

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 879 of 2013**

(Arising out of award dated 29/06/2013 passed in Claim Case No.17 of 2012 by the 2nd Additional Member of the First Additional Motor Accident Claims Tribunal, Bilaspur, C.G.)

Smt. Alka Shukla W/o Rajkumar Shukla, aged about 35 years, Through Power of attorney holder Rajkumar Shukla S/o Gopi Kishan, aged about 35 years, R/o near Santoshi Mandir, Main Road Torwa, Police Station Torwa, Bilaspur, Tahsil & District (Revenue & Civil) Bilaspur (C.G.).

---- Appellant**Versus**

1. Lakhanlal Sahu S/o Dasharath Prasad Sahu, R/o Village Nagoi; Police Station Takhatpur, District (Revenue & Civil) Bilaspur (C.G.).
2. Gajanand Prasad Pandey, S/o Shri Dewdatt Pandey, R/o Village & Post Belasari, Tahsil Police Station Takhatpur, District (Revenue & Civil) Bilaspur (C.G.).
3. The New India Insurance Company Ltd. Through Branch Manager, Branch Office New Rajiv Plaza, Bus Stand Bilaspur, Police Station Bilaspur, Tahsil & District (Revenue & Civil) Bilaspur (C.G.).

---- Respondents

For Appellant	: None
For Respondent No.1	: None
For Respondent No.2	: Shri S.P. Kale, Advocate
For Respondent No.3	: Shri Raj Awasthi, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

13/07/2020

1. Appellant/claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated

29/06/2013 passed by the 2nd Additional Member of the First Additional Motor Accident Claims Tribunal Bilaspur, C.G. (hereinafter referred to as 'Claims Tribunal') in Claim Case No.17 of 2012 whereby learned Claims Tribunal awarded a sum of Rs.25,000/- as compensation in vehicle damage case.

2. This case was earlier listed on 11/06/2020; on that date, Shri Anand Kumar Kesharwani, appeared for the appellant and sought time to make his submission. Though due to clerical/typographical error in the order sheet dated 11/06/2020, it is appearing that time was sought for by respondent No.3 and the case was adjourned for a week. The case was again listed on 30/06/2020, on which date, no one appeared on behalf of the appellant and we have adjourned the case again for a week. Thereafter, the case was listed today for hearing and today again, nobody appeared on behalf of the appellant. Taking note of the fact that on all the aforementioned three dates, the case was listed under the heading of “targeted for hearing and disposal” and considering that the case is pending since last seven years, we have directed the staff of the Registry to inform the learned Advocate whose name is appearing in the cause list and mentioned in the *Vakalatnama* filed by them. In compliance of the direction issued by this Court, Pushpraj Rathore, Assistant Grade-III (Computer Operator) informed

with his mobile No.7974718125 to Shri Anand Kumar Kesharwani, Advocate on his mobile No.9300672165. Shri Anand Kumar Kesharwani stated that in the subject case Shri Vineet Kumar Pandey, Advocate will appear. On this information given by Shri Anand Kumar Kesharwani, Pushpraj Rathore called Shri Vineet Kumar Pandey, Advocate on his mobile No.9826185764, who stated that he will not appear in this case, but Shri Anand Kumar Kesharwani, Advocate will appear. Looking to the disinterest shown by both the counsels, who signed and filed *Vakalatnama*, this Court has left with no other option but to consider the case on its merit in their absence and this is how the case is taken up for hearing in absence of the appellant's counsel for hearing on its merits.

3. Facts relevant for disposal of this appeal are that, the appellant is owner of the truck bearing registration No.MH/31/AP/2263. On 25/04/2006, driver of truck, by name, Yogesh was brining the truck from village Bandeli to Bilaspur loaded with fire wood, while so when truck reached near village Jarhagaon at small canal, the driver of truck saw one Tractor Trolley coming with a high speed driven by its driver negligently. He stopped the truck and put off the headlights. The driver of tractor while trying to escape with the ditch on the road, dashed the truck owned by the appellant. In the aforementioned accident, the truck got damaged. The

accident was reported to the concerned police station, based upon which, crime No. 39/2006 was registered for the offence punishable under Sections 279 and 337 of IPC against non-applicant No.1.

4. The appellant/claimant filed an application under Section 166 of the M.V. Act claiming compensation of Rs.2,89,000/- on the various heads including Rs.2,00,000/- towards repairing of the body of truck.
5. Non-applicants No. 1 and 2/respondents No. 1 and 2, driver and owner of the tractor respectively, submitted reply to claim application pleading therein that the accident was on account of the rash and negligent driving of truck by its driver. There is no negligence on the part of the driver of the tractor. The tractor was under hypothecation agreement with Punjab National Bank, Branch-Bareilly, Saharanpur and thereby the liability for getting the vehicle insured was upon the bank and if for any reason, the trolley of the tractor was not insured by the bank, then, its liability of the bank.
6. Non-applicant No.3/Insurance Company submitted reply to claim application pleading therein that the tractor trolley was not insured by it and further the non-applicant No.1/respondent No.1 drove the tractor trolley in breach of conditions of the insurance policy.

7. Learned Claims Tribunal on appreciation of the pleading and evidence placed on record by respective parties has assessed the damages and awarded a sum of Rs.25,000/- as compensation.
8. The grounds taken in the appeal seeking enhancement of amount of compensation before this Court that learned Claims Tribunal erred in not awarding sufficient amount towards substantial expenditure incurred by the appellant towards damage of the truck in the accident. The bills of repairing and other articles ought to have been admitted as material evidence and the sustainable amount of compensation ought to have been awarded.
9. Shri Raj Awasthi, learned counsel appearing for the respondent No.3/Insurance Company submits that learned Claims Tribunal has considered evidence placed on record by the claimant/appellant on record and awarded just and reasonable amount of compensation. The learned Claims Tribunal while considering the pleading and evidence placed on record by respective Parties, discussed the oral and documentary evidence placed on record by the appellant in paragraph No.22 of its award. The learned Claims Tribunal in its awarded has considered that the claimant has produced Exs.A/9 to Ex.A/17 as receipts of the expenses towards repairing of the truck, but mechanic of the truck has

not been examined before the learned Claims Tribunal to prove the bills/receipts of expenditure. It was further observed that Exs.A/9, A/10, A/13, A/14 and A/15 were not bearing signature of the person who issued bills/receipts. There was no investigation and evaluation report by the competent person/valuer of the Insurance Company or some other to value the damages suffered to the vehicle owned by the appellant in the accident. The bills though submitted as stated above have not been proved by calling witness who issued the bills and learned Claims Tribunal taking into consideration the photographs of the truck, awarded a sum of Rs.25,000/- as compensation.

10. We have gone through the documents enclosed by the appellant in support of her claim application. The appellant has produced final report as Ex.A/1, copy of First Information Report as Ex.A/2, copy of photographs as Exs.A/3 to A/7, copy of newspaper clip as Ex.A/8, copy of bills/receipts as Exs.A/9 to A/17. Though the bills/receipts have been produced by the appellant on record, but as recorded by learned Claims Tribunal, she has not proved the said bills/receipts by examining the person who issued the bills/receipts before the learned Claims Tribunal and in absence of proof of documents by its author before the learned Claims Tribunal, it cannot be admitted in evidence.

11. The claimant has examined one Rajkumar Shukla as AW-1, who is husband of the appellant and also the power of attorney holder as per particulars of the appellant shown in the cause-title of the memo of appeal. Rajkumar Shukla (AW-1) has admitted in his evidence that Exs.A/9 and A/10 does not bear the signature and the bills/receipts which have been filed, has been given to him by the owner of the garage. Admittedly, the appellant has not examined owner of the garage and mechanic, who has done the repairing work to prove the expenditure occurred on repairing of the truck owned by the appellant and the parts fitted in that course.
12. In view of above facts and evidence available on record showing that the appellant though placed some bills/estimate/receipts before the learned Claims Tribunal, but those bills and receipts had not been proved in accordance with law by examining the author of the document. In our considered view, the learned Claims Tribunal has not committed any error in not accepting the bills/receipts produced by the appellant to be proved for awarding the amount of compensation.
13. As the claim application was filed under Section 166 of the M.V. Act, learned Claims Tribunal by doing some guess work awarded a sum of Rs.25,000/- as compensation, which

cannot be said to be erroneous in the facts and circumstances of the case as discussed above.

14. For the foregoing reasons, we do not find any merit in this appeal calling interference in the impugned award. Appeal fails. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh