

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 346 of 2014

- Shri Kapoor Chand Agrawal, S/o Late Mangeram Agrawal Aged About 45 Years occupation Business (Proprietor- M/s. Nitesh Bag House And Mobile World, R/o Village- Surajpur, P.O. And P.S. Surajpur, Distt. Surajpur, Chhattisgarh)

---- Appellant /Claimant

Versus

1. United India Insurance Company Limited Thru- The Branch Manager, Branch Office, Bramha Road, Ambikapur, Distt. Surguja, Chhattisgarh (Insurer)
2. Ajay Agrawal, S/o Purushottam Das Agrawal Aged About 30 Years, Occupation Business, R/o village Surajpur, P.S. Surajpur, District : Surajpur, Chhattisgarh (Owner)
3. Teksai Rajwade S/o Shyam Lal Rajwade Aged About 23 Years Occupation Driver, R/o village Unchdih (Jagarnathpur) Chowki- Basdei, P.S. Surajpur, District : Surajpur, Chhattisgarh (Driver)

----Respondents

For Appellant : Shri Ashish Surana, Advocate
For Respondent-1 : Shri Dashrath Gupta, Advocate

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

Per Parth Prateem Sahu, J.
27.08.2020

1. This is claimant's appeal filed under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated 28.02.2014 passed in Claim case No.58 of 2012 by the Second Additional Motor Accident Claims Tribunal, Surajpur (for short, 'Claims Tribunal'), whereby learned Claims Tribunal dismissed the claim application.

2. Facts relevant for disposal of this appeal are that on 05.10.2011 at about 7.30 pm Kapoorchand Agrawal (injured/claimant) was returning from his Mobile/Bag shop on foot. When he reached in front of main gate, Jilla Panchayat, Surajpur on the Main road, one Maruti Omni bearing

No.CG15 B 3349 ((hereafter, referred to as 'offending vehicle'), driven by NA3 rashly and negligently dashed Kapoorchand Agrawal due to which he suffered grievous injuries over his right leg. He was initially taken to Community Health Centre, Surajpur and thereafter, he was taken to Ramkrishna Care Hospital, Raipur. The accident was reported to the concerned Police Station.

3. Application under Section 166 of the Act of 1988 was filed on 11.05.2012 by the injured, pleading therein that he suffered grievous injuries over his right leg and thigh in the aforementioned accident and incurred Rs.2,85,615/- towards medical expenditure. By adding compensation on other pecuniary and non-pecuniary damages claimed Rs.8,49,425/- as total compensation.

4. NA3, driver of offending vehicle did not appear before the learned Claims Tribunal and was proceeded *ex parte*.

5. NA1, Insurance Company submitted reply to the claim application and denied the pleadings made therein. It was pleaded that FIR was lodged after delay of one month; no explanation was offered for the same and therefore, the complaint/FIR was an afterthought in collusion with NA2/owner and NA3/driver of offending vehicle. False and fabricated case was prepared against NA1/Insurance Company. It was also pleaded that on the date of accident, NA3 driver of offending vehicle was not possessing a valid and effective driving license with him.

6. NA2, owner of the offending vehicle denied the pleadings made in the claim application. It was pleaded that the accident was on account of

negligence of the claimant himself. There was valid fitness and permit of the vehicle and NA3/driver was possessed with valid and effective driving license. The liability to satisfy the amount of compensation will be upon the Insurance Company.

7. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as four issues for consideration, decided all the four issues in negative and dismissed the claim application of the appellant.

8. Shri Ashish Surana, learned counsel for the appellant submits that the learned Claims Tribunal has dismissed the claim application, mainly considering the delay of one month in lodging the FIR to the concerned Police Station about the accident. He submits that the learned Claims Tribunal erred in not considering the reason assigned by the claimant for lodging FIR with a delay ie the appellant went to take treatment at Ramkrishn Care Hospital, Raipur, where, he took treatment as in-patient from 09.10.2011 to 14.10.2011. He also points out that in the FIR which was lodged on 05.11.2011 of the accident on 05.10.2011, in the column of the FIR with regard to the delay it is mentioned that the injured was out of station for the purpose of medical treatment. He also submitted that the learned Claims Tribunal has not considered the judgment relied upon by learned counsel for the appellant/claimant on the case of **Ravi Vs Badrinarayan and others** (paragraph15) reported in 2011 (4) SCC 693 wherein Hon'ble Supreme Court has held that the claim application cannot be dismissed only on the ground of delay in lodging the FIR. He also submits that the learned Claims Tribunal only on the basis of presumption

and surmises has arrived at a finding that the case of accident is a concocted one on the basis of presumptions and surmises. There is no material available on record to arrive at such a finding. He also points out that respondent-2, owner of offending vehicle in reply to the claim application has categorically admitted the fact of accident except the pleading that the accident was a result of negligence on the part of appellant/claimant himself which itself is sufficient to prove the fact of accident. It is also contended that when once the accident itself is admitted, learned Claims Tribunal ought not to have dismissed the claim application mentioning that the accident of claimant with offending vehicle could not be proved. He also points out that even if for any reason, learned Claims Tribunal was having some confusion about the facts pleaded in the claim application and the reply filed by NA3 with regard to the accident, it could have exercised the jurisdiction under the provision of Section 168 of the Motor Vehicle Act, 1988 and Rule 226 of Chhattisgarh Motor Vehicle Rules, 1994 to conduct an enquiry and to arrive at a correct finding based on the material available on record. The dismissal of claim application by the learned Claims Tribunal holding the pleadings in the claim application to be suspicious only on the ground of delay in lodging the FIR, is not sustainable, when no other contrary evidence was placed on record either by NA1 Insurance Company or by NA2, owner of offending vehicle.

9. Per contra, Shri Dashrath Gupta, learned counsel for NA1, Insurance Company submits that learned Claims Tribunal has correctly recorded a finding that there is delay of one month in lodging FIR and no satisfactory

explanation was offered for the delay. He further submits that learned Claims Tribunal has also taken into consideration the involvement of vehicle owned by relative of the claimant/appellant in the accident to be suspicious. He submits that no accident as alleged took place with the offending vehicle of NA2. He also points out that the pleadings made in the reply of the claim application have not been proved by NA2 by entering into the witness box before the learned Claims Tribunal, adding to it he also submitted that driver of offending vehicle was proceeded *ex parte* as he did not appear before learned Claims Tribunal.

10. Learned counsel for the Insurance Company submits that the dismissal of the claim application by learned Claims Tribunal is based on material and evidence available on record, hence does not call for any interference.

11. We have heard learned counsel for the respective parties. Learned Claims Tribunal has dismissed the claim application taking into consideration that FIR for the accidental injuries suffered by the appellant was lodged with a delay of one month, owner of offending vehicle shown in the FIR is relative of the injured claimant, involvement of offending vehicle in the accident shown is in collusion with NA2 and NA3, owner and driver of offending vehicle; considering time of accident mentioned by the appellant/claimant differently in FIR and in the claim application to be suspicious; non-production of the vehicle examination report in proof that the appellant suffered grievous injuries in the motor accident with offending vehicle; non-mentioning of the reason of the injuries suffered by the appellant to the doctor, where he took immediate treatment after the

accident, arrived at a finding that the facts narrated with regard to the accident in the claim application and statement of the appellant/claimant to be concocted and fabricated. Learned Claims Tribunal upon analysing the material on record presumed that appellant/claimant failed to prove the fact of motor accidental injuries suffered by him with the offending vehicle and dismissed the claim application.

12. Before proceeding further it will be relevant to mention that the appellant has placed on record treatment taken by him for the injuries at Ramkrishn Care Hospital, Raipur. After taking treatment from the hospital, FIR was lodged to the concerned Police Station, of course, after lapse of about one month. Police also submitted its Final Report/charge-sheet against the driver of offending vehicle and most importantly, the fact that the Non-applicants have not entered into the witness box to bring on record the evidence and material controverting the pleadings and evidence brought on record by the appellant/claimant. Learned Claims Tribunal has observed for dismissing the case that the appellant/claimant has not produced on record the vehicle examination report to prove the fact of accident. Learned Claims Tribunal while observing aforementioned fact, has not taken into consideration the manner of accident as pleaded in the claim application by the appellant that he suffered accidental injuries when he was returning to his house from shop as pedestrian, offending vehicle dashed him. In this type of accidents, there may not be possibility of necessarily causing some damage to the offending vehicle also. The damage to the offending vehicle can be possible if some other motor vehicle is involved in the accident with offending vehicle but the learned

Claims Tribunal erroneously, only on the basis of conjunctures, has taken this as one of the grounds for dismissing the claim application, which in view of this Court is not sustainable.

13. So far as one of the reasons for dismissing the claim case that there may be collusion between the owner and driver of offending vehicle as the claimant being relative of the owner of offending vehicle. Merely on becoming of a relative of the owner of offending vehicle in itself will not be sufficient to dislodge the claimant from a claim for compensation for the motor accidental injuries, but it is required to be proved that the offending vehicle is falsely implicated. NA1/Insurance Company has not made any effort to call NA2 and NA3 as witness before the Tribunal. But non-applicants before the Tribunal have stated that they do not want to give any evidence. Though under the Act of 1988, Claims Tribunal has been clothed with vide powers to enquire into the claim application by issuing a direction for production of document, calling of witnesses to pass just award under Section 168 of the Act of 1988 and Rule 226 of the Rules of Chhattisgarh Motor Vehicle Rules, 1994, which were not invoked, and arrived at a finding that the facts of the case pleaded in the claim application to be false and fabricated only on the basis of surmises and conjunctures.

14. It is for NA1/Insurance Company, who has taken a plea that the facts narrated in the claim application are false and fabricated, then, it is burden upon the Insurance Company to prove the facts pleaded in the claim application, but as the Insurance Company did not examine any witness in support of the reply submitted by it, the Tribunal erred in accepting the

pleadings only in arriving at a finding that the claimant failed to prove the motor accidental injuries suffered by him with the offending vehicle. Learned Claims Tribunal has taken into consideration delay in lodging of FIR which appears to be the main consideration of Claims Tribunal for arriving at a finding that the offending vehicle was not involved in the accident. In absence of any clinching and admissible piece of evidence, learned Claims Tribunal could not have arrived at a finding that the offending vehicle was not involved in the accident and the involvement of said vehicle is false and on fabricated grounds. If the non-applicants have not brought any evidence, much less admissible piece of evidence by examining any of the witness in support of their reply, then, learned Claims Tribunal ought to have accepted the claim application or should have conducted an enquiry by exercising its jurisdiction under Section 168 of the Act of 1988 and Rule 226 of the Rules of 1994 to overcome with the suspicion if any, which was not done in this case.

15. Hon'ble Supreme Court in case of **Ravi Vs Badri** (supra) has considered the issue with regard to delay in lodging the FIR of accident. In the case at hand, it was also considered by the Tribunal in Paragraph-15 of award but even then, dismissed the claim application taking delay in lodging the FIR as one of the grounds. Recording such a finding by learned Claims Tribunal even after taking note of judgement passed by Hon'ble Supreme Court on the issue of delay is erroneous and not sustainable in the eyes of law.

16. As involvement of offending vehicle shown in the accident to be one of the relative of the appellant, who did not entered into the witness box

and also taking into consideration the objection raised by the Insurance Company in reply, who failed to examine any witness, we find it appropriate to remand back the case to learned Claims Tribunal to decide the claim application afresh after providing opportunity of hearing to the respective parties.

17. It goes without saying that parties will be at liberty to amend their pleadings to place further evidence in support of their pleadings in addition to the evidence placed on record oral and documentary before the Tribunal. Learned Tribunal thereafter, will decide the claim case afresh after considering the entire material brought on record by the respective parties keeping in mind the law laid down by Hon'ble Supreme Court in case of **Ravi Vs Badri** (supra).

18. In view of above, appeal is allowed in part and the case is remitted back to the learned Claims Tribunal for deciding the claim application afresh after taking into consideration all the relevant material, evidence and documents placed on record or to be placed on record by respective parties after order of remand.

19. Taking note of the fact that date of accident is of 05.10.2011, we direct the Tribunal to decide the claim application afresh as early as possible, preferably within a period of four months from the receipt of copy of the order passed by this Court.

20. Registry is directed to send back the records without any delay.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge