

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 279 of 2015

Sarju Ram S/o Shri Tilak Ram Soni Aged About 43 Years R/o Risaipara, Dhamtari, Thana and Tahsil Dhamtari, Civil and Revenue Distt. Dhamtari Chhattisgarh.

----Applicant/Appellant

Versus

1. Ashok @ Samrat S/o Shri Narayan Rao Aged About 56 Years R/o Behind Mata Garage, Pandari, Thana-Civil Lines, Civil and Revenue Distt. Raipur Chhattisgarh.
2. Branch Manager, The Oriental Insurance Company Limited, Balak Chowk Dhamtari, Civil and Revenue Distt. Dhamtari Chhattisgarh.

--- Non-applicant Nos.1 & 2/Respondents

For Appellant	: Mr. Sunil Sahu, Advocate.
For Respondent No.1	: Mr. Kshitiz Sharma, Advocate.
For Respondent No.2	: Mr. Sudhir Agrawal, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

01/09/2021

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned Chief Motor Accident Claim Tribunal, Dhamtari, District -Dhamtari, (CG) (for short 'Tribunal') vide award dated 02.02.2015 in Claim Case No.81/2009, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part and awarded total compensation of Rs.23,327/- in injury case.
2. Respondent No.1/owner of Jeep bearing registration No.CG/19/T/0011 (for short, 'offending vehicle') also preferred cross-objection under Section 41 Rule 22 of CPC, challenging liability fastened upon him of making payment of entire amount of compensation awarded.
3. Facts relevant for disposal of this appeal are that on 10.4.2009 he was going on foot to Gol Bazar market for purchasing articles for his house, when he reached near shop of one BM Nahar, offending vehicle driven

rashly and negligently by non-applicant No.1, dashed him and caused accident. In said accident, he suffered grievous injuries over his person. He was taken to Hospital where he took treatment from 10.04.2009 to 20.04.2009. Even after treatment injuries suffered by him could not be cured properly.

4. Appellant/claimant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.11,00,000/- pleading therein that on the date of accident, he was working as 'driver' and earning Rs.4,000/- per month. In aforementioned accident, he suffered 40-45% permanent disability due to which he is unable to do work of driving.
5. Non-applicant No.1/respondent No.1 (owner of offending vehicle), submitted reply to claim application denying facts pleaded therein. It was further pleaded that appellant/claimant himself was driver of offending vehicle. On the date of accident, he himself was driving vehicle. Offending vehicle owned by respondent No.1 and driven by claimant was engaged in transportation of bread from Raipur to Dhamtari and also for carrying passengers. At the time of accident, even after stopping by other persons, claimant himself climbed over roof of offending vehicle for unloading bread crates. As he was under influence of liquor, he could not balance himself and fell down from roof of offending vehicle. Report was lodged with a delay of about five days. Allegations levelled are afterthought. It was also pleaded that after remand of case by the High Court, claimant made amendment in his claim application to the effect that offending vehicle dashed him as a result he collided with hood/roof of offending vehicle and thereafter fell on bonnet of offending vehicle which resulted into serious injuries to him.

6. Non-applicant No.2/Respondent No.2 (Insurance Company) also submitted its reply to claim application and resisted claim. It was pleaded that report was lodged on false facts. Claimant himself was driver of offending vehicle, at the time of unloading goods from roof of offending vehicle, due to his own negligence claimant fell down and suffered injuries. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving license. There was no valid permit to run vehicle as taxi. As there was breach of policy condition, Insurance company is not liable to indemnify the insured.
7. Upon appreciation of amended pleadings, additional evidence brought on record by respective parties, Tribunal held that claimant suffered injuries in accident, permanent disability, as claimed by appellant, was not found to be proved but for grievous injuries. Breach of Policy condition was found to be proved. Tribunal after computing amount of compensation awarded Rs.23,3270/- alongwith interest @ 6% per annum and fastened liability upon non-applicant No.1-owner of offending vehicle to make payment of entire amount of compensation.
8. Learned counsel for appellant/claimant submits that Tribunal erred in awarding meager amount of compensation ignoring the fact that after accident claimant took treatment as in-patient in Christian Hospital, Dhamtari from 10.04.2009 to 20.04.2009. Tribunal has not taken into consideration disability certificate (Ex.P-32) issued by Dr. Amit Agrawal (M.S Ortho) certifying that claimant suffered 49% permanent disability as also injuries mentioned in MLC report Ex.P-4. Certificate issued by Dr. Amit Agrawal is admissible under Rule 220 of the CG Motor Vehicle Rules 1994. He further submits that Tribunal overlooking nature of injuries, period of treatment and disability certificate, awarded compensation which claimant

expended on his treatment and Rs.3,000/- towards pain and suffering. It is also argued that Insurance Company/respondent No.2 was erroneously exonerated. Fact that non-applicant No.1 (owner & driver of offending vehicle) was possessed with valid and effective driving licence to drive motorcycle and Light Motor Vehicle on the date of accident was proved, but Tribunal erroneously came to conclusion that there is no endorsement in licence of non-applicant No.1 to drive transport vehicle. He further submits that when vehicle, which non-applicant No.1 was driving falls within category of 'Light Motor Vehicles' based on its gross vehicle weight to be less than 7500 kg, then person holding license to drive 'light motor vehicle' is authorized to drive said vehicle even if it is used as commercial vehicle.

9. Learned counsel for respondent No.1/cross objector opposes submissions of learned counsel for appellant/claimant and submits that claim application filed earlier by claimant was decided on 01.07.2010, Tribunal considering pleadings and evidence brought on record by respective parties came to conclusion that application for grant of compensation under Section 166 of the Act of 1988 is not maintainable. Aforementioned award was challenged by claimant before High Court in MAC No.807/2010. Appeal preferred by claimant was allowed and case was remitted back. He further pointed out that High Court gave liberty to amend pleadings and lead additional evidence (documentary and oral) if any and also to file suitable application for conversion of application to an application filed under Section 163(A) of the Act. Claimant filed an application for amendment and incorporated amendment, added that in the accident claimant (injured) bounced from road, hit at the top of offending vehicle, fell down on bonnet and thereafter on ground and thereby suffered injuries. He further submits that after suffering injuries claimant was taken to Christian Hospital Dhamtari where

he was examined by Dr. Amit Agrawal (Ortho Surgeon), who issued injuries report (Ex.P-4) mentioning that “alleged history of fall from top of offending vehicle around 07:00 p.m.”. Manner in which claimant suffered injuries is mentioned in Ex.P-4 by Dr. Amit Agrawal to whom claimant narrated incident was immediate. Hence, document Ex.P-4 cannot be overlooked. More-so when Dr. Amit Agrawal, who issued injury report (Ex.P-4), himself appeared as witness before Tribunal. Dr. Amit Agrawal was examined as AW-2, in Para No.2 of his deposition sheet it is mentioned that cause of suffering of injury as mentioned in Ex.P-32 is based on information given by claimant/injured. Referring to evidence of one Kamal Multani, in whose shop claimant was unloading bread crates, it is submitted this witness in his evidence has specifically stated that when he came alongwith offending vehicle loaded with breads, claimant could not able to stand properly. Therefore, the witness stated that he will engage some other persons for unloading crates of breads, but even thereafter, claimant climbed on roof/carrier of offending vehicle and fell down. NAW 1 – 2/Owner-cum-driver of offending vehicle also stated the fact that claimant himself was engaged as driver till 10.04.2009. However, the Tribunal overlooking evidence available on record has erroneously considered wrong story narrated in claim application of metting with an accident due to rash and negligent driving of offending vehicle by non-applicant No.1.

He further submits that report of accident dated 10.4.2009 was lodged on 15.4.2009 by brother of claimant mentioning name of Parvej Ashraf and Narendra Kumar Soni as eyewitnesses, but they have not been examined as witnesses even after remand of case. Division Bench of this Court also while passing an order of remand has very specifically mentioned name of two persons to be eye-witnesses. Failure on the part of

claimant to examine afore named persons before Tribunal even after remand of case granting opportunity to claimant to prove his claim, is sufficient to arrive at a conclusion that claimant failed to prove the case as pleaded by him.

10. Learned counsel for respondent No.2-Insurance Company submits that information given by claimant immediately after accident to Dr. Amit Agrawal is to be taken into consideration for appreciating pleadings based on FIR lodged after five days of accident. Adopting submissions of learned counsel for respondent No.1, he submits that Dr. Amit Agrawal before whom manner of accident was disclosed, was also examined before Tribunal. Hence, Tribunal ought to have considered documentary and oral evidence brought on record, which is of the doctor and hospital, and ought to have dismissed claim application. Respondent No.1 (owner of offending vehicle) failed to produce permit of offending vehicle for plying it as commercial vehicle. Hence, exoneration of respondent No.2/Insurance Company from its liability does not call for any interference.
11. Heard learned counsel for parties and also perused record of claim case.
12. Award under challenge is passed by Tribunal afresh after remand of case. Copy of order dated 20.09.2011 passed in MAC No.807/2010 would show that there is mention of two persons as eye-witnesses of incident ie Parvej Ashraf and Narendra Kumar Soni, but they have not been produced by claimant before Tribunal. In order of remand, High Court while setting aside impugned award therein directed the Tribunal for deciding claim case afresh after giving opportunity to the parties to adduce further evidence, amend pleadings and to file or verify additional documents. Considering facts of case and submissions made by counsel for parties therein, the High Court also observed that it will be open for appellant/ claimant to move

suitable application for conversion of his application into an application filed under Section 163(A) of the Act of 1988.

13. After remand, claimant made amendment in Para No.3 of application to the effect that the offending vehicle dashed him as a result he bounced-up, dashed with top of offending vehicle, fell down on bonnet and thereafter on ground/earth. This is only amendment made by claimant. Claimant himself gave additional oral evidence before Tribunal. Even after remand, claimant did not examine two eye-witnesses ie Parvej Ashraf and Narendra Kumar Soni as mentioned in FIR. When before the High Court in earlier appeal a ground is taken that there are two witnesses to accident, the High Court considering the fact, that the Act is a beneficial piece of legislation, while remanding case also noted names of eye-witnesses, then it was for the claimant to examine them as witness or could have filed appropriate application for issuance of summons or calling them as witness through Tribunal but that was not done. Claimant himself filed injury report as (Ex.P-4) wherein it is mentioned that alleged history falls from top of offending vehicle around 07:00 pm. Dr. Amit Agrawal examined as AW-2 by claimant to prove document Ex.P-4, who in categorical terms stated that manner in which claimant suffered injury mentioned in Ex.P-4 is based on information given by claimant. There is no reason to dis-believe documentary evidence placed on record by claimant himself as Ex.P-4 and oral evidence of AW-2 Dr. Amit Agrawal, who treated claimant and was examined by claimant as his witness. Learned counsel for appellant/claimant also could not able to point out any ground to disbelieve the documentary evidence as well as oral evidence as mentioned above.
14. Apart from above, respondent No.1-owner of offending vehicle examined KamaL Multani as (NA-1-1) to whose shop claimant being driver of

offending vehicle brought crates of breads from Raipur to Dhamtari. He is not owner of offending vehicle. In his evidence, he specifically stated that on the date of accident, when he brought crates of breads loaded on vehicle, claimant was under influence of liquor and could not able to stand properly but even after stopping him he climbed roof of offending vehicle, got unbalanced, fell down from roof top of vehicle. Claimant pleaded wrong facts that he was not engaged as driver of offending vehicle but was walking on road and offending vehicle driven by respondent No.1 dashed him.

15. After remand of case by High Court, Tribunal considering pleadings and evidence brought on record by claimant as well as non-applicant No.1 decided claim case, but failed to consider that even after observation of High Court that eye witnesses were not examined to prove case, claimant did not examine those two witnesses ie Parvej Ashraf & Narendra Kumar Soni. In light of nature of injuries, as mentioned in injury report (Ex.P/4), amendment made by claimant is also highly improbable. By way of amendment, claimant pleaded that offending vehicle while running in high speed dashed him due to which he bounced to the extent of 8-9 feet dashed with roof of offending vehicle and fell over bonnet and thereafter on earth/ground. But injury report does not mention corresponding injuries in view of manner of accident as pleaded in application by way of amendment.
16. True it is that the Motor Vehicle Act is beneficial piece of legislation and enacted with an object to grant just compensation to victim of a motor accident, but at the same time it is also to be kept in mind that no person be permitted to file false claim and therefore proper evaluation of pleadings and evidence is required.

17. Upon considering entirety of facts and circumstances of the case, evidence available on record as also pleadings, this court is of the considered view that Tribunal has not considered documentary and oral evidence brought on record in its entirety, and has arrived at a wrong conclusion that accident was due to rash and negligent driving of offending vehicle by non-applicant No.1. In Para 10 of impugned order, Tribunal taking note of judgment passed by Division Bench of Madhya Pradesh High Court on 21.07.2005 in case of **Daulatram vs. Akhlesh Kumar** reported in **2006 (3) MPWN 39**, wherein eye-witnesses were examined and the Police registered crime against driver. In case at hand, claimant failed to examine any of the two eye witnesses before Tribunal even after remand of case and getting another opportunity and therefore merely because some crime is registered on complaint/FIR registered after five days of accident will not in itself be sufficient to hold that pleadings made in application by claimant are correct pleadings overlooking other evidence.
18. For the forgoing discussions, cross–appeal filed by respondent No.1 is allowed and impugned award passed by Tribunal is set aside. Consequently, appeal filed by claimant seeking enhancement of amount of compensation is dismissed.
19. If any amount is deposited by respondent No.1 (owner of offending vehicle) before Tribunal and is disbursed to claimant then amount so disbursed shall not be recovered from him, However, if amount deposited by respondent No.1 is still lying with Tribunal then the same shall be returned to respondent No.1.

Sd/-
(Parth Prateem Sahu)
 Judge

Jamal/-