

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1249 of 2014**

- Nitin Mukesh Nirala, s/o Ramkripal Nirala, aged about 21 years, R/o Village- Bhinouda, Police Station Sarsiwa, Tahsil Bilaigarh, Civil & Revenue District Baloda Bazar-Bhatapara C.G.

**---- Appellant****Versus**

1. Subhash Vishal, S/o Indrajeet Vishal, aged about 26 years, R/o Village Sagarpali, P.S. Saraipali, District Mahasamund C.G. (Driver of alleged vehicle Eicher Tractor bearing registration No.CG06-E-2523 & Trolley No.CG06-E-2799)
2. Balak Ram Patel, S/o Motilal Patel, R/o Parsabhadi, P.O. Khoksa, P.S. Basna, District Mahasamund (wrongly Mahasamunder) (CG) (Owner of alleged vehicle Eicher Tractor bearing registration No.CG06-E-2523 & Trolley No.CG06-E-2799)
3. Manager, Insurance Company, The Reliance General Insurance Company Ltd., Office of 570 Restifare House, Naigam Cross Road, Vadla W, Mumbai, 400031

**---- Respondents**


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|-------------------------|---|---------------------------------------------------|
| For Appellant           | : | Mr. A.D. Kuldeep, Advocate                        |
| For Respondent No.1 & 2 | : | Mr. Shivendu Pandya, Advocate                     |
| For Respondent No.3     | : | Mr. Saurabh Sharma & Mr. Nilesh Thakur, Advocates |

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**Hon'ble Shri P. R. Ramachandra Menon, CJ****Hon'ble Shri Parth Prateem Sahu, J****Order On Board****Per Parth Prateem Sahu, J****25/09/2020**

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') has been filed against the award dated 27.9.2014 passed by the learned 1<sup>st</sup> Additional Motor Accident Claims Tribunal, Balodabazar (for short 'the Claims Tribunal') in Claim Case No.13/13 dismissing claim application

filed by claimant/appellant.

2. Facts relevant for disposal of this appeal, in brief, are that on 23.9.2012 at about 7.45 p.m. Nitin Mukesh along with one Dulesh was going to village Bhinoda from Bilaspur Tata on motorcycle bearing registration number CG04-KD-7449. Said Dulesh was driving motorcycle and Nitin Mukesh was travelling as pillion rider. When they reached on Main Road of Village Mudpaar, one tractor-trolley bearing registration number CG06-E-2523 & CG06-E-2799 respectively, driven by non-applicant No.1, dashed their motorcycle thereby caused accident. As a result, said Nitin Mukesh suffered grievous injuries on his jaw, right leg, knee bone, chest and others parts of the body. Accident was reported to Police Station Sarsiva based on which crime bearing No.156/12 for the offence under Sections 279, 337, 338 & 304A of IPC was registered against non-applicant No.1-,driver of offending vehicle and on completion of investigation, charge sheet against him was filed in the Court of jurisdictional Magistrate. On account of injuries suffered by claimant in the said accident, he has suffered permanent disability in his right leg.
3. Claimant filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking an amount of Rs.6,28,000/- as compensation specifically pleading therein that on the date of accident, he was 21 years old and earning a sum of Rs.9000/- per month by performing job of a 'Pykar Operator' in Rewa Cement Factor, however, due to permanent disability suffered by him in the accident, now he is unable to perform the

any work.

4. Non-applicant No.1 & 2, owner & driver of offending vehicle, filed their reply to claim application and denied the entire pleadings made therein. It was pleaded that driver of motorcycle himself was responsible for the accident in question as on account of rash and negligent driving of motorcycle by Dilesh, claimant - pillion rider fell down on road along with driver and sustained injuries.
5. Non-applicant No.3- Insurance Company also filed its reply to claim application and denied the averments made therein including the status of non-applicant No.1 & 2 as 'driver' & 'owner' of the offending vehicle. It was pleaded that the offending vehicle was not involved in the accident and the claimant has narrated a false and concocted story in the claim application. On the date of accident, the offending vehicle was plied in breach of conditions of insurance policy as non-applicant No.1, driver of offending vehicle, was not possessed with valid and effective driving license, therefore, the insurance company is not liable to be indemnify the insured.
6. Since the claimants did not enter into witness box to give their evidence, nor examined any witness or produced any public document in support of their case, the Claims Tribunal considering the evidence of non-applicant No.1 and his witness Radheshyam (NAW-2), arrived at a conclusion that the claimant failed to prove their case and accordingly dismissed the claim application vide impugned award.
7. Mr. A.D. Kuldeep, learned counsel for claimant/appellant

submits that the claimant, who is a poor villager residing in rural area and has suffered permanent disability in a motor road accident, was fully dependent on the counsel engaged by him to prosecute his claim. However, he did not receive information in time about the date on which his evidence was to be recorded, therefore, he could not give his evidence before the Claims Tribunal. He submits that appellant may be given one opportunity to prove his claim application filed before the Claims Tribunal by adducing evidence in support thereof.

8. Per contra, Mr. S. Pandya, learned counsel representing respondents No.1 & 2, opposing the above prayer made on the part of appellant, submits that the Claims Tribunal has granted several opportunities to the claimant for adducing evidence in support of his claim, but he failed to adduce any evidence and only thereafter the Claims Tribunal dismissed his claim application vide impugned award, which does not call for any interference.
9. Resisting the above prayer made on behalf of claimant-appellant, Mr. Saurabh Sharma & Mr. Nilesh Thakur, learned counsel representing Insurance Company submitted that the claimant failed to produce any evidence before the Claims Tribunal even after grant of several opportunities. As the claimant failed to produce any evidence, the Claims Tribunal was justified in dismissing claim application by recording a finding that the claimant failed to prove their case.
10. We have heard learned counsel for the parties and perused the record of claim case.

11. On account of injuries suffered by the claimant/appellant in a road accident, he moved an application before the Claims Tribunal seeking compensation from the non-applicants and upon dismissal of his claim by the Claims Tribunal on the ground that the appellant failed to adduce any evidence in support of his claim, this appeal is filed.
12. Going through the proceedings of claim case, as recorded by the Claims Tribunal, it is evident that on 29.7.2013 the claim case was adjourned to be listed on 1.8.2013 for fixing the date of recording of evidence and filing of list of witnesses. On 1.8.2013 the matter was again adjourned to be listed on 23.8.2013 for recording of claimants' evidence. On 23.8.2013 at the request of learned counsel for claimants, the matter was adjourned for 24.9.2013. On 24.9.2013 non-applicant No.3 filed an application under Order 8 Rule 1 of CPC along with documents as per list, which were supplied to other side and the matter was ordered to be listed on 11.10.2013 for reply/argument on said application and also for recording of evidence. Thereafter the matter was adjourned from time to time and on 5.3.2014 the application filed by non-applicant No.3 under Order 8 Rule 1 CPC was rejected and the matter was ordered to be fixed on 14.4.2014 for recording evidence of claimants. As the Presiding Officer was on leave from 14.4.2014 to 13.5.2014, the matter could be taken up on 18.6.2014 on which date also the matter has been adjourned for 8.7.2014 for recording evidence of claimants. On 8.7.2014 since the Presiding Officer was on leave, 31.7.2014 was fixed as next date for recording of

evidence of claimants. On 31.7.2014 the matter was again adjourned for 22.8.2014. On 22.8.2014 the Claims Tribunal taking into consideration earlier dates of proceeding rejected the application of claimants seeking time to lead evidence and fixed the case for recording of evidence of non-applicants. The Claims Tribunal after recording evidence of non-applicants, dismissed the claim case holding that the claimants failed to prove their case.

13. Perusal of the entire proceedings of claim case would show that on 12.9.2014 the learned counsel representing claimants moved an application before the Claims Tribunal under Section 151 of CPC praying for grant of an opportunity to lead evidence in support of his case, but the same has been rejected by the Claims Tribunal holding that application filed on behalf of claimant cannot be held to be bona fide. Perusal of application filed under Section 151 of CPC dated 8.9.2014, which is available on record, would show that in this application the claimant has pleaded that due to sickness and non-receipt of any information regarding case, he could not be able to produce his evidence before the Claims Tribunal on the last date of hearing. It has been mentioned that the matter is at preliminary stage, the claimant has interest in the matter, therefore, today he is before the Court to give his evidence. Learned counsel appearing on behalf of non-applicants have also orally opposed the said application and not filed any reply to it. However, the Claims Tribunal rejected this application.

14. Perusal of record of claim case reveals that documents relating

to criminal case including FIR are available in the record of claim case and a glance of FIR would demonstrate that it has been registered against non-applicant No.1/respondent No.1, driver of offending vehicle and after completion of investigation, charge sheet has also been filed against him before the Court of jurisdictional Magistrate.

15. The Act of 1988 is a beneficial piece of legislation enacted with an object to provide compensation to a person who suffered injuries or family members who lost their relative in a motor vehicular accident. While drawing proceedings under the Act of 1988, the strict principles of law are not to be followed but the proceedings are to be drawn in furtherance of the object of the Act of 1988.
16. Taking into consideration the order sheets of the Claims Tribunal as well as the reasons assigned by the claimants in the application filed before the Claims Tribunal under Section 151 of CPC seeking opportunity to adduce evidence in support of their case, and further taking into consideration the fact that during pendency of case, appellant, widow mother of deceased, has also lost her husband, we think that ends of justice would be met if an opportunity is granted to claimant/appellant to prove her claim filed under Section 166 of the Act of 1988 before the Claims Tribunal by adducing evidence in support thereof.
17. In the above circumstance, the impugned award is hereby set aside and the matter is remanded back to the Claims Tribunal for fresh adjudication of claim case after giving an opportunity to the claimant/appellant to amend the pleadings and to adduce

evidence (oral and documentary) in support her case. The respondents are entitled to rebut the evidence adduced by the claimant/ appellant.

18. Considering the fact that the claim case was filed as back as on 15.1.2013, it seems necessary to direct that the proceeding should be concluded expeditiously. It is, accordingly, directed that the Claims Tribunal shall decide the claim case within a period of five months from the date of receipt of original record of claim case. The Registry is directed to send back the entire original record to the Claims Tribunal forthwith.
19. The appeal is allowed in the above term.

Sd/-  
(P.R. Ramachandra Menon)  
Chief Justice

Sd/-  
(Parth Prateem Sahu)  
Judge

roshan/-