

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A(C) No.1378 of 2015****Reserved on 15.12.2020****Pronounced on 17.12.2020**

Roshan Goyal S/o Katahur Goyal, Aged About 40 Years R/o Village-
Pendari, Tahsil- Takhatpur, District- Bilaspur, ChhattisgarhClaimant,

---- Appellant**Versus**

1. Rakesh Kumar Malhotra S/o Shyam Lal Malhotra Aged About 22 Years R/o Village- Khajuri, Nawagaon Kathakoni, Tahsil- Takhatpur, District- Bilaspur, Chhattisgarh Registered Owner Of Motor Cycle No. C.G.-10 N C-4963, Chhattisgarh
2. Ajay Malhotra S/o Shyam Lal Malhotra, Aged About 20 Years R/o Village- Khajuri, Nawagaon Kathakoni, Tahsil- Takhatpur, District- Bilaspur, Chhattisgarh Driver Of Motor Cycle No. C.G.-10 N C-4963
3. Branch Manager, I.C.I.C.I. Lombard, Branch Office Vyapar Vihar, Bilaspur, ChhattisgarhNon-Applicants

----Respondents

For Appellant:	Shri Basant Dewangan, Advocate.
For Respondents No.1 & 2:	None, though served.
For Respondent No.3:	Shri Amrito Das appears along with Shri Tessy Abraham, Advocates.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
C A V Award/Judgment

1. This Appeal has been preferred by the Claimant under Section 173 of the Motor Vehicle Act, 1988 (for short 'the Act of 1988'), questioning the legality and propriety of the award dated 26.09.2015 passed by the 9th Motor Accident Claims Tribunal, Bilaspur (for short 'the Tribunal') in Claim Case No.188/2014, whereby the Tribunal has dismissed the Claim Petition filed under Section 166 of the Act of 1988. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Shri Basant Dewangan, learned Counsel for the Applicant submits

that the finding of the Tribunal holding that the Claimant has failed to establish the specific number of the vehicle in question, which caused the accident is apparently misreading of the avements made in the claim Petition vis-a-vis the evidence, both oral and documentary and is, therefore, perverse and liable to set aside. While inviting attention to the charge sheet (Ex.A-2) and the seizure memo (Ex.A-3), it is contended that the vehicle in question i.e. motorcycle 'Hero Honda' bearing registration No.CG 10 NC- 4953, owned by Non-Applicant No.1-Rakesh Kumar Malhotra was involved, however, without taking note of these documentary evidence and that by ignoring the evidence led by the parties in its proper manner, the Tribunal has committed a serious illegality in dismissing the claim.

3. On the other hand, Shri Das, learned Counsel for Non-Applicant No.3 has supported the award impugned as passed by the Tribunal.

4. I have heard learned Counsel for the parties and perused the entire record carefully.

5. From perusal of the record, it appears that on the fateful day, i.e. on 27.12.2013, Claimant Roshan Goyal was going by his motorcycle along with his sister-in-law Neeta Khandey from Bilaspur to village Pendari, *en route*, he was dashed from his back side by the offending vehicle, i.e. motorcycle 'Hero Honda' bearing registration No.CG 10 NC-4953 owing to rash and negligent driving by its driver namely Ajay Malhotra, Non-Applicant No.2. As a result of the alleged accident, his right leg below the knee got fractured along with other injuries, which he received in other parts of his body. He was admitted into Gayatri Hospital, Bilaspur where he was operated for fracture of Tibia and medial malleollus and an implant

was put inside the bone i.e. a rod was fixed for the treatment of fracture.

6. On account of the aforesaid accident, the matter was reported to P.S Chakarbhata in connection with Crime No.10/14 and after the investigation, the charge sheet (Ex.A-2) was submitted before the Judicial Magistrate, Belha against the driver of the alleged offending vehicle under Sections 279, 337 and 338 IPC while specifying not only the number of his vehicle as CG 10 NC-4953, but by seizing the same from him vide seizure memo (Ex.A-3) dated 18.01.2014. It is true that the number of alleged vehicle was differently mentioned in the claim Petition, as it was shown as 'CG 10 NC-4963' in the cause title of the memo of claim Petition, while at paragraphs No.2 & 3 as 'CG 10 HC-4953'. However, the documentary evidence like charge sheet (Ex.A-2) and seizure memo (Ex.A-3) would reveal the involvement of the vehicle having its registration No.'CG 10-NC-4953'. That apart, according to the statement of the driver of the alleged offending vehicle Ajay Malhotra (NAW-1), it appears that when he was going by the said vehicle, the Applicant, at the relevant time, was going to village Pendari accompanied by two others while driving his vehicle in a rash and negligent manner and turned the same abruptly without showing the indicators of it and fell down due to loss of control over it. It means that the number of alleged vehicle was not disputed by this witness in his evidence nor any complaint has been lodged before the higher authority, as evidenced from paragraph-3 of his statement, that it was wrongly involved in the matter as such. It thus appears that due to the typographical mistake, the number of alleged offending vehicle has been mentioned slightly different in the claim Petition. However, in view of the documentary evidence, like charge sheet (Ex.A-2) and seizure memo

(Ex.A-3), vis-a-vis the statement of the driver of the alleged offending vehicle as observed herein above, it cannot be said that the vehicle in question i.e. 'CG 10 NC-4953' was not involved in the alleged accident occurred on 27.12.2013. Consequently, the finding of the Tribunal holding that the vehicle in question was not involved in the alleged accident is thus, liable to be and is hereby set aside.

7. Since the accident was of the year 2013 and the statements of both the parties have already been recorded, therefore, I deem it appropriate to determine the amount of compensation payable to the Claimant-Roshan Goyal and would consider further the fact as to whether it was being used in violation of the policy, as alleged by the insurer.

8. According to the Claimant, he suffered permanent disability on account of the alleged accident which took place on 27.12.2013, but in absence of any documentary evidence in this regard, it cannot be held to be so. It, however, appears from a bare perusal of the evidence of Dr. Ajay Jaiswal (AW-3), the owner of the Gayatri Hospital, where the Applicant was admitted on 27.12.2013 immediately after the occurrence of the alleged accident, that during his treatment, he was operated for fracture of Tibia and medial malleolus and an implant was put inside the bone. He opined further that in such type of a case, a person can lead his normal life after six months of the operation. It appears further from his evidence that during his treatment, various medical bills i.e. Ex.A-9 to Ex.A-22, except Ex.A-12 and Ex.A-13, were issued from his hospital. The Claimant is therefore, entitled to a sum of Rs.16,723.67, rounded off to Rs.16,750/- towards medical expenditure as evidenced by these bills. In addition to this, he is entitled to a further lump sum amount of Rs.10,000/- towards

mental and physical agony suffered by him owing to the alleged accident.

9. That apart, 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 in the light of the observations made by the Supreme Court in the matter of *Raj Kumar Versus Ajay Kumar and Another* reported in (2011) 1 SCC 343. As the applicant was in hospital for a period of 8 days and was unable to work as a daily wager, therefore, the Applicant must have suffered loss owing to it and would be entitled to be compensated in this regard as well apart from suffering for mental and physical agony. According to the claimant, he was a daily wager and used to earn Rs.300/- per day, monthly Rs.9,000/-, however, in absence of its proof, it cannot be held to be so. His income, therefore, under such circumstances, could be assessed as of an unskilled worker as provided under the Minimum Wages Act, 1948. Since the alleged accident occurred on 27.12.2013, it would, therefore, be appropriate to consider his monthly income at Rs.5,163/- rounded off to Rs.5,200/- prevailing at the relevant time as per the Notification issued by the Prescribed Authority under the said Minimum Wages Act, 1948. The claimant would, thus, be entitled to a sum of Rs.1,387/- rounded off Rs.1,500/-, owing to his hospitalization for 8 days.

10. Consequently, the Claimant is entitled to a total sum of Rs.28,250/- (Rs.16,750/- + Rs.10,000/- + Rs.1,500/-) with interest at the rate of 7% per annum from the date of filing of the claim Petition till its actual payment.

11. As far as the defence taken by the insurer that since the vehicle in question was being used in violation of the policy and therefore, no liability could be fastened upon it, is, however, liable to be rejected in absence of any cogent and reliable evidence led by the insurer as the Sujit Kumar Rai

(NAW-2), who was examined by the insurer, has, however, failed to establish the same. In such circumstances, the Insurance Company cannot be held to be exonerated from its liability, as alleged. Accordingly, it is held that the vehicle in question was not being used in violation of the policy and the insurer of it is thus held liable to indemnify the insured.

12. In view of the foregoing discussion, the Appeal is allowed in part and the Non-Applicants are held liable jointly and severally to satisfy the aforesaid amount of compensation and it is directed that Non-Applicant No.3-I.C.I.C.I Lombard Insurance Company shall pay the aforesaid amount of compensation of Rs.28,250/- to the Claimant with 7% interest per annum from the date of filing of the Claim Petition till its realization. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Priya