

(C.G.)

MISC. APPEAL (C) NO. 129 OF 2012

Division Bench

APPELLANT :

Claimant

Dheeraj Shukla, S/o R.B. Shukla,
aged about 22 years, R/o Village
Ganeshpur, Post Vishrampur,
Tahsil and Police Station Simga,
District Raipur (C.G.)

T.R. No. 129/12
Presented by Shri. P. S. Khatu
dated 25/4/12

VERSUS

RESPONDENTS :

Non-applicants

1. Vimesh Kumar Lal, S/o Victor Lal,
aged about 32 years, R/o Village
Ganeshpur, Post Vishrampur,
District Raipur (C.G.)
(Driver of offending vehicle
Motorcycle Bajaj Pulsar no. CG-04
CU 0950)
2. Raju Ratre, S/o Shri Ramcharan
Ratre, aged about not known, R/o
Village and Post Limtara, Police
Station and Tahsil Simga, District
Raipur (C.G.)
(Registered owner of offending
vehicle Motorcycle Bajaj Pulsar no.
CG-04 CU 0950)
3. Reliance General Insurance
Company Limited, Anil Dhiru Bhai
Ambani Group,
Through: Officer-in-Charge,
Reliance General Insurance
Company Limited, Shop No. 412-
413, 4th Floor, Ravi Bhawan,
Jaystambh Chowk, Raipur (C.G.)
(Insurer of offending vehicle
Motorcycle Bajaj Pulsar no. CG-04
CU 0950)

Claimed before Tribunal : Rs. 7,00,000/-
Amount awarded by the learned Tribunal : Nil
Claimed in this memo of appeal : Rs. 7,00,000/-
Court fee affixed : Rs. 15/-

MISCELLANEOUS APPEAL UNDER SECTION 173 OF THE MOTOR
VEHICLE ACT, 1988

HIGH COURT OF CHHATTISGARH, BILASPUR

DB: HON'BLE Dr. I.M. QUDDUSI &
HON'BLE MR. G. MINHAJUDDIN. JJ
M.A [C] No. 129 of 2012

APPELLANT
CLAIMANT

Dheeraj Shukla

Vs.

RESPONDENTS
NON-APPLICANTS

Vimesh Kumar Lal and others

Present Mr. Ashok Soni, counsel for the appellant.
Mr. Sourabh Sharma, counsel for respondent No.3.

ORDER (ORAL)
(30.04.2012)

Per Dr. I.M. QUDDUSI, J

This appeal has been filed against the impugned award dated 22.11.2011 passed by learned Additional Motor Accident Claims Tribunal, Bhatapara, Distt. Raipur (CG) (for short "the Claims Tribunal") in Claim Case No.27/2009.

2. Brief facts of the case are that on 05.01.2008, the appellant/claimant and the respondent No.1 herein were going towards Nandghat from Simga on the motor cycle 'Bajaj Pulsar' bearing registration No.CG-04-CU/0950. Due to rash and negligent driving of respondent No.1 herein, the said vehicle dashed another motor cycle bearing registration No.CG-07-LD/1657 belonging to one Majid, as a result of which, the appellant/claimant herein got grievously injured. The appellant/claimant herein, who suffered permanent disability, was initially admitted in Govt. hospital, Simga from where he was shifted to Ramkrishna Hospital and undergone treatment for about six months. The appellant/claimant filed claim petition u/s 166 of the

Motor Vehicles Act, 1988 for the award of compensation to the tune of Rs.7,00,000/- under various heads.

3. The Claims Tribunal after hearing the parties in the matter and considering the material available on record, dismissed the claim petition of the appellant/claimant herein on the ground of non-joinder of parties.
4. We have heard learned counsel for the parties, perused the record of Claims Tribunal as well as the impugned award.
5. Learned counsel for the appellant/claimant has submitted that the claim petition has been dismissed on the ground that it was bad for non-joinder of the parties i.e. the driver, owner and insurer of the motor cycle belonging to Majid which has collided with the motor cycle 'Bajaj Pulsar' in which the appellant /claimant herein was travelling. The other ground was that the claimant himself was driving the motorcycle.
6. The Claims Tribunal has not considered the fact that the driver of the motor cycle 'Bajaj Pulsar' in which the appellant/claimant was traveling, had admitted his guilt before the Judicial Magistrate, First Class, Simga in whose Court, the charge sheet was filed against him after concluding the investigation by the Police that he was driving the vehicle and committed the accident. It may be noticed that the driver of the offending vehicle namely Vimesh Kumar Lal is the respondent No.1 in the instant

appeal who was also non-applicant No.1 in the claim petition.

7. With regard to the non-joinder of the driver, owner and insurer of the other motor cycle which met with accident with 'Bajaj Pulsar' in which the injured was traveling, it is a well settled that a claim petition cannot be dismissed for non-joinder of the parties as it should have been treated as a civil suit. The claimant should not be denied just compensation for technical ground. However, if the Claims Tribunal felt that there was necessity of impleadment of party, it could have directed the claimant to implead necessary parties instead of dismissing the claim petition on that ground. In the matter of Rajkumar Vs. Ajay Kumar & another reported in 2010 (12) SCALE wherein in Para-11 the Hon'ble Apex Court has held as under:-

"11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple

non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage."

8. In the instant case, even if it is assumed that it was negligence on the part of the driver of 'Bajaj Pulsar' as well as the driver of the other motor cycle which has collided with 'Bajaj Pulsar', the pillion rider could allege the case of composite negligence and in that case, the other offending vehicle was not a necessary party. This point has been dealt with in the matter of T.O. Anthony vs. Karvarnan and others reported in (2008) 3 Supreme Court Cases 748 in paragraph-6, which is as under:-

"6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand

reduced in proportion to his contributory negligence."

9. It also appears that the Claims Tribunal has not considered the fact that the charge sheet was filed against Vimesh Kumar Lal, the respondent No.1 herein, who admitted his guilt before the Judicial Magistrate, First Class, Simga. The Claims Tribunal dismissed the claim petition *inter alia* on the ground that in the F.I.R, lodged by some other person, the appellant/claimant was alleged to be the driver of the offending vehicle but the Tribunal neither heeded towards the investigation or charge sheet nor the admission of guilt of the driver of 'Bajaj Pulsar'.
10. Therefore, in view of above, we are of the opinion that the matter requires reconsideration at the end of the Claims Tribunal and accordingly, we allow the appeal in part, set aside the impugned award and the findings given therein and remit the matter back to the Claims Tribunal for deciding the same afresh in the light of the observation made above.
11. Needless to mention that the parties shall be allowed to amend the pleadings, adduce further evidence, file documents or get the documents verified etc., and thereafter the decision shall be taken afresh. The parties shall appear before the Claims Tribunal on 20th of June, 2012. The records of the Tribunal shall be sent back forthwith. No order as to costs.

Sd/-
I.M.Quddusi
Judge

Sd/-
G. Minhajuddin
Judge