

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1290 of 2014

- Rajesh Kumar Jaiswal, S/o Shri Fakirchand Jaiswal Aged About 31 Years, Occupation – Contractor, R/o Village- Khukhri, P.S. Dhourpur, Tah. Rajpur, Revenue and Civil Distt. Surguja, Chhattisgarh

---- Appellant /Claimant

Versus

1. Gyansruti Jaiswal, S/o Late Goverdhan Jaiswal, Aged About 32 Years R/o Mohalla Chopdapara Nagar Ambikapur, P.S. And Tah. Ambikapur, Distt. Surguja, Chhattisgarh (NA1)
2. The Oriental Insu.Co.Ltd. Thru- Manager, The Oriental Insu.Co.Ltd., Bilaspur, P.S. And Tah. Bilaspur, Distt. Bilaspur Chhattisgarh (NA2)

-----Respondents

For Appellant	: Shri Sunil Tripathi, Advocate
For Respondent-2	: Smt Chitra Shrivastava, Advocate
For Respondent- 1	: None appears

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

Per Parth Prateem Sahu, J.
07.10.2020

1. Claimant has preferred this appeal under Section 173 of Motor Vehicles Act, 1988 challenging the impugned award dated 13.08.2014 passed by the Motor Accident Claims Tribunal, Surguja, Ambikapur (for short, Claims Tribunal) in Claim Case- 136 of 2009, whereby learned Claims Tribunal dismissed the application for grant of compensation.
2. Facts relevant for disposal of this appeal are that the appellant has filed application under Section 166 of the Act of 1988, pleading therein that on 17.10.2008 he was travelling from Raigarh to Ambikapur in a Indica Car bearing No.CG 15 B 3518 (for short, offending vehicle) owned and driven by NA1/respondent-1. On the way, offending vehicle driven by

NA1, met with an accident near Dharamjaigarh- Rairuma Khurd Road due to rash and negligent driving, fell down in a ditch and over turned. In the said accident, appellant suffered grievous injuries over his person. He was taken to the Community Health Centre, Patthalgaon. Looking to the nature of injuries and its seriousness, he was referred to higher hospital. Claimant was then taken to Ramkrishn Care Hospital, Raipur, where, he took treatment as in-patient from 19.10.2008 to 04.11.2008. During the course of treatment it diagnosed that he suffered fracture of left elbow, fracture of left femur with other injuries. Appellant underwent operation and rod was implanted. Fracture injuries suffered by him could not be cured fully, till filing of claim application. Application under Section 166 of the Motor Vehicles Act 1988 was filed seeking compensation of Rs.20,80,000/- from the NA1 and NA2, Driver–cum-Owner and Insurer of the offending vehicle.

3. NA1 submitted his reply to the claim application, admitting the fact of accident but, denied the injuries and treatment taken by the appellant. It was further pleaded that the amount of compensation claimed is highly exaggerated. The offending vehicle was insured with NA2, hence, liability, if any, is of the Insurance Company.

4. NA2/Insurance Company submitted its reply to the claim application denying the pleadings made therein. It was pleaded that the story of motor accidental injuries with offending vehicle is a concocted one, no document is placed on record with respect to the accident to show that accident took place as pleaded in the application. No information of accident was forwarded to the Insurance Company by the insurer ie NA1

regarding the accident. Apart from the above, it was pleaded that on the date of accident, NA1 was not possessing valid and effective driving license and there was breach of policy conditions. The claimant, in fact, has not suffered any personal injury as pleaded in the claim application; rather he is working normally as he was working prior to the so called accident.

5. Upon appreciation of pleadings and evidence, placed on record by respective parties, learned Claims Tribunal arrived at a finding that NA1 who is relative of the appellant/claimant was not examined as witness. The document Ex.P1 which is said to be the information given to the Police does not appear to be correct as the fact of, information to the Police is not pleaded in the claim application. Learned Claims Tribunal further concluded that the appellant has placed Ex.P2, Discharge Ticket of the Community Health Centre, Pathalgaon, where he was given primary treatment and was discharged on the same date ie on 17.10.2008 itself, at about 5 pm. The Claims Tribunal further considered that there is no proof of giving information of accident to the Police, no crime was registered. The injuries suffered by the appellant cannot be accepted to be the injuries suffered in the motor accident as pleaded in the claim application. Learned Claims Tribunal has further held that no efforts have been made to get the crime registered against NA1 and dismissed the claim application.

6. Shri Sunil Tripathi, learned counsel for the appellant submits that learned Claims Tribunal arrived at a wrong finding that the accident was not reported to the concerned Police Station and further, erred in holding

Ex.P1 to be a suspicious document. The appellant has placed on record Ex P2 Discharge Ticket, issued by the Community Health Centre, Pathalgaon, which is a Government Hospital mentioning the injuries suffered by the appellant to be in road traffic accident. He further points out that immediately he was taken to Ramkrishn Care Hospital, Raipur on the very next day for better treatment, where appellant took treatment as in-patient for a considerable long period. In Ex.P3 nature of injuries and treatment given to the appellant at Ramkrishn Care Hospital is also specifically mentioned. The finding recorded by learned Claims Tribunal is only on the basis of conjunctures and surmises.

7. He further contended that the accident of the vehicle on which the appellant was travelling is admitted by NA1. Insurance Company satisfied the the claim of damage of offending vehicle, then accidental injuries suffered by the appellant cannot be said to be suspicious. The appellant has forwarded the information to the Police. He was immediately taken to the Community Health Center, Pathalgaon, which is evident from document Ex.P2 and therefore, the accidental injuries suffered by the appellant is proved.

8. He places reliance on judgments passed by Hon'ble Supreme Court in the matters of **Anil and others Vs New India Assurance Company Limited and others** reported in (2018) 2 SCC 482, **Vimla Devi and others Vs National Insurance Company Limited and another** reported in (2019) 2 SCC 186, and **Hastimal Vs Jagdish and others** reported in (2008) ACJ 1577, in support of his contention.

9. Smt Chitra Shrivastava, learned counsel for the Insurance Company submits that learned Claims Tribunal upon evaluating the entire material and evidence available on record, is justified in arriving at a finding that the appellant has not suffered accidental injuries from the accident of offending vehicle, however she admits that the vehicle damage claim was satisfied by the Insurance Company. The finding recorded is based on material available on record.

10. We have heard learned counsel for the respective parties and also perused the record of claim case.

11. Appellant in support of the claim application has placed on record, hand written document which was addressed to the Out Post In-charge of Police Station Rairuma Khurd, Daramjaigarh, in which it is mentioned that the car met with an accident, as the vehicle went out of control due to uneven road, as appearing from document Ex.P1, information given by NA1, owner of the offending vehicle on 17.10.2008. NA1 in reply admitted that at the time of accident, applicant was with him in the offending vehicle driven by him. True, it is, there is some over-writing in the *Rojnamchasanha* number and date, it was signed by the Assistant Sub-Inspector but there is overwriting below his signature. If for any reason, learned Claims Tribunal has found the document Ex.P1 to be suspicious, then, it could also have called the Out Post In-charge of Police Station Rairuma Khurd, Daramjaigarh for verifying the same and Panchas for arriving at correct finding exercising the jurisdiction under Section 168 of the Act of 1988 and Rule 226 of the Chhattisgarh Motor Vehicle Rules, 1994.

12. The claimant has further placed on record Ex.P2, Discharge ticket issued by the Community Health Centre, Pathalgaon. Upon going through the said document, it would show that there is mention of RTA fracture, fracture of thigh, which shows that the appellant suffered road traffic accidental injuries on 17.10.2008. This document was not disputed before the Claims Tribunal nor it was disbelieved.

13. As per document Ex.P2, the appellant was discharged on the same day, within hour of the accident. Other document Ex.P3 is Discharge Summary of Ramkrishn Care Hospital, Raipur, showing the date of admission on 19.10.2008 till 31.10.2008 mentioning fracture of femur left, fracture of capatome and left humerus. These injuries as mentioned in Ex.P3 and Ex.P2 appears to be of the same date ie 17.10.2008 the date of accident.

14. Learned Claims Tribunal for dismissing the claim has given its reasoning that no MLC report is placed on record on requisition through the Police, copy of FIR or Final Reort is not placed on record, nor claimant has made any attempt to get the FIR registered. Tribunal further considered that the injured claimant and driver -cum-owner of offending vehicle to be cousin brothers.

15. The facts narrated by the Claims Tribunal could not be sufficient to oust the injured claimant from getting just compensation, more so when the accident was admitted by NA1 in reply and further the fact that the applicant was accompanied with him in offending vehicle at the time of accident. Claimant has placed on record document Ex.P2 which is a

document of Hospital at Patthalgaon showing Road Traffic accidental injuries, showing fracture of thigh. The other aspect of the case is that the Insurance Company is stated to have satisfied the vehicle damage claim of the offending vehicle for the accident on 17.10.2008. Insurance Company has not taken any steps to call the NA1 as witness when they have suspected the fact of accidental injuries suffered by applicant in the accident dated 17.10.2000 while travelling in offending vehicle.

16. Motor vehicle Act is a beneficial piece of legislation with an object to compensate the injured or the Legal representatives of deceased persons for the loss suffered by them on account of motor accidental injuries. Under the Act of 1988, it is the duty of the Tribunal to consider all the material and documents placed on record by the respective parties minutely and to pass just award. If for one or the other reason, some document or evidence could not be brought on record which appears to be crucial and essential in the opinion of the Tribunal, then, the Tribunal is having jurisdiction to cause presence of the witnesses and get the document proved which are available on record. Tribunal should not act like silent spectator as held by Hon'ble Supreme Court in the matter of **Raj Kumar Vs Ajay Kumar** reported in (2011) 1 SCC 343 and held thus:

“5. The provision of the [Motor Vehicles Act](#), 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation

or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. ([See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair](#) - AIR 1970 SC 376, [R. D. Hattangadi vs. Pest Control \(India\) Ltd.](#) - 1995 (1) SCC 551 and [Baker vs. Willoughby](#) - 1970 AC 467).

16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. [Sections 168](#) and [169](#) of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'."

17. If we consider the facts of present case in light of above, the accident was of 17.10.2008. Appellant was taken to Community Health Centre, Pathalgaon ie the nearest hospital to the place of accident. As per the pleadings and submissions made by the appellant looking to the seriousness of the injuries, he was taken to the Ramkrishn Care Hospital, Raipur, where also, similar injuries were diagnosed as mentioned in Ex.P2, Discharge Ticket.

18. NA1 admitted the presence of claimant in vehicle at the time of accident. The Insurance Company has not disputed the accident of offending vehicle on 17.10.2008 but accepted before this Court also that the Company has satisfied own damage claim to NA1. Learned Claims Tribunal failed to conduct proper enquiry in terms of provisions of Section

168 and 169 of the Act of 1988 and Rule 226 of the Chhattisgarh Motor Vehicle Rules, 1994.

19. For the foregoing reasons, we set aside the impugned award passed by learned Claims Tribunal, and remand back the case for passing award afresh after affording proper opportunity of hearing to all the parties. The parties will be at liberty to amend their pleadings, lead further evidence before Claims Tribunal in support of their case and thereafter, learned Claims Tribunal shall pass fresh award after taking into consideration the earlier and additional evidence placed on record by the respective parties.

20. For the foregoing reasons, appeal is allowed in part and case is remitted back to the Claims Tribunal in above terms.

21. Record of claim case be sent back without any further delay.

22. Looking to the date of accident, we direct learned Claims Tribunal to decide the claim application afresh, preferably within five months of the date of receipt of copy of order, passed by this Court.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge