

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 903 of 2013

- S. Kumar Sahu S/o Vijay Kumar Sahu Aged About 28 Years R/o Kachna, P.S. Dharsiwa, P.O. Saddu, Distt. Raipur, Chhattisgarh

---- Appellant

Versus

1. Janak Lal Pandey, S/o Late Parasram Pandey Aged About 41 Years R/o Santoshi Nagar, Near Good luck Plastic Factory, P.O. Raipur, P.S. Tikrapara, Distt. Raipur C.G., Chhattisgarh (Driver of vehicle Bus bearing registration No.CG-04-E9400)
2. Smt. Kameshwari Tomeshwari Verma W/o Late Mohan Chand Verma R/o Janata Quarter No. 128, Sector-2, Shankar Nagar, P.O. Shankar Nagar, P.S. Civil Lines, District : Raipur, Chhattisgarh (Registered Owner of vehicle Bus bearing registration No.CG-04-E9400)
3. The New India Insu.Co.Ltd. W/o Thru- Divisional Manager, Divisional Office No. 2, Behind L.I.C. Building, Jeewan Bima Marg, Commercial Campus, Pandri, P.O. Raipur, P.S. Pandri, Tah. And Distt. Raipur, Chhattisgarh

----Respondents

For Appellant	: Shri Dharmesh Shrivastava, Advocate
For Respondents-1 and 2/Driver and Owner	: Shri YC Sharma, Advocate
For Respondent-3/Insurance Company	: Shri Anil Gulati, Advocate

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**

Per Parth Prateem Sahu, J.

23.06.2020

1. Challenge in this appeal is to the impugned award dated 23.08.2013 passed in Claim Case-175 of 2012 by 2nd Additional Motor Accident Claims Tribunal, Raipur (for short, 'Claims Tribunal'), whereby the claim application filed by the appellant was dismissed.
2. Facts of the case in a nutshell are that, on 17.01.2012 when appellant/Claimant was going to Baloda Bazar from Bhatapara on Motorcycle bearing No.CG 04-BV-2168 (for short, 'Motorcycle') at about

3 pm. On the way, he met with an accident with Bus bearing No.CG -4E-9400 (for short,'offending vehicle') and suffered injuries over his person. The accident was reported to concerned Police Station, based on which Crime No.49 of 2012 was registered against respondent-1/NA1, driver of offending vehicle.

3. Appellant filed claim application under Section 166 of Motor Vehicle Act, 1988 claiming compensation of Rs.6,75,000/- on different heads mentioning therein that he suffered fracture injury over his right ankle and also got fracture of one finger. He was taken to Yashwant Hospital at Raipur by co-employees of his department, where he took treatment as In-Patient from 17th to 21st January, 2012. His right leg was operated and till the date of filing of claim application, his treatment was going on. It was also pleaded that by occupation, he is a driver but due to injuries suffered by him, he is not able to perform his work properly, affecting future prospects like promotion and increase in pay.

4. Respondents 1 and 2/NA-1 and 2 submitted reply to claim application pleading therein that condition of road on which accident took place was not good and therefore, respondent-1 was driving offending vehicle slowly and cautiously, but Motorcycle from opposite direction being driven rashly and negligently dashed offending vehicle. There was negligence on the part of Motorcycle rider, ie appellant himself. Amount claimed by appellant on different heads is highly exaggerated and after taking treatment, he fully recovered from the injuries suffered by him and able to perform all his routine work. It was also pleaded that liability if any, would be upon the Insurance Company, respondent-3.

5. Respondent-3 /Insurance Company submitted reply to claim application pleading therein that appellant was driving Motorcycle without there being any valid and effective driving license. Appellant himself caused the accident; therefore, even if it is found that offending vehicle is involved in the accident, then also it is a case of contributory negligence. Offending vehicle was plying without there being any valid permit, fitness and driver of offending vehicle was not possessing valid and effective driving license with him, thereby there was breach of conditions of Insurance Policy.

6. Learned Claims Tribunal based on pleadings and evidence placed on record, has formulated as many as five issues for consideration and after concluding the enquiry, held that appellant suffered grievous injuries; involvement of offending vehicle in the accident was not proved; violation of conditions of Insurance Policy was not proved; also there was no contributory negligence on the part of appellant. Learned Claims Tribunal though calculated amount of compensation, but dismissed claim application.

7. Shri Dharmesh Shrivastava, learned counsel for the appellant submits that learned Claims Tribunal dismissed application only on the ground of delay in lodging the FIR. He submitted that finding recorded by learned Claims Tribunal that accident as pleaded in claim application is doubtful on the ground that FIR has been lodged after 22 days of the accident, is based on surmises. He contended that there was admission by respondents-1 and 2/NA1 and 2 in their reply to claim application with regard to accident of Motorcycle with offending vehicle and learned

Claims Tribunal, without any admissible and reliable piece of evidence brought on record by either parties, should not have discarded the material available before learned Claims Tribunal. He also points out that crime was registered against respondent-1, driver of offending vehicle, appellant suffered injuries. Respondent-1 not only admitted the fact of accident, but the guilt was also admitted before competent Court of criminal jurisdiction and he was sentenced to fine.

8. Per contra, Shri Anil Gulati, learned counsel for the Insurance Company submits that learned Claims Tribunal taking into consideration overall facts and circumstances of the case, as well as the fact that appellant was discharged from the hospital after five days of accident, but even then, he has not lodged FIR with regard to accidental injuries suffered by him and the same was lodged only after 22 days, held the conduct of appellant, *prima facie* appears to be doubtful. He further submits that there is no evidence brought on record by the appellant that he has been advised to take rest for particular period by his doctor. While referring to paragraph-16 of impugned award he submits that learned Claims Tribunal rightly arrived at a finding that there was collusion between appellant and that of driver of offending vehicle.

9. Shri YC Sharma, learned counsel for respondents- 1 and 2, driver and owner of offending vehicle supports the award passed by learned Claims Tribunal.

10. We have heard learned counsel for respective parties and also perused record.

11. Appellant, in support of his claim application, has filed documents of criminal case, ie copy of summary trial under Section 263 and 264 of Cr.P.C., wherein respondent-1 has admitted his guilt of accident by driving the offending vehicle rashly and negligently. Court of Chief Judicial Magistrate, Baloda Bazar sentenced him for payment of fine of Rs.2,000/- against respondent-1 for committing offences under Section 279 and 338 of IPC. FIR has been lodged as Ex.P3 and final report is Ex.P4. Perusal of FIR would show that information has been given to the Police Station by one TC Verma, who is Sub-Divisional Officer, PWD (Public Works Department). Claimant has examined himself as AW-1 to prove the accidental injuries suffered by him. This witness was cross-examined by learned counsel for Insurance Company before learned Claims Tribunal, but no specific question has been put to him with regard to happening of accident or involvement of offending vehicle in the accident. The only question which has been put to him is with regard to appellant's continuing in employment with PWD, reimbursement of medical expenses incurred by him and also with respect to wages/salary. Apart from this, there is no material placed on record by either parties.

12. Section 168 of the Motor Vehicle Act, 1988 and Rule-226 of Motor Vehicle Rules, 1994 provide that learned Claims Tribunal has to decide the claim application based on pleadings, material and evidence (documentary as well as oral) placed on record before learned Claims Tribunal. Learned Claims Tribunal can make further enquiry to achieve the object of Motor Vehicle Act, 1988, if some facts or evidence of accident could not be brought on record by either parties.

13. In case at hand, claimant specifically pleaded that he met with an accident caused by offending vehicle, in support of his claim application, he filed documents of Criminal case registered against the driver of offending vehicle, and also the judgment of Criminal Case, wherein driver of offending vehicle was punished on admission of his guilt.

14. Respondents- 1 and 2 submitted reply to claim application admitting the fact of accident of appellant with offending vehicle.

15. Having all this material facts available on record, particularly admission of respondents-1 and 2 with regard to happening of accident and conviction of driver of offending vehicle, there was no occasion for learned Claims Tribunal to arrive at a finding only on the basis of surmises that fact of accident as pleaded in the application is suspicious only on the ground that FIR has been lodged after about 22 days of date of accident.

16. Delay in lodging FIR only cannot be taken as ground to dislodge the claimant from his legal rights by dismissing the claim application and denying justice to the victim of motor accident case. Lodging of FIR only proves the fact of happening of accident and one of the evidence in support of an application before competent Claims Tribunal seeking compensation against the injury or death suffered by the victim of accident. Lodging of FIR before concern Police Station in case of accident is vital in deciding the motor accident claim case, but delay in lodging the same should not be treated as vital for such proceedings if claimant has his satisfactory and cogent reasons for it.

17. In the case at hand, there is delay of 22 days in lodging the FIR. Merely discharge from the hospital after five days of his treatment will not be sufficient to assess ability of injured to move further and approach the authorities. It requires some bed rest looking to the facts and circumstances of each case. Document Ex.P7, which is medical cash receipt voucher of Yashwant Hospital, showing admission of appellant on 17.01.2012 and discharge on 21.01.2012 and also showing OT Charges (Operation Theatre). In the case at hand, FIR was lodged by one of the high rank Officer of the department, the respondent-1, driver of the offending vehicle admitted his guilt before competent court and was sentenced to fine.

18. From the aforementioned cash voucher, it can be inferred that appellant has undergone operation as stated by him and definitely, even after discharge from the hospital, it may not be possible for him to move, when the injury and operation is of the ankle.

19. Hon'ble Supreme Court in case of **Ravi Vs Badrinarayan and others** reported in (2011) 4 SCC 693 has held thus :

“17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

19. Lodging of FIR certainly proves the factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be a variety of reasons in genuine cases for delayed lodgement of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

20. For the foregoing reasons and in light of law laid down by Hon'ble Supreme Court, in our considered opinion, learned Claims Tribunal has erred in holding that claimant failed to prove the injuries suffered by him in the accident with offending vehicle.

21. Learned Claims Tribunal also recorded that there appears to be a collusion between appellant and respondent-1, though from perusal of record, there is no such material available to arrive such a finding. The allegation of collusion is required to be proved by placing sufficient material and evidence on record and not on the basis of conjecture and surmises.

22. Now coming to the grounds raised in memo of appeal by the claimant with regard to grant of compensation by learned Claims Tribunal to be on the lower side on the ground that the amount of Rs.2,00,000/- incurred by the claimant towards medical expenses and Rs.2,00,000/- towards permanent disability along with other claims and not awarding

any amount towards future treatment, income towards lay-off period and loss of future prospects is concerned, we have perused claim application as well as evidence of appellant. The appellant has stated that he is working as Driver in Public Works Department and also received salary of the period of treatment. In the above facts, the evidence of the appellant is not specific that whether the medical expenses were reimbursed or not.

23. The object of the Act of 1988 is to award just and proper compensation and it cannot be a bonanza. If the appellant has received back the expenditure incurred by him, then he may not be entitled for the medical bills again. The award of the compensation is to be based on material available on record and in injury cases duty of the Tribunal is more to consider the nature of injuries, medical evidence appropriately and to award just and proper amount of compensation.

24. Appellant in his claim application has pleaded that he is working as driver and due to injuries suffered by him, he is unable to perform his work properly, there is no possibility of his promotion and increase in income/salary. In evidence, appellant has admitted that he is working as driver in PWD and on the date of accident, he was travelling for departmental work. In cross-examination, he admits that he is still continuing in his service and also receiving salary from department. He also admits that his finger was not amputated. He is only feeling pain on the leg and rod which was inserted initially has also been removed. There is further admission that he has not filed any certificate of permanent disability. It is also stated by him that since 2006, he is working in that department. He has received salary during the period of treatment and he

submitted his fitness certificate at the time of joining to his duties after the accident.

25. Taking into consideration evidence of appellant himself, it is evident that he is working in PWD ie a Government institution; there was no permanent disability suffered by him; he is continuing with his job; he is working on the same post in which he was working prior to the accident ie Driver there is no loss of income. No evidence has been placed on record with respect to the future treatment and further there is admission that he received salary for the period of his treatment.

26. Coming to the grant of compensation calculated by learned Claims Tribunal, learned Claims Tribunal has accepted medical bills to the tune of Rs.69,263/- which is proved by placing it on record and rounded off to Rs.70,000/-. Learned Tribunal also added Rs.3,000/- towards attendant & special diet, Rs.4,000/- for pain and suffering, and Rs.3,000/- towards future treatment. Thereby calculated a total sum of Rs.80,000/-.

27. From the evidence of appellant, what is apparent is that, he has not suffered loss of income during the period of treatment. Learned Claims Tribunal has calculated the entire medical bills placed on record, considering the documents Ex.P7 to P12, particularly Ex.P11 which is bill of year 2013, was also taken into consideration by learned Claims Tribunal for future treatment.

28. In the aforementioned facts and circumstance of the case and amount calculated by learned Claims Tribunal, we only find that amount of award of compensation on the head of pain and suffering has been

calculated on the lower side looking to the nature of injuries suffered by the appellant/claimant. We find it appropriate to award Rs.10,000/- instead of Rs.4,000/- on this head.

29. In the facts and circumstances of the case, now the appellant/claimant will be entitled for amount of Rs.70,000/- towards medical expenses, Rs.10,000/- towards pain and suffering, Rs.3,000/- towards attendant & special diet and Rs.3,000/- towards future treatment, making the total compensation as Rs.86,000/-

30. For the foregoing reasons, appeal filed by the claimant is allowed in part. Appellant will be entitled for a total sum of Rs.86,000/- as compensation. Amount of compensation will carry interest of 6% from the date of filing of claim application.

31. Respondents-1 to 3 are liable to satisfy the amount of compensation jointly and severally.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge