

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 776 of 2014

- The New India Assurance Company Limited Divisional Office, First Floor, Chouhan State G.E. Road, Supela, Bhilai, Distt. Durg C.G., Through-Auth. Sign. For The New India Insu.Co.Ltd., Divisional Office, Bilaspur Chhattisgarh

---- Appellant/InsurerNA2

Versus

1. Smt.Gulab Kothari, W/o Vijay Kumar Kothari Aged About 61 Years Head Master (Mistress), Baldeo Prasad Mishra Girls Primary School, Basantpur, Distt. Rajnandgaon R/o Basantpur, Ward No. 38, Rajnandgaon, Tah. And Distt. Rajnandgaon Chhattisgarh (Claimant)
2. Rajiv Chugh S/o Jyotij Prakash Chugh Aged About 48 Years R/o Nehru Nagar West 18/2, Supela, Bhilai, Tah. And District : Durg, Chhattisgarh (Owner/Driver)

----Respondents

For Appellant	: Shri BN Nande, Advocate
For Respondents	: 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.
17.09.2020

1. NA2/ Insurance Company has filed this appeal under Section 173 of the Motor Vehicle Act,1988 challenging the impugned award dated 30.04.2014 passed by the Second Additional Motor Accident Claims Tribunal, Rajnandgaon (for short, 'Claims Tribunal') in Claim Case-88 of 2012, whereby learned Claims Tribunal allowed application filed under Section 166 MV Act 1988 in part and awarded Rs.33,600/- as total compensation in an injury case.
2. Facts relevant for disposal of this appeal are that on 24.04.2011 at about 11 am, claimant/respondent-1 herein was travelling as pillion rider on a motorcycle bearing No.CG 08F 2071 along with her son Ashish

Kotari and going to Bhilai from Rajnandgaon. When they reached near District Hospital, Durg, one Maruti WagonR Car bearing No.CG 7M 3090 driven by NA1 dashed the motorcycle on its back. In the said motor accident, claimant and her son fell down and met with an accident. Ashish son of the claimant suffered injuries over his right hand, right knee and chest, apart from other injuries over his person. Claimant/respondent-1 suffered injuries on her right hand, right leg apart from injuries over other parts of her body. He was immediately taken to the Government Hospital, Durg and thereafter, took treatment from Chandulal Chandrakar Hospital, Bhilai. Upon diagnosis, fracture on right humerus bone was found. She took treatment as inpatient from 28.04.2011 to 30.04.2011, where she undergone operation and rod was implanted. Accident was reported to concerned Police Station on 30.04.2011, upon which Police conducted investigation and after completion of investigation, final report was filed before the Chief Judicial Magistrate, Durg, against NA1.

3. Claimant /respondent-1 filed application under Section 166 of the Act of 1988 claiming compensation on account of motor accidental injuries suffered by her, claimed Rs.4,17,463/- as compensation on different heads.

4. NA1, driver of offending vehicle submitted reply to the claim application denying the fact of accident. It was further pleaded that the offending vehicle was insured with NA2, Insurance Company. There was no accident from the vehicle driven by him, as alleged in the claim application. The documents and bills placed on record are fabricated. As per information gathered by NA1, she was advised to get x-ray of the injury suffered by her, she did not return back to the Government hospital with x-ray report. MLC report of the son of claimant

was not prepared which shows that implication of NA1 in the accident was false. Amount of compensation claimed is highly exaggerated. There was no loss of earning, claimant is entitled for medical reimbursement from the department being a government servant. It was pleaded that on the date of accident, NA1 was in his house.

5. NA2/Insurance Company submitted reply denying the facts pleaded in the claim application. It was further pleaded that the amount of compensation pleaded is highly exaggerated. Claimant has not suffered any permanent disability, not taken any treatment from the District Hospital, Durg, and no FIR was lodged on 24.04.2011 ie date of accident.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that claimant/respondent-1 suffered injuries resulting in permanent disability in an accident from Maruti WagonR CG07M3030 driven by NA1 on 24.04.2011 and awarded Rs.33,600/- as compensation.

7. Shri BN Nande, learned counsel for the appellant/Insurance Company submits that the impugned award passed by learned Claims Tribunal is contrary to the facts and evidence available on record. Learned Claims Tribunal has not appreciated the evidence available on record, particularly, the documentary evidence in its entirety and arrived at a wrong finding. He contended that Ex.P3 and P4 which are documents showing medical ailment and treatment of the claimant/ respondent-1 do not mention the reason on which claimant suffered injuries, which itself is sufficient to show that the claimant has not suffered motor accidental injuries in a road traffic accident.

He further contended that the Tribunal has overlooked the fact that accident took place on 24.04.2011, whereas FIR was lodged on 30.04.2011, after lapse of long gap, from which it can be gathered that involvement of offending vehicle is an after thought by way of cooked up story. The Claims Tribunal also erred in not considering the documents placed on record Ex.D33 to Ex.D54 which are the medical documents of treatment of NA1/driver and owner of offending vehicle from which it is apparent that due to old ailments, NA1 was not able to drive the vehicle. The document Ex.D54 placed on record does not bear MLC number or register number maintained by the government hospital, though it is based on requisition memo of the Police. Further, doctor who examined claimant on 30.04.2011 at about 7.25 pm was not on duty. He submits that involvement of vehicle is on the basis of concocted story, whereas, the Tribunal erred in not considering that the claimant failed to prove her case that NA1 and his vehicle is involved in the accident by placing cogent and admissible piece of evidence and submits that the impugned award be set aside. Shri Nande in support of his argument of delay in lodging the FIR, placed reliance on the case law **Anil and others Vs New India Assurance Company Limited and others** reported in (2018) 2 SCC 482.

8. We have heard learned counsel for the appellant and have also gone through the record of claim case very minutely.

9. Claimant/respondent-1 on the date of accident was working as Head Mistress at Primary Girls School, Basantpur, Rajnandgaon. In support of claim application, she filed documents Ex.P1 Final report, P2 FIR, P3 medical prescriptions of the Government District Hospital Durg dated 24.04.2011 and Ex.P4 which is the government medical prescription of son of the claimant, who

also suffered injuries on the date of accident. After lodging FIR on 30.04.2011, claimant had been sent for medical examination vide requisition dated 30.04.2011 upon which she was examined by the doctor of the government hospital, who found casting over her right arm and right knee.

10. Claimant has also submitted other documents of Chandulal Chandrakar Memorial Hospital, medical documents of CM Hospital, Bhilai of her treatment. OPD card of Chandulal Chandrakar Hospital is placed on record as Ex.P9. In the said document it is mentioned that "Injury due to dash with Car". Fracture of shaft humerus and preparation for operation. Discharge card of Chandulal chandrakar Hospital is placed on record as Ex.P10 showing treatment as inpatient from 28.04.2011 to 30.04.2011 fracture of humerus mid shaft. Treatment given was "open reduction and internal fixation". Claimant has filed other medical documents also of several tests. Claimant was examined as AW1. In her evidence, she narrated the date of accident as on 24.04.2011 at 11 am, the date of lodging FIR on 30.04.2011. She was extensively cross examined by counsel of NA1 appearing therein, wherein she admitted that she filed a medical claim before the department for reimbursement, but that was not reimbursed, she took leave for five days. She in her cross-examination admitted that after the accident, she returned to Rajnandgaon and thereafter, on 26.04.2011 she went to Chandulal Chandrakar Hospital, where she undergone operation on 28.04.2011. In support of her disability, she examined AW2 Dr Prakash Bhalerao, who proved her Disability Certificate Ex.P56.

11. NA1 examined NAW1 Pankaj Kumar De, motor mechanic to prove the vehicle examination report dated 12.10.2011 ie of more than five months of accident. He admitted in his evidence that in his report he has given his report

with regard to the front side of vehicle only and not the other three sides of offending vehicle. He further admitted that since last four years offending vehicle was coming to his shop for repairing and maintenance. He did not receive any notice from the Tribunal for appearing as witness.

12. Shri Jyoti Prakash Chugh, father of NA1 appeared as NAW2 before the Tribunal. He has proved the documents ExD1 to D4. Ex.D27 is document/information obtained through RTI on 19.10.2012, issued by Block Education Officer, Rajnandgaon showing the period of leave, joining, summer vacation of School and further, salary drawn by the claimant/respondent-1 for the month of April, May, June and July, 2011. This witness stated that NA1 was suffering from medical ailment ie chronic Kidney disease. No other witness was examined on behalf of NA1, owner, driver of offending vehicle.

13. Upon going through aforementioned documents, it is apparent that the claimant immediately after the accident was taken to the Government Hospital, where, fracture of humerus bone was detected. She stated that she returned to her house at Rajnandgaon and thereafter, she went to hospital at Bhilai on 26.04.2011 ie after a day of the accident. She took treatment as inpatient from 28.04.2011 to 30.04.2011, where she undergone operation of her right humerus bone. Injury mentioned in Ex.P3 dated 24.04.2011 issued by the Government District Hospital and the injury mentioned in the Discharge ticket Ex.P10 are one and the same, fracture of humerus mid-shaft right. Though in Ex.P33 and Ex.P10 shows date of admission as 28.04.2011, but the other document available on record with regard to other tests undergone by the claimant is of 26.04.2011 vide Ex.P11, P12 to P16. From the aforementioned documents, it is apparent that claimant/respondent-1 suffered injuries over her

person. Ex.P9 ie OPD card dated 26.04.2011 of Chandulal Chandrakar Hospital clearly mentions injury due to dashing with Car while patient was travelling on Motorcycle. These documents of treatment remain uncontroverted. Merely non-mentioning of injuries on account of RTA (Road Traffic Accident) by the doctor who examined the claimant immediately after the accident itself will not be sufficient to oust the claimant seeking compensation on account of motor accidental injuries suffered by her. NA1 to prove her pleading that no such accident took place on 24.04.2011 as lodged by the claimant, has not called any officials of the investigating agency. Further, for one reason or the other, NA1 himself has not entered into witness box to prove the pleadings. In reply to the claim application, NA1 has pleaded that on the date of accident, he did not went out of his house, his occupation is of irregular nature and further not clarified that he never use to drive the motor car.

14. Further, the documents obtained by NA1 under RTI clearly mentioned that claimant was on Medical leave since 25.04.2011 to 30.04.2011, joined on 01.05.2011, after that there was summer vacation which ended on 15.06.2011. Appellant/respondent-1 could not able to bring on record any admissible piece of evidence on record of non-involvement of the offending vehicle.

15. From the aforementioned material and evidence available on record, we do not find any error in the finding recorded by learned Claims Tribunal in paragraph-8 to 18, holding that the claimant suffered motor accidental injury with the offending vehicle. The ground raised by learned counsel for the appellant with regard to false implication of NA1 and his vehicle in the accident is not substantiated and it is hereby repelled.

16. The next ground raised by learned counsel for appellant that accident took place on 24.04.2011 whereas FIR lodged on 30.04.2011 after delay of about more than five days, which clearly shows that FIR lodged against NA1 is after thought and concocted one. We are not convinced with the submission made by learned counsel that merely on account of delay in lodging FIR, claim of the injured claimant to be disbelieved. There can be more than one reason for lodging the FIR with delay. In FIR, reason assigned by the claimant for delay is 'busy in treatment'. This explanation of the injured/claimant in view of the documents placed on record of treatment is a plausible explanation. The Police after investigation into FIR has also submitted the Final Report before the Court of jurisdictional Magistrate against the respondent-2. In the above circumstances, burden was upon the respondent-2 to prove that the complaint made by the injured in Police Station is a concocted one, it is false and fabricated. Appellant/Insurance Company also could have called the Investigation Officer as 'witness' but not made any efforts.

17. Hon'ble Supreme Court in case of **Ravi Vs Badrinarayan and other** reported in (2011) 4 SCC 693, has dealt with the issue with regard to delay in lodging the FIR and held thus:

“17. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

19. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. 21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.”

18. In the light of the above ruling we hold that the claimant cannot be ousted on account of delay in lodging FIR when application is filed for compensation under the Act of 1988.

19. The case law relied upon by the learned counsel for the appellant is on different facts.

20. For the foregoing reasons, we do not find any tenable ground in this appeal. The appeal being devoid of any substance, it is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge