

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 843 of 2014

- Motiram Lalwani, S/o Late Sewaram Lalawani Aged About 50 Years
Occupation Business, R/o Pakki Kholi, Sindhi Colony, Raigarh, P.S. ,
Tahsil And District Raigarh, Chhattisgarh ---- **Appellant/Claimant**

Versus

1. Paramjeet Singh Bagga, S/o Malik Singh Bagga Aged About 47 Years
Occupation Vehicle Owner And Vehicle Driver, R/o Old Sarangarh Bus
Stand, In Front Of District Jail, Raigarh, Chhattisgarh
2. Reliance General Insurance Co. Through The Branch Manager, Branch
Office, Plot No. 09, Behind Hotel Dilli Darbar, Tansport Nagar, Korba,
Tahsil And District - Korba, Chhattisgarh -----**Respondents**

For Appellant	: Shri Samir Singh, Advocate
For Respondent-1	: Shri Vineet Kumar Pandey, Advocate
For Respondent- 2	: Shri Sachin Singh Rajput, Advocate

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

Per Parth Prateem Sahu, J.
07.08.2020

1. This is claimant's appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 08.05.2014 in claim case-17/2009 by Motor Accident Claims Tribunal, Raigarh (for short, 'Claims Tribunal'), whereby learned Claims Tribunal dismissed the claim application.
2. Facts relevant for disposal of this appeal are that appellant is owner of Pick-up vehicle bearing No.CG13A-9707. His vehicle was driven by a driver engaged by him namely, Anurodh Kumar. When the vehicle was on its way carrying goods from Raigarh to Dharamjaygarh, one dumper / truck bearing No.CG13D1785 (hereafter, referred to as 'offending vehicle') driven by NA1 rashly and negligently, dashed the Pick-up vehicle. In the

aforementioned accident, front portion of the Pick-up vehicle damaged badly. The accident was reported to concerned Police Station, based on which Crime No.93 of 2008 was registered against NA1, driver of offending vehicle.

3. Appellant filed application under Section 166 of M V Act mentioning therein that as per the estimate given to him for the purpose of required expenditure to be incurred on repairing of the Pick-up vehicle, amounting to Rs.3,79,590/-, on account of non-running of the damaged Pick-up vehicle in the aforementioned accident he is suffering loss of income. He is a wholesale tomato merchant and engaged in supply of tomatoes by his own vehicle but due to the motor accident he is required to supply tomatoes with a hired vehicle. In view of the above, he claimed Rs.21,38,590/- as compensation.
4. NA1/driver & owner of offending vehicle submitted reply to the claim application and denied entire pleadings in claim application made by the appellant. It is pleaded that on the date of accident NA1 was possessing valid and effective driving license and offending vehicle owned by him was insured with NA2/Insurance Company. The claim application filed for vehicle damage is based on false and fabricated ground and the amount claimed is highly exaggerated. No loss was suffered by the appellant and the liability, if any, for payment of amount of compensation would be upon Insurance Company.
5. NA2/Insurance Company submitted reply, denying the pleadings made in the claim application and also denied the fact of accident. They have also denied the insurance of offending vehicle with them. There was

no valid and effective driving license with NA1 and thereby there was breach of conditions of Insurance Policy.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that NA1 dashed the Pick-up vehicle owned by the claimant by driving the offending vehicle rashly and negligently; Pick-up vehicle owned by the claimant got damaged, but dismissed the claim application holding that the claimant failed to place reliable evidence of expenditure incurred by the claimant. NA2/Insurance Company failed to prove that driver of offending vehicle was not having valid and effective driving license on the date of accident and dismissed the claim application.

7. We have heard learned counsel for the parties.

8. Learned counsel for the appellant submits that appellant / claimant has very specifically pleaded the accident and damage suffered to the Pick-up vehicle for which he placed evidence on record i.e. photograph of the damaged Pick-up vehicle which shows the manner of accident and the extent of damage of vehicle. It is also pointed that before the learned Claims Tribunal appellant/claimant has placed on record the estimate / quotation of the amount of expenditure required to be incurred by him for repair of Pick-up vehicle but the said document was not considered by learned Claims Tribunal and unlawfully dismissed his claim application in its entirety.

9. Shri Vineet Kumar Pandey, learned counsel appearing for Respondent 1 supports the award.

10. Shri Sachin Singh Rajput, learned counsel for Respondent 2 submits that appellant failed to produce any cogent and reliable piece of evidence to show the expenditure incurred by him towards repair by placing receipts of payment etc., but he only placed on record the estimate / quotation, showing the amount of expenditure, or amount required for repairing of Pick-up vehicle. Learned Claims Tribunal rightly dismissed the claim application holding that the estimate cannot be taken into consideration as the actual expenditure or amount paid by the appellant for getting the Pick-up vehicle repaired.

11. We have heard learned counsel for the respective parties and perused the record.

12. The claimant in support of his pleading in claim application claiming Rs.21,38,590/-, has placed on record only the documents of criminal case and the application written by him to the Branch Manager, Shivam Motors, Raigarh, from where the Pick-up vehicle owned by him was purchased under finance. Application to the Oriental Insurance Company for disbursement of claim towards damaged vehicle, and further, estimate / quotation said to have been issued from Shivam Motors. These documents are marked as Ex.P13, 14 and 15. To prove the pleadings made in the claim application, the appellant examined himself as AW1, wherein it is only stated about taking photograph of damaged vehicle and also obtaining the estimate of amount to be expended towards repairing of the vehicle issued from M/s.Shivam Motors. He further stated that he also incurred expenditure for pulling the vehicle through crane. He examined Ujjwal Ghosh, Lubricant In-charge of Shivam Motors as AW3, who stated that

documents Ex.P14 and 15 were issued by Shivam Motors bearing signatures of Virendra Ojha and Avinash Dewangan. In his cross-examination, he was questioned that whether he brought the quotation book with him, he said that he had not brought quotation book, he further stated that the quotation was not prepared in front of him and he is not looked into the report. Apart from the aforementioned documentary and oral evidence, the appellant has not brought any other evidence on record.

13. So far as the vehicle damage claim is concerned, it cannot be presumed that till date vehicle was not repaired. Even otherwise, compensation is required to be paid in case of damage to the vehicle or property is the actual damage suffered by the claimant which can be proved by placing receipts of expenditure incurred by him towards the repairing of damaged vehicle.

14. In view of above facts and circumstances of the case, we find that the appellant failed to place on record any admissible and reliable piece of evidence to prove that he incurred any amount towards repairing of the damaged vehicle/ Pick-up.

15. For the foregoing reasons, we do not find any substance in the appeal and the appeal is liable to be dismissed and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge