

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A(C) No.1302 of 2014**

Amit Kumar Ratre S/o Alakhram Aged About 20 Years R/o Village- Dhandwa Baikunth, P.S. Nevra, Tah. And Distt. Raipur C.G., Chhattisgarh

---- Appellant**Versus**

Kumhan Lal S/o Kartik Ram Dhruv Aged About 50 Years R/o Parsada, P.S. Abhanpur, Distt. Raipur C.G., Present Address- Qr. No. 84/h, Risali Sector, P.S. Nevai, Distt. Durg C.G., Chhattisgarh

---- Respondent

Shri Awadhesh Mishra, Advocate for the Appellant.
None for the Respondent, though served.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
Award On Board

02.01.2020

1. This Miscellaneous Appeal has been preferred by the Claimant under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 28.03.2014 passed by the 4th Additional Motor Accidents Claims Tribunal, Raipur (CG) (for short 'the Claims Tribunal') in Claim Case No.44/2013 by which, the Claims Tribunal, while allowing the claim in part, awarded a total sum of Rs.74,325/- with 6% interest per annum from the date of filing of the claim Petition till its realization. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 05.05.2011 at 5.30 p.m, the Applicant was returning from his college by his motorcycle i.e. "Hero Honda" bearing its Registration No.CG 07 LF 7312. At the relevant time, he was dashed vehemently from his opposite side by the offending vehicle i.e. another motorcycle bearing its registration No.CG 07 LH 8760, which was being driven by its owner, Non-Applicant Kumhan Lal. It is pleaded that the

alleged accident has occurred due to rash and negligent driving of the Non-Applicant, as a result of which, the Applicant has sustained serious injuries, particularly on his left eye and was admitted into the hospital for a period of ten days for his treatment. According to the further averments made in the claim Petition, the Applicant was a student of an Engineering College, aged 19 years and has claimed a total amount of compensation to the tune of Rs.44 lacs under various heads.

3. The Non-Applicant has contested the aforesaid claim on the ground that the Applicant himself was responsible for the alleged accident as he was driving the vehicle without any valid and effective driving license and therefore, the claim is liable to be dismissed.

4. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 05.05.2011 at 5.30 p.m when the Applicant was returning from his college and was dashed vehemently by the opposite side by the offending vehicle, owing to rash and negligent driving by Non-Applicant Kumhan Lal. It held further that on account of the alleged accident, the Applicant has suffered permanent disability to the extent of 25% and observed further that the Applicant was equally responsible for the alleged accident and accordingly, a total amount of compensation to the tune of Rs.74,325/- has been awarded with 6% interest per annum as mentioned hereinabove.

5. Being aggrieved, the Claimant has preferred this Appeal. Shri Awadhesh Mishra, learned Counsel for the Applicant submits that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the Applicant was equally responsible for the alleged accident merely on the ground that the Applicant was not holding a valid and effective

driving license. While inviting attention to the report lodged by his father, marked as Ex.P-2 and consequent upon the filing of charge sheet (Ex.P-1), it is apparent that the Non-Applicant alone was responsible for the alleged accident. However, even without considering this documentary evidence, the Claims Tribunal has committed an illegality in holding that the Applicant was also responsible for the alleged accident to the extent of 50% and thereby erred in reducing the compensation to the tune of Rs.53,125/- from Rs.1,06,250/-.

6. I have heard learned Counsel for the Applicant and perused the entire record carefully.

7. The main contention of the Applicant herein is that the Claims Tribunal, while passing the award impugned, has erred in holding that the Applicant was equally responsible for the alleged accident. In order to consider the said contention, I examined all the oral and documentary evidence led by the parties. From perusal of the same, it appears that F.I.R was lodged by the father of the Applicant immediately after the occurrence of the alleged accident and after the investigation of the matter, the concerned Investigating Officer has submitted his final report vide Ex.P-1 before the concerned Court while registering an offence punishable under Sections 279, 337 and 338 IPC against the Non-Applicant Kumhan Lal. The Applicant, in his examination, has stated very specifically that when he was returning from his college by driving his vehicle slowly and cautiously, he was dashed vehemently by the Non-Applicant, who was coming from the opposite direction while driving the alleged offending vehicle in a rash and negligent manner. The initial burden was thus duly discharged by the Applicant. It is true that the Non-Applicant in his evidence has stated that the Applicant was driving his vehicle in a rash and

negligent manner, but a bare perusal of his evidence would show that at the relevant time, one Shivdhar and Santosh Kumar were also with him. However, they have not entered into the witness box. They could have thrown some light on the factum of the alleged accident, but have not been examined by the Non-Applicant for the reasons best known to him. In such circumstances, it is difficult to hold that the Applicant was equally responsible for the alleged accident as held by the Tribunal. Further, it is surprising enough that even without considering all the material documentary evidence, the Claims Tribunal has observed that the Applicant was equally responsible for the alleged accident merely on the ground that he was driving the vehicle without any valid and effective driving license. The approach of the Tribunal in arriving at such a conclusion cannot be upheld. The finding of the Claims Tribunal is therefore, liable to be and is hereby set aside and it is held that the Non-Applicant-Kumhan Lal alone was responsible for the alleged accident occurred on 05.05.2011.

8. In view of the aforesaid fact, the amount of compensation as reduced to the extent of Rs.53,125/- is thus set aside and it is held that the Applicant would be entitled to a sum of Rs.1,06,250/-, apart from the medical expenses of Rs.21,200/-. The Claimant would thus be entitled to a total sum of Rs.1,27,450/- (Rs.1,06,250/- + Rs.21,200/-) with 6% interest per annum as awarded by the Claims Tribunal from the date of filing of the claim Petition till its realization.

9. The Appeal is accordingly allowed in part to the extent indicated hereinabove. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge

