

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Appeal (C) No.499 of 2015

Shyamdas @ Bhura, S/o Rama Satanami, aged about 40 years, R/o Kumharpara, Jarhabhatha, Police Station Civil Line, Tahsil & District (Revenue and Civil) Bilaspur (C.G.)

(Applicant)
---- Appellant

Versus

1. Kaleshwar, S/o Bhulauram Sahu, R/o Village Navalpur, Police Station & Tahsil Nawagarh, District (Revenue & Civil) Durg (C.G.), (Driver)
2. Sanat Kumar Sahu, S/o Bhulauram Sahu, R/o Village Navalpur, Police Station & Tahsil Nawagarh, District (Revenue & Civil) Durg (C.G.), (Owner)
3. IFFCO TOKYO GENERAL INSURANCE COMPANY LIMITED, Through Branch Manager, Branch Office Lalganga Shopping Complex, G.I. Road, Pandari, Raipur, Tahsil & District (Revenue and Civil) Raipur (C.G.), Insurer

(Non-applicants)
---- Respondents

For Appellant: Mr. Anand Kesharwani, Advocate.
Respondents No.1 & 2: None present, though served.
For Respondent No.3: Mr. Tessy Abraham, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/11/2021

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act, 1988 calling in question legality, validity and correctness of the award passed by the Claims Tribunal by which the learned Claims Tribunal has rejected the application under Section 166 of the Motor Vehicles Act, 1988, finding that the claimant has failed to prove that the injury was caused by the rash and negligent act of the vehicle owned by respondent No.2, insured by respondent No.3 and driven by respondent No.1.

2. Mr. Anand Kesharwani, learned counsel appearing for the appellant / claimant, would submit that admittedly, the accident occurred on 1-4-2010, but in the discharge ticket, it has been written as 30-3-2010 and on that ground, the learned Claims Tribunal has rejected the application holding that there is material discrepancy on the evidence of the appellant and the witnesses and also in the documents filed by the appellant / claimant and therefore the accident caused by rash and negligent act has not been proved by the claimant and as such, the award impugned is liable to be set aside.
3. None present on behalf of driver and owner of the vehicle, respondents No.1 and 2, respectively, though served.
4. Mr. Tessy Abraham, learned counsel appearing on behalf of respondent No.3 Insurance Company, would oppose the appeal and support the impugned award.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. It is established position on record that the accident occurred by the vehicle owned by respondent No.2, driven by respondent No.1 and insured by respondent No.3, on 1-4-2010, which has been duly recorded in the FIR, but in the discharge ticket of the claimant, it has been mentioned as 30-3-2010 to which serious view has been taken by the learned Claims Tribunal holding that it is material contradiction in the statements of witnesses and the documents and thereafter, the learned Claims Tribunal proceeded to hold that the claimant has failed to prove that the injury was caused by the rash and negligent act of respondent No.1 and did not discuss anything further.

7. True it is that there is some difference in respect of the date of accident, in the FIR it has been mentioned as 1-4-2010 and in the discharge ticket it has been mentioned as 30-3-2010, but it would hardly make any difference, as the FIR was lodged at the first point of time and thereafter, some mistake has crept in while recording the admission slip in which date of admission is written as 30-3-2010, but that will not completely demolish the case of the claimant, particularly when the evidence has been brought that the accident occurred on 1-4-2010 in which he suffered injury. The learned Claims Tribunal could have taken some pain to point out correct facts before dismissing the claim and could not have dismissed the application merely on the ground that there is some discrepancy in the oral and documentary evidence of the claimant. Accordingly, the impugned award is hereby set aside and the matter is remitted to the Claims Tribunal, Bilaspur for hearing and disposal in accordance with law. It be done within three months from the date of receipt of a copy of this order, as the accident occurred on 1-4-2010. Record be sent back forthwith.
8. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge