

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 751 of 2015**

- Manoj Kumar S/o Shri Hemrai Verma, aged about 40 years, Village: Bazar Chowk, Kumhari, Kumhari Basti, Dist. Durg C.G.

----Appellant/Claimant**VERSUS**

1. Pramod S/o Harinarayan Gour, aged about 23 years, R/o Village- Fangawali, Thana Shergarh, District Mathura (UP) **-----Driver**
2. Seema D/o D.H. Gulshan Lal, R/o Ward No. 1, Mihla Darjiwala, near Laxmi Narayan Mandir Hotel, Palwal Haryana **-----Owner**
3. IFFCO Tokio General Insurance company Limited, Registered and head Office: Iffco Sadan, C-I, Distt., Central Saket, New Delhi, Branch Office: Branch Manager, Lalganga Shopping Mall, G.E. Road, Raipur C.G.

-----Respondents

For Appellant	: Mr. B.P. Rao, Advocate
For Respondents	: None.

Hon'ble Shri Justice Parth Prateem Sahu**Judgement on Board****09/11/2020**

1. Appellant-claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") seeking enhancement of the amount of compensation awarded by 6th Additional Motor Accident Claims Tribunal, Durg in claim case no. 125/2013 *vide* impugned award dated 31-01-2015 whereby learned Claims Tribunal awarded Rs. 50,000/- towards the vehicle damage claim.
2. Facts of the case in nutshell are that on 11-01-2012 in between 1:30-2:00 p.m. at Kumhari-Ahivara road, one truck bearing registration no. HR 55H

1880 (hereinafter referred to as “offending truck”) driven by Respondent 1/ non-applicant 1 rashly and negligently dashed the tractor bearing registration no. CG 07D 5432 and trolley bearing registration no. CG 07HA 1851 while coming from opposite direction. In the said accident tractor trolley was badly damaged. Accident was reported to concerned police station based on which crime bearing no. 07/12 was registered against non-applicant 1. After completion of the investigation charge-sheet was also filed before the Court of jurisdictional Magistrate. Appellant-claimant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 2,45,000/- claiming therein Rs. 1,50,000/- towards vehicle repairing charges, Rs. 45,000/- towards ideling of the vehicle for about 45 days on account of damage and Rs. 50,000/- towards pain and sufferings.

3. Non-applicant 1 and 2/ Respondent 1 and 2-driver and owner of the offending truck did not file their reply to the claim application and were proceeded *ex parte*.
4. Non-applicant 3/ Respondent 3-Insurance Company submitted reply to the claim application and denied the fact of insurance of offending truck by the company. There was breach of policy conditions. The amount of compensation claimed on the head of repairing is highly exaggerated. It is not pleaded in specific terms whether own damage claim was claimed against its own Insurance Company or not. In absence of which, the claimant is not entitled to receive any amount on the head of compensation on damage.
5. Learned Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties held that the tractor trolley was

dashed by the offending truck driven by non-applicant 1 rashly and negligently. In the said accident tractor and trolley got damaged. On the date of accident, offending truck was insured with Non-applicant 3, was driven within the policy conditions and awarded consolidated amount of Rs. 50,000/- as compensation.

6. Mr. B.P. Rao, learned counsel for the appellant submits that the Claims Tribunal erred in awarding meagre amount of compensation even after arriving at a finding that the vehicle owned by the appellant ie. tractor trolley got badly damage in the accident but has erroneously not considered the bills placed on record with regard to repairing of the tractor trolley which are filed as Ext. P-9 and P-10. He submits that the Claims Tribunal ought to have awarded the entire claim towards repairing of the tractor trolley owned by him ie Rs. 1,50,000/- as pleaded in the claim application and further loss of income and pain and sufferings.
7. No one appeared on behalf of Respondents in the second round of hearing.
8. To appreciate the submission made by the learned counsel for the appellant with regard to non-awarding of entire claim pleaded in the claim application. Upon perusal of the impugned award, learned Claims Tribunal in paragraph 16 has considered the documents placed on record by the appellant but disbelieved the document in absence of evidence of author of document but taking into consideration that the vehicle owned by the appellant met with the accident due to rash and negligent driving of non-applicant 1 awarded Rs. 50,000/- lump-sum as compensation. The appellant in support of his claim has placed on record the copies of the documents prepared by the police during the course of investigation of the

crime, seizer memo placed on record as Ext. P-5 mentioned about seizer of the tractor trolley in damaged condition. Vehicle examination report is filed as Ext. P-7, the mechanic/ author of the document who prepared the vehicle examination report was not examined as witness before the Claims Tribunal, hence, the document Ext. P-7 and P-8 cannot be accepted as evidence. Similarly, the appellant-claimant has placed on record Ext. P-9 and P-10 (bills) in proof of the expenditure incurred by him towards repairing of the tractor trolley but to prove these bills the mechanic who prepared these bills of repairing the vehicle has not been examined as witness, hence, in the considered opinion of this Court, the Tribunal was justified in not awarding entire amount of compensation as claimed by the claimant. It is settled that any report or bills, particularly, the bills towards the vehicle repairing can be considered as evidence only when the author of the document is produced as witness to prove these documents/ bills.

9. In the case at hand, the appellant except his own oral statement and evidence of driver of offending truck has not examined any other witness to prove the vehicle examination report and the bills of repairing of the vehicle (tractor trolley). In absence of any admissible piece of evidence brought on record by the appellant to prove the extent of damage of the tractor trolley owned by him and cost of repairing, actual expenditure incurred, cannot be ascertained.
10. In absence of any clinching and admissible piece of evidence brought on record by the appellant, in the considered opinion of this Court, learned Claims Tribunal has not erred in awarding compensation of Rs. 50,000/- in lump-sum by taking into consideration the overall facts available on

record. The award passed by the Claims Tribunal awarding Rs. 50,000/- towards compensation, in the aforementioned facts and circumstances of case, cannot be said to be erroneous

11. In view of the above, I do not find any illegality or infirmity in the award passed by the Claims Tribunal calling interference of this Court.
12. Appeal fails and it is hereby dismissed accordingly.

Sd/-
(Parth Prateem Sahu)
Judge