

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No.167 of 2015**

Reserved on 14.10.2020
Pronounced on 27.10.2020

1. Chain Singh, S/o Shri Khorbahra Sahu, Aged About 35 Years, R/o Village Manjgaon, Police Station Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.
 2. Bhagwat Sahu, S/o Goverdhan Sahu, Aged About 25 Years, R/o Village Manjgaon, Police Station Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.
- Appellants**

Versus

Shri Ram, S/o Balaram Dhurve, Aged About 27 Years, R/o Village Paliguda, Police Station Pipariya, Tahsil Kawardha, District Kabirdham, Chhattisgarh (Claimant).

---- Respondent

For Appellants	:	Shri C. K. Sahu, Advocate.
For Respondent	:	Shri Devesh Chandra Verma, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal, J

CAV Award/Order

1. This Miscellaneous Appeal has been preferred by the Driver and Owner of the vehicle in question under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988'), questioning the legality and propriety of the award dated 18.09.2014 passed by the Additional Motor Accident Claims Tribunal, Kabirdham (C.G.) in Claim Case No.54/2014, whereby the learned Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.1,60,000/- with 8%

interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description before the Tribunal.

2. Briefly stated the facts of the case are that on 08.04.2012 at about 05:30 pm, the Claimant Shriram was returning by his motorcycle to his village Paliguda from the Village Sonpur-via-Kawardha and was dashed vehemently from his back side when he reached near the Village Bhagutola by the offending vehicle '*Tractor*' bearing Registration No.CG-07-ZA-2034 owned by Non-Applicant No.2/Chain Singh. At the relevant time, it was being driven in a rash and negligent manner by its driver, Bhagwat Sahu/Non-Applicant No.1, owing to which, the alleged accident occurred and the Claimant has sustained multiple serious injuries and was admitted into the Government Hospital at Kawardha from where, he was referred to Narayana Hospital at Raipur and was admitted there for 18 days for his treatment. A criminal case was registered by the Police Station Kawardha against the driver of the alleged offending vehicle in connection with Crime No.142/2012 and after its investigation, a charge-sheet was submitted before the Chief Judicial Magistrate, Kabirdham against the driver of it under Sections 279, 337 & 338 of the Indian Penal Code, 1860 along with Section 146/196 of the Act of 1988, giving rise to the institution of the claim petition by the Claimant under Section 166 of the Act of 1988. In the claim petition, a total amount of compensation to the tune of Rs.3,38,000/- has been claimed by submitting *inter alia* that owing to the alleged accident, he suffered grievous injuries and was admitted into the Hospital for a period of 18 days for his treatment.

3. While disputing the factum of alleged accident with the offending vehicle, it is pleaded by the Non-Applicants that the Claimant himself was responsible for the alleged accident, as he was driving his motorcycle in a drunken condition and dashed with some unknown vehicle while losing his control over it. The claim petition is, therefore, liable to be dismissed.
4. After considering the evidence led by the parties, it was held by the Tribunal that the alleged accident occurred due to the rash and negligent driving by the driver of the alleged offending vehicle and as a result of which, the Claimant has sustained grievous injuries. While considering the medical bills (Ex.P/6 to Ex.P/16), the compensation of Rs.1,45,000/- has been awarded under the head of medical expenses. A sum of Rs.2,000/- each has been awarded towards diet and attendant and further sum of Rs.6,000/- has been awarded towards loss of monthly income for a period of 2 months while considering the Claimant's monthly income as Rs.3,000/- and, Rs.5,000/- has been awarded on account of the mental and physical agony caused to him. Thus, total amount of compensation of Rs.1,60,000/- has been awarded with 8% interest per annum from the date of filing of the claim petition till the date of actual payment.
5. Shri C.K. Sahu, learned counsel appearing for the appellants while referring to the judgment dated 30.12.2013 passed by the Judicial Magistrate Second Class, Kabirdham in Criminal Case No.32/2013, whereby the driver of the alleged offending vehicle was acquitted from the aforesaid offences, submitted that the finding of the

Tribunal holding that the vehicle in question was involved with regard to the said accident and was occurred due to rash and negligent driving of the said driver is apparently contrary to law. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of ***Nishan Singh And Others*** vs. ***Oriental Insurance Company Limited Through Regional Manager And Others*** reported in (2018) 6 SCC 765. It is contended further that the amount of compensation as assessed by the Tribunal is extremely on higher side and, therefore, the award under appeal is liable to be set aside.

6. On the other hand, Shri Devesh Chandra Verma, learned counsel for the Respondent while supporting the award impugned submits that the principles of the aforesaid decision has been made on different facts and, therefore, would not be applicable in the instant matter.
7. I have heard learned counsel for the parties and perused the entire record carefully.
8. From perusal of the record, it appears that the alleged accident occurred on 08.04.2012, when Claimant/Shriram was returning by his motorcycle to village Paliguda from Village Sonpur via Kanker. According to him, he was dashed vehemently at the relevant time by the offending vehicle 'Tractor' due to the rash and negligent driving by its driver namely, Bhagwat Sahu. The evidence of him could not be rebutted by the Non-Applicants, as the eye witness of the alleged accident namely, Gourishankar, produced by them, has admitted in his cross examination that he

knows nothing about the alleged accident. That apart, on account of the alleged accident, an F.I.R. (Ex.P-2) was lodged immediately thereafter on the same day against the said driver in connection with Crime No. 142/2012 and the relevant papers, like R.C. Book, driving licence etc., were recovered from him vide seizer memo dated 08.04.2012 (Ex.P-4) and after investigating the matter, the concerned Investigating Officer has submitted the charge sheet (Ex.P-1) against the said driver on 19.06.2012 before the Chief Judicial Magistrate, Kabirdham under sections 279, 337 and 338 of I.P.C. along with section 146/196 of the Act of 1988.

9. It is true that the driver of the alleged offending vehicle has been acquitted from the alleged crime vide judgment dated 30.12.2013 in Criminal Case No.32/2013, but a bare perusal of it would show that he was acquitted in the said crime because of the failure of the prosecution to establish the fact that he was driving the said vehicle in a rash and negligent manner. Merely of his acquittal as such would, however, not be sufficient to hold that he was not negligent in driving the alleged offending vehicle unless and until, it is corroborated by cogent and reliable evidence. At this juncture, the principles laid down by the Supreme Court in the matter of **Dulcina Fernandes and Others Versus Joaquim Xavier Cruz and Another**, reported in (2013) 10 SCC 646 are to be seen where, while dealing with the similar situation when the driver was acquitted with the criminal trial, it was observed at paragraph 12 as under:-

12. “xxxxxxx. Though it is submitted at the Bar that the first respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, prima facie, materials showing negligence were found to put him on trial.”

10. In the matter of **Bimla Devi and Others vs. Himachal Road Transport Corporation and Others** reported in (2009) 13 SCC 530, wherein, it has been observed by the Supreme Court while dealing with the claim petition in terms of Section 166 of the Act of 1988 that the Tribunal *stricto sensu* is not bound by the pleadings of the parties and its function is to determine the amount of fair compensation. In paragraphs 11 and 13 to 15, it has been observed as under:-

11. “While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition.”

13. “The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate Respondents 2 and 3. The claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.”

14. “Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.”

15. “In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

11. In view of the principles laid down in the aforesaid case laws, it is evident that the key of negligence on the part of the driver of the offending vehicle as set up by the Claimant is to be considered on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt.
12. In the present case, as visualized from a bare perusal of the aforesaid documentary evidence (Ex.P/1 to Ex.P/3), vis-a-vis, the evidence of the parties, as observed herein above, the vehicle in question was not only involved in the alleged accident, but the driver of it was found to be driving the same in a rash and negligent manner. Initial burden was, thus, discharged by the Claimant in order to establish the alleged factum of the accident as well as the rash and negligent driving by the said driver of the alleged offending vehicle. However, on the other hand, the Non-Applicants have failed to prove that it was neither involved nor was it being driven rashly and negligently by its driver Bhagwat Sahu as the statement of Gourishankar (NAW-2), who was examined by them has failed to support their version as it appears from his testimony, as observed earlier also, that he was infact not at all aware regarding the alleged accident. It is, thus, evident that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle and I do not find any infirmity in the finding of the Tribunal holding that the vehicle in question was not only involved with regard to the alleged accident, but it occurred due to rash and negligent driving by its driver Bhagwat Sahu.

13. In so far as the principles laid down by the Supreme Court in the matter of ***Nishan Singh And Others*** vs. ***Oriental Insurance Company Limited Through Regional Manager And Others*** (*supra*), as relied upon by Shri Sahu is, however, noted to be distinguishable from the facts involved in the present one. As in the said matter, the subject-Truck and Maruti-Car was running in the same direction on a road which was only about 14 fit wide and at the relevant time, the said Truck was running ahead of the said Car for quite sometime and it was found further that the driver of the Maruti-Car was driving the same without maintaining sufficient distance as required to be made by the Regulation 23 of the Rules of the Road Regulation, 1989. It was also observed therein that the driver of the subject-Truck had not applied his break suddenly in the middle of the road. In that factual scenario, it was held that the driver of the Maruti-Car alone was responsible for the occurrence of the said accident. However, in the instant matter, as observed herein above, no such circumstances or situation was occurred. In view of the said background, the principles as laid down in the said matter would be of no use for the Appellants.
14. In so far as the quantum of compensation that had been awarded by the Tribunal, I find that upon due consideration of the medical bills (Ex.P/6 to Ex.P/16) the ascertainment of the compensation have been made by the Tribunal, as such, the same is also hereby confirmed.
15. In view of the above, I do not find any substance in this appeal.

The appeal being devoid of merit is accordingly dismissed.

No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge

Deepti Jha