

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A(C) No.143 of 2015****Reserved on 25.08.2020****Pronounced on 03.09.2020**

Aghanu Ram, S/o Bodhi Ram Adile, Aged About 38 Years, R/o Village-Kathoutiya, P.S. Dadhi, Distt. Bemetara C.G., (Claimant)

---- Appellant**Versus**

1. Nitesh Kumar Shukla, S/o Naresh Kumar Shukla, Aged About 30 Years R/o Kathoutiya, P.S. Dadhi, Distt. Bemetara C.G., (Driver and Owner)
2. Shriman Manager, ICICI Lombard General Insu.Co.Ltd., Vanijya Bhawan, Devendra Nagar, Raipur C.G., (Insurer)

----Respondents

For Appellant:	Shri Govind Ram Miri alongwith Shri Basant Kaiwartya, Advocate.
For Respondent No.1:	None, though served.
For Respondent No.2:	Shri Amrito Das along with Shri P. Acharya, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J**C A V Award**

1. This Appeal has been preferred by the Claimant under Section 173 of the Motor Vehicle Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 28.01.2015 passed by the Additional Motor Accident Claims Tribunal, Bemetara, District Bemetara (for short 'the Tribunal') in Claim Case No.93/2013, whereby the Tribunal has allowed the Claim in part by awarding the total amount of compensation to the tune of Rs.1,47,593/- with 6% interest per annum from the date of filing of the Claim Petition till its realization. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 28.01.2013 at 10.00 a.m, the Claimant-Aghanu Ram was returning by his motorcycle from village Bhaisbodkhurd to his village Kathoutiya. At the relevant time, he was dashed vehemently from his opposite side by the offending vehicle 'Hero Honda (Splendor)' bearing Registration No.CG 04 K 1105 owned by its driver Nitesh Kumar Shukla and insured with ICICI Lombard General Insurance Company. According to the Claimant, it was being driven by its owner in a rash and negligent manner, as a result of which, the accident occurred and he sustained serious injuries on his head and left hand. A criminal case was, therefore, registered before the police station – Dadhi against the owner-cum-driver of the said offending vehicle under Sections 279, 337 and 338 IPC and a charge sheet has been submitted before the Judicial Magistrate First Class, Bemetara.

3. On account of the aforesaid accident, a claim enumerated under Section 166 of the Act of 1988 has been made by the Claimant/injured submitting *inter alia* that he was a head mason (*rajmistri*) and has suffered permanent disability owing to the alleged accident and claimed total amount of compensation to the tune of Rs.7,45,000/- under various heads.

4. Non-Applicant No.1, the owner-cum-driver of the alleged offending vehicle, while contesting the claim, pleaded that at the relevant time, threshing of paddy (*dhanmisai*), a process of separating the grain from straw was going on and owing to spreading of husk (*bhoosa*) all over, the Claimant, who was coming along with his friends while driving his vehicle could not see him and dashed his vehicle, therefore, he alone was responsible for the alleged accident and the claim, as made by him, is therefore, liable to be dismissed.

5. Non-Applicant No.2, the insurer of the alleged offending vehicle, while denying the negligent driving of its driver, pleaded further that since the driver of it was not possessing the valid and effective driving license, therefore, no liability could be fastened upon it.

6. The Tribunal, after considering the evidence led by the parties, has held that the alleged accident occurred on 28.01.2013 due to the contributory negligence of the drivers of both the vehicles and are equally responsible for it. It determined the total amount of compensation at Rs.2,95,186/- and that by deducting half of it, awarded a total sum of Rs.1,47,593/- with 6% interest per annum from the date of filing of the Claim Petition till its realization.

7. Being aggrieved, the Claimant has preferred this Appeal. Shri Govind Ram Miri, learned Counsel appearing for the Appellant submits that the finding of the Tribunal holding the contributory negligence of the Appellant/Claimant to the extent of 50% is apparently contrary to law. According to him, the Claimant has proved the factum of the alleged accident, therefore and particularly in absence of the rebuttal of his statement, the Tribunal ought not to have held that the Claimant is equally responsible for the alleged accident occurred on 28.01.2013. Lastly, it is contended that the amount of compensation as determined by the Tribunal is on lower side, which needs to be modified.

8. On the other hand, learned Counsel appearing for Non-Applicant No.2 has supported the award impugned as passed by the Claims Tribunal.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. From perusal of the record, it appears that on the fateful day, the Claimant was hit from his opposite side by the offending vehicle 'Hero Honda (Splendor)', the motorcycle which was being driven by its owner when the Claimant was returning to his village by his motorcycle. The initial burden to establish the occurrence of the alleged accident and/or the rash and negligent act of the driver of the offending vehicle was upon the Claimant. In order to establish the said fact, it was stated by him in his evidence that he was hit by the offending vehicle which was being driven in a very high speed by its driver and owing to which, he sustained serious multiple injuries and became unconscious on the spot. No suggestion, whatsoever, was put to him in order to disprove his version that the driver of the alleged offending vehicle was not driving his vehicle in a rash and negligent manner. That apart, the driver of the alleged offending vehicle has not stated anywhere in his evidence that he was not driving his vehicle in a rash and negligent manner. What is, in fact, stated by him was that he was hit by the Claimant at the time when he was going by his side while driving the vehicle at the speed of 40-50 kilometres per hour. However, in support of it, none was examined by him. Therefore, in absence of its corroboration, the version of him cannot be relied upon.

11. The Tribunal, however, without considering the aforesaid evidence of the parties in its proper manner, has held that the drivers of both the vehicles are liable equally merely on the ground that the alleged accident had taken place because of head on collision and the case has been registered against them. Merely because the accident has occurred as such and the offence has been registered against them would not by itself be sufficient to arrive at such a conclusion that both the drivers are equally

responsible for the same. The approach of the Tribunal, under such circumstances, appears to be unreasonable and cannot be upheld. It is the normal rule that the person claiming compensation for personal injury has to establish negligence and the extent of loss suffered by him due to the injury. But there is an exception to the normal rule. This exception is in respect of accidents, attracting the doctrine of *res ipsa loquitur*. Negligence could be inferred by the applicability by this maxim. If the accident by its very nature more consistent with its being caused by negligence of the driver, than by the other causes, then the mere fact of the accident is *prima facie* evidence of such negligence. In such a case, it is on the driver of the vehicle in question to explain as to how the accident occurred without negligence on his part. The driver of the offending vehicle has to show a specific cause not connoting negligence on his part or that he used all reasonable care expected of him by way of cogent and reliable evidence. At this stage, the following passage from Halsbury's Laws of England, 2nd Edition, Vol.23 at page 671 has to be seen, which reads as under:-

“An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence “tells its own story” of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which, if he is to succeed in his defence, must be overcome, by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part”.

12. In this case, the Claimant has specifically stated in his evidence regarding the occurrence of the alleged accident, which therefore raises the presumption of negligence of the driver of the offending vehicle alone as he failed to rebut the statement as led by the Claimant. That apart, the driver of the alleged offending vehicle has failed to lead any cogent and reliable evidence so as to hold that it has not occurred due to his fault or negligence. Thus, there is no acceptable evidence placed on record in order to arrive at a conclusion that the Claimant was also responsible for the alleged accident as held by the Tribunal. Such a finding holding the Claimant to be equally responsible for the alleged accident, thus, deserves to be and is hereby set aside and I accordingly hold that the driver of the alleged offending vehicle namely Nitesh Kumar Shukla, Non-Applicant No.1 alone was responsible for the alleged accident, which took place on 28.01.2013.

13. In so far as the quantum of compensation, as awarded by the Tribunal to the tune of Rs.2,95,186/- along with the said interest from the date of filing of the Claim Petition till the date of actual payment is concerned, I find that after following the strict principles of law, the same has been determined and as such the same is hereby confirmed.

14. Consequently, the Appeal is allowed in part and the Claimant is entitled to a total amount of compensation to the tune of Rs.2,95,186/- with 6% interest per annum from the date of filing of the Claim Petition till the date of actual payment.

15. Rest of the observations as made by the Tribunal shall remain in tact. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE