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**(2018) 02 CHH CK 0242**

**In the Chhattisgarh High Court**

**Case No : Miscellaneous Appeal (C) No. 628 Of 2012**

Nawal Sahu

APPELLANT

Vs

Arjun Sahu And Ors

RESPONDENT

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**Date of Decision : 13-02-2018**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166, 173

**Citation : (2018) 02 CHH CK 0242**

**Hon'ble Judges : P. Sam Koshy, J**

**Bench : Single Bench**

**Advocate : Siddharth Rathod, Gagan Tiwari, Malay Shrivastava**

**Final Decision : Allowed/Disposed Of**

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## **Judgement**

P. Sam Koshy, J

1. Present is an appeal filed by the driver under Section 173 of the Motor Vehicles Act assailing the award dated 27/02/2012 passed by the learned

Motor Accident Claims Tribunal, Kabirdham, District Kawardha (C.G.) in Motor Accident Claim Case No. 16/2010.

2. Vide the impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.60,000/-

with interest @ 9% per annum from the date of application.

3. While passing the impugned award, the Tribunal has fastened the liability of payment of compensation jointly and severally upon the appellant/the

alleged driver of the offending vehicle and on the respondent No.2/the registered owner of the vehicle.

4. The counsel for the appellant submits that, the claim application of the claimant himself was not maintainable for the reason that, it was he who was

driving the Motorcycle at the time of accident and it was he who was responsible for the accident and the present appellant has been falsely implicated in the instant case. He further submits that, all the evidences which have come on record would establish the fact that, it was the claimant who was driving the Motorcycle on the date of accident and the present appellant was infact a pillion rider. He further submits that, there is a huge inordinate and unexplained delay on part of the claimant in lodging of the F.I.R. which also shows that, the F.I.R. has been lodged as an after thought for the purpose of filing of the claim application and thus prayed for setting aside of the award and to further hold that the claimant would not be entitled for any compensation.

5. Perusal of record would show that, the claimant himself had examined AW/3 - Dr.Suryakant Bharti who had in a very specific term both in the cross-examination and in examination in chief has deposed before the Tribunal that, the claimant sustained injuries on account of fall from the Motorcycle. This aspect disproves the contention of the claimant in the claim application wherein he has said that he was travelling on the road by foot when he was hit by a Motorcycle driven by the present appellant. Thus, there is clear contradiction between the stand of the claimant in the claim application and the statement made to the doctor before whom he had gone for treatment. Likewise the present appellant also had deposed before the Tribunal that, it was the claimant who was driving the Motorcycle and the present appellant was infact a pillion rider.

6. This deposition of the present appellant has not been rebutted in any manner by the claimant by way of any effective cross-examination on this aspect and the statement of the present appellant thus stands affirmed.

7. Likewise, the registered owner of the vehicle - Ashok Kumar i.e. the respondent No.2 has also deposed that, it was the claimant who had taken the vehicle from him and that after taking the vehicle, he along with the present appellant sitting as a pillion rider had met with an accident. The registered owner was also not sufficiently cross-examined on this aspect so as to establish that the claimant was not driving the Motorcycle. On the contrary, in the cross-examination on a question made by the claimant, the owner has specifically denied the fact and accepted that, it was the claimant who was driving the Motorcycle which further disproves the stand of the claimant that he

was hit by the vehicle driven by the present appellant.

8. In addition to the aforesaid evidences which have come on record what also cannot be brushed aside is that, the date of accident in the instant case

was 13/05/2008 and that no F.I.R. was lodged immediately. Further, after more than a year, the F.I.R. for the first time was lodged on 28/06/2009.

This inordinate and unexplained delay in lodging of the F.I.R. also creates a great element of doubt as to whether the accident occurred when the

claimant who was going on foot on the road was hit by the Motorcycle driven by the present appellant ?

9. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that, the claim application filed by the claimant has not been

sufficiently proved before the Tribunal and the findings arrived at by the Tribunal is contrary to the evidences which have come on record and the

same is therefore is not sustainable and deserves to be and is accordingly set aside. It is held that there is sufficient evidences available on record to

show that, the accident occurred when the claimant himself was driving the Motorcycle fell on the road on account of the vehicle getting disbalanced.

10. Under the circumstances, the claimant would not be entitled for any compensation.

11. The appeal of the driver thus stands allowed and disposed off.