

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE HIRDESH**

**ON THE 12TH OF JANUARY, 2024**

**MISC. APPEAL No. 1096 of 2023**

**BETWEEN:-**

**1. VIJAY KUMAR SHARMA S/O  
RAMGOPAL SHARMA AGE – 30 YEARS  
R/O SUBHASH NAGAR MAHOBA  
POLICE STATION – KOTWALI  
MAHOBA DISTT. MAHOBA U.P.**

**.....APPELLANT**

***(BY SHRI SIDDHARTH GULATEE - ADVOCATE)***

**AND**

**1. PRADEEP KUMAR S/O BALAPRASAD  
CHOURASIYA, AGED ABOUT 34 YEARS  
R/O MADANPURA MOHALLA, WARD NO.  
3 MAHARAJPUR, P.S. AND TEHSIL  
MAHARAJPUR, DISTT. CHHATARPUR  
M.P.**

**2. MUKUND SINGH S/O JAHIR SINGH  
YADAV AGE 23 YEARS R/O HARDWAR,  
WARD NO. 12, LAVKUSH NAGAR, P.S.  
LAVKUSH NAGAR DISTT. CHHATARPUR  
M.P.**

**.....RESPONDENTS**

***(SHRI VIJAY KUMAR PANDEY - ADVOCATE)***

**RESERVED ON : 07.12.2023**

**PRONOUNCED ON : 12.01.2024**

*This appeal having been heard and reserved for order, coming on for pronouncement this day, this court passed the following:*

**ORDER**

1. This appeal has been filed by owner of the offending vehicle/appellant under Section 173(1) of Motor Vehicles Act being aggrieved by the award dated 21.12.2022 passed by 6<sup>th</sup> MACT, Chhatarpur in MACC No.199/2021 whereby the Tribunal awarded a total sum of compensation of Rs. 2,90,244/- with interest of 6 percent per annum from the date of filing of the petition till realization to the claimant by way of compensation on account of injury to Pradeep Kumar in the motor Accident which allegedly took place on 28.09.2020.

2. Brief facts of the case are that on 28.09.2020, the claimant came to his house Maharajpur from Chhatarpur on motorcycle. One Sachin was sitting on the motorcycle at 04:15 pm when he reached in front of house of Rajesh Maheto, Gadi Malhara, he stopped his motorcycle. Then from the Gade Malhara side respondent No. 1, driving the offending vehicle JCB, bearing registration No. MP-16 DA0415 in rash and negligent manner dashed the claimant due to which claimant received injury on his body. He was taken to

District Hospital Chhatarpur for treatment and Dr. Mukesh Prajapati informed Police Choki Campus Chhattarpur.

3. In the accident claimant received fracture in femur bone on the left hand and treated for long time. So he filed claim petition before the Tribunal for seeking compensation.

4. Appellant filed the written statement and denied all allegations and submitted that appellant's vehicle has not caused any accident on date 28.09.2020. Respondent was riding his motorcycle in rashly and negligently and due to his negligence collided with the standing JCB of the appellant and that there is 100 percent negligence on the part of the claimant and there is no fault of the appellant and pray for dismissal of the claim petition.

5. Tribunal framed the issues and taking evidence of both the parties and accepted the claim petition and awarded Rs.2,90,244/- with 6 percent interest to the claimant.

6. Being aggrieved with such award, owner of the vehicle/appellant filed this appeal that the appellant's vehicle has not caused any accident. Respondent was riding the motorcycle rashly and negligently and due to his negligence vehicle collided with the standing JCB of the appellant and there is 100 percent negligence on the part of the claimant. There is no fault on the part of the appellant and his vehicle, so he is not liable. On other hand he

also submitted that Tribunal awarded higher side of the compensation and alternatively reduced the compensation.

7. Per-contra leaned counsel, appearing on behalf of the respondent/claimant contended that Tribunal has awarded just and proper compensation and pray for rejection of the appeal.

8. Heard the arguments advanced by the learned counsel for the parties and perused the record of the claims Tribunal.

9. Learned counsel for the appellant submitted that there is no accident caused by the offending vehicle. Offending vehicle was implanted in the case. He submitted that according to the intimation sent by the District Hospital, Chhatarpur to Police Chowk, Chhatarpur there is no registration number of the vehicle and FIR was lodged after 20 days of the incident. So the FIR is delayed.

10. Considering the arguments and perusing the record, Ex. P. 3, intimation by the hospital sent to Police Chowki Hospital Campus Chhatarpur by the doctor in which it was mentioned that deceased was brought for treatment in hospital. He received injuries in road accident.

11. According to FIR Ex. P-2, police received this intimation and thereafter inquired the matter and found that a JCB of yellow colour without

number dashed the motorcycle of the claimant by which the claimant received injury.

12. Thereafter, police inquired the matter and after investigation filed the charge sheet of the offending vehicle which was driven by Mukund Singh respondent No. 2.

13. It is settled principle that if police registers the case against the offending vehicle after investigation, files a charge sheet before Magistrate Court then Tribunal presume guilty of the driver of the offending vehicle.

14. Driver of the offending vehicle gave his evidence before the Tribunal and denied the accident, but he accepted in cross- examination that he is driver of offending vehicle and he has accepted that Police Thana Gadi Malhara registered a case against him and filed charge sheet against him and criminal case is pending before criminal Court. He also accepted that he did not produce any document in which he made complaint before the higher officer of police for lodging false case against him.

15. Learned counsel for the appellant also submitted that police did not seized the motorcycle of the claimant and there is no damage in motorcycle.

16. Considering this argument and perusing of record it was found that according to the plaint and statement of claimant, when offending vehicle

dashed the motorcycle, but in the case of accident, it is a duty of police to seize the vehicle but it is not the duty of claimant to get it seized to police.

17. Appellant filed this appeal and raising the ground that **“Appellant's vehicle has not caused any accident on 28.09.2020 and that the respondent was driving the motorcycle rashly and negligently and due to his negligence collided with the stationed JCB of the appellant. It means that there is 100 percent negligence on the part of the claimant and no fault of the appellant and his vehicle was stationed on road side.”**

18. It means appellant impliedly accepted that accident occurred between motorcycle of the claimant and offending vehicle JCB. But he raise the point that claimant is driving rashly and negligently and dashed the JCB, which was stationed on the road side. So burden of proof shifted to the appellant to prove this fact that claimant dashed his motorcycle on stationed JCB, but he had not produced single evidence on this point and not cross-examined to claimant on this point before Tribunal.

19. So as per aforesaid discussion, this is considered view of this Court that Tribunal has rightly held that driver of the offending vehicle was driving rashly and negligently and hit the claimant and appellant failed to prove their defence before Tribunal. So argument of appellant that his vehicle was falsely planted in accident has no substance.

20. On the other hand, appellant argued that Tribunal has awarded compensation in higher side, but perusal of the record of the Tribunal and considering the injury of the claimant and treatment, this Court has no hesitation to say that Tribunal had granted just and proper compensation to the claimant.

21. So as per aforesaid discussion, this appeal has no substance, The appeal is accordingly dismissed.

**(HIRDESH)**  
**JUDGE**

VKV/-