. Sujit Kumar Rai S/o Shri Thakur Lal Rai Aged About 28 Years R/o Qtr No. 38/K, Yadav Para, Yamuna Vihar, Lata, Police Station Darri, District - Korba, Chhattisgarh.
3. Branch Manager National Insurance Company Limited, Branch Office - Meenu Complex Kosabadi, Police Station Tahsil And District - Korba, Chhattisgarh.

---- Respondents

For Appellant : Miss Sharena Khan, Advocate on behalf of Shri Malay Kumar Bhaduri, Advocate.
 For Respondent No. 3 : Shri P.K. Tulsyan, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****26/03/2019**

- 1) This appeal is filed by the claimant under Section 173 of Motor Vehicles Act, 1988 (in short "the Act") against the award dated 24/08/2018 passed by First Additional Motor Accident Claims Tribunal, Korba (C.G.) in Claim Case No. 112/2016; whereby the claim petition has been dismissed with cost.
- 2) As per averment in the claim petition on 11/03/2016 at around 02:40 PM the claimant by driving his Indica Car bearing No. CG12 D 5661 was going from Champa to Korba. However, on

the way non-applicant No. 1 Raju Rai Yadav by driving Truck bearing No. CG12 S 3457 in a rash and negligent manner dashed another truck coming from opposite side and thereafter while reversing his Truck in a rash and negligent manner dashed the vehicle of the claimant. As a result of this accident the Bonnet, Mudguard, Bumper, Glass, Doors, Head Light and other parts of Car of the claimant got badly damaged. Report of the said accident was lodged before the Police on which crime No. 69/2016 for the offence under section 279 of I.P.C. was registered against non-applicant No.1/driver.

- 3) On claim petition being filed by the claimant under section 166 of the Act, the Tribunal considering the pleadings of the parties and the evidence on record dismissed the claim petition with cost.
- 4) Learned counsel for the appellant submits that a prompt F.I.R. (Ex. P-1) was lodged by the claimant against the Driver of the offending vehicle/Non-applicant No. 1 with the Police, on which offence under section 279 of I.P.C. was registered vide Ex. P-1. As per order dated 05/05/2016 (Ex. P-3) it is evident that Non-applicant No. 1/Driver was held guilty under section 279 of I.P.C. and fine of Rs. 1,000/- was paid by the Driver. The claimant in support of his claim petition produced certain document before the Tribunal, such as, copy of F.I.R. (Ex. P-1), charge sheet (Ex. P-2), order dated 05/05/2016 of Judicial Magistrate First Class, Korba (Ex. P-3), Spot Map (Ex. P-4), Seizure Memo (Ex. P-5 & 6), letter by the Station House Officer, Uрга to District Transport Officer (Ex. P-7), Information by owner of the vehicle to the Police (Ex. P-8), letter by the Police to the owner of the vehicle (Ex. P-9 & P-10), arrest memo of non-applicant No. 1 (Ex. P-11), Bail Bonds (Ex. P-12), vehicle examination report (Ex. P-13), copy of RC Book of the offending vehicle (Ex. P-14), summary letter prepared by the Court (Ex. P-15), estimate of the claimant with a letter to Station House Officer (Ex. P-16) and photographs concerning the accident. He submits that all these above

documents clearly go to show that the vehicle of the claimant got damaged in the accident caused by the offending vehicle. However, the Tribunal considering the minor discrepancies in the statement of the claimant before the Tribunal and F.I.R. as also in the charge sheet and non examination of the author of the bill (Ex. P-20, 21 & 22), held that the claimant has failed to prove that the accident occurred due to rash and negligent driving of the offending vehicle by the Non-applicant No. 1 and he incurred expenses as claimant in getting his vehicle repaired. The aforesaid findings recorded by the Tribunal run contrary to the evidence adduced by the claimants and as such are liable to be set aside. The matter is required to be remanded to the Tribunal for decision afresh after proper appreciation of the evidence available on the record and giving due opportunity of hearing to the parties.

- 5) On the other hand learned counsel for the respondent/Insurance Company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly dismissed the claim petition, which needs no interference by this Court.
- 6) Heard, learned counsel for the parties and perused the matter file on record.
- 7) From perusal of the record it is seen that on the same day i.e. 11/03/2016, F.I.R. (Ex. P-1) was lodged by the claimant against Driver of the offending vehicle on which offence under section 279 of I.P.C. was registered and after investigation charge sheet was filed against him accordingly. Further, from perusal of record it is seen that non-applicant No. 1/Driver admitted his guilt before the criminal Court and therefore, as per order dated 05/05/2016 (Ex. P-3) he was held guilty under section 279 of I.P.C. and fine of Rs. 1,000/- was imposed on him with default stipulation, which was paid by him.

- 8) In this view of the matter, the Tribunal was not justified in recording the finding that the claimant has failed to prove the negligence on the part of non-applicant No.1.
- 9) In support of the claim petition, the claimant filed certain documents, as detailed above in para 4, but the Tribunal did not believe the documents (Ex. P-20, 21 & 22) which relate to repairing cost of the claimant's vehicle and the expenses incurred by him towards fare charges @ Rs. 3,000/- given by him to C.S. Travels. As per Ex. P-20 on the ground that author of the said bills have not been examined. In the given facts and circumstances of the case, the pleadings of the claimant, the nature and quality of evidence adduced by him in support of his claim and also keeping in view the benevolent provisions of the Act, this Court is of the opinion that the Tribunal was not justified in dismissing the claim petition for the reasons mentioned in the impugned award.
- 10) In the result, the appeal is allowed, the impugned award is hereby set aside and the matter is remanded to the concerned Tribunal to decide the claim petition afresh on its own merits, after giving due opportunity of hearing to the parties, as expeditiously as possible preferably within a period of six months from the date of first appearance of the parties in accordance with law. Parties are directed to appear before the concerned Tribunal on 09/05/2019.
- 11) 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.
- 12) Record of the Tribunal be sent back forthwith.

-Sd/-
(Gautam Chourdiya)
Judge