

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 571 of 2008

1. Vinod Sarkar S/o Haripad, aged about 43 years, resident of village CEO Colony, Tahsil Farsagaon, District Bastar, CG

---- Appellant/Applicant

Versus

1. Rikhab Chand Jain S/o Vaktavarmal Jain, aged about 43 years, resident of Main Road Kondagaon, District Bastar, CG **(Driver)**
2. Sandhya Sakhlecha W/o "not known" aged about 27 years, resident of Vikas Nagar, Kondagaon, District Bastar (CG) **(Owner)**
3. The Oriental Insurance Company Ltd. Branch Office, Main Road Sadar Bazar, Jagdalpur, District Bastar (CG)

---- Respondents

For Appellant.	-	Shri R.N. Jha, Advocate.
For Respondents 1 & 2	-	None appeared
For Respondent No.3	-	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice Pritinker Diwaker

CAV order

21/07/2016

This appeal arises out of the award dated 10.1.2008 passed by Additional Motor Accident Claims Tribunal (FTC) (for short the "Tribunal") Kondagaon in Claim Case No. 46/2007 awarding a compensation of Rs. 10,000/- in favour of claimant.

2. Facts of the case in brief are that on 25.11.2005 at about 7.30 PM when the appellant/claimant was returning from Badedongar, at village Farasgaon the offending vehicle i.e. Jeep bearing registration No. CG-17/

1025 (old No. MP-25/@-146 owned by Sandhya Sakhlecha (Respondent No.2 herein), insured by the Oriental Insurance Company (Respondent No.3 herein) and driven by one Rikhab Chand Jain (Respondent No.1 herein) in a rash and negligent manner, hit him on account of which he suffered fracture of his left leg and injuries near the periphery of his right eye. After the accident, the appellant/claimant was taken to Government Hospital, Farasgaon from where he was referred to Ram Krishna Hospital, Raipur and remained hospitalized for about 15 days and a rod was inserted in his leg.

3. A claim case was filed by the injured claiming compensation of Rs. 2,22,000/- under various heads *inter alia* pleading that immediately after the accident he was shifted to Government Hospital, Farasgaon from where referred to Ram Krishna Hospital, Raipur and remained there for number of days. It is also pleaded that after the accident which occurred on 25.11.2005 the injured was required to visit the hospital for medical treatment on several occasions. It is pleaded that the injured was an Assistant Teacher and his monthly salary was Rs. 11,956/-. Claim petition further goes to show that during his hospitalization, the injured did not attend his office and his movement was restricted to crutches causing physical pain and mental agony.

4. The respondents contested the claim of the claimant by filing written statement stating that they are not liable to pay any compensation to the claimant. The appellant prayed for compensation before the Tribunal as under:

Medical expenses	:	Rs.	85,000/-
Pain and suffering	:	Rs.	1,00,000/-
Loss of amenities	:	Rs.	05,000/-
Travel expenses	:	Rs.	12,000/-
Future medical expenses	:	Rs.	20,000/-

Total	:	Rs.	2,22,000/-

5. The respondents have denied all the pleadings and submitted that though there are certain documents which go to show that there was some accident but it is not proved that the said accident occurred on account of rash and negligent driving of the vehicle owned by respondent No.2 namely Sandhya Sakhlecha and driven by respondent No.1 namely Rikhab Chand Jain and in these circumstances the injured is not entitled for any compensation.

6. After evaluating the evidence available on record, the Tribunal negated all the claims put forth by the claimant and awarded just Rs. 10,000/- for the injuries and resultant mental agony undergone by him.

7. Counsel for the appellant/claimant submits that the tribunal has erred in law in not appreciating the evidence adduced by the parties in proper perspective. He submits that from the evidence on record it is apparent that on the date of accident it is the driver of the offending vehicle namely Rikhab Chand Jain only who was driving the vehicle in question dashing the appellant/claimant who was riding the bicycle. That apart, in cross examination the driver of the offending vehicle has also admitted that a criminal case was registered against him which is pending in the Court of Judicial Magistrate, Kondagaon. According to him, it is also on record that after the accident the appellant/claimant remained hospitalized for about 15 days and even thereafter he was required to visit the hospital for the purpose of medical treatment but the Tribunal has not considered all these aspects of the matter and awarded a scanty sum of Rs. 10,000/- which requires to be suitably enhanced.

8. On the other hand, supporting the impugned award it has been argued by counsel for respondent/Insurance Company that a very just and reasonable compensation has been awarded to the claimant and there is no infirmity in the award impugned. He submits that driver of the offending

vehicle namely Rikhab Chand Jain has categorically admitted in his Court statement that the vehicle in question is in the name of respondent No.2 namely Sandhya Sakhelecha and that on the date of accident he was driving the same with utmost care and caution. He has stated at about 7.30 PM when he reached near Farasgaon, one person came on his bicycle from the opposite direction that too in the wrong side and collided with the offending vehicle. The driver is further said to have stated that it is the injured who was responsible for the accident as he was negligent while riding the bicycle, and there was no negligence on his part.

9. Heard counsel for the parties and perused the documents on record.

10. It is not in dispute that the accident occurred with the offending vehicle which was driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Since the Insurance Company has not been able to prove that on the date of accident the vehicle in question was being driven in contravention of the terms and conditions of the Insurance Policy, it cannot escape its liability to reasonably compensate the claimant.

11. As regards quantification of the claim amount, from the pleadings and evidence, oral as well as medical, it is evident that the claimant suffered fracture of left leg requiring insertion of rod for which he remained hospitalized for about 15 days and even thereafter he visited the hospital for further treatment and during this period he did not attend his office and underwent tremendous pain and suffering. Thus keeping all these things in mind this Court is of the opinion that it would be in the interest of justice to award compensation in the following manner:

Medical expenses	:	Rs.	50,000/-
Pain and suffering	:	Rs.	25,000/-
Special diet	:	Rs.	10,000/-

For attendant	:	Rs. 05,000/-
Loss of amenities	:	Rs. 05,000/-
Travel expenses	:	Rs. 10,000/-
Permanent disability	:	Rs. 25,000/-

Total	:	Rs. 1,30,000/-
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12. In the result, the appeal is allowed in part. The appellant is held entitled for a total compensation of Rs. 1,30,000/- and as the Tribunal has already awarded Rs. 10,000/- the enhanced sum for which the appellant would be entitled is Rs. 1,20,000/- This enhanced amount shall carry interest at the rate of 7.5% per annum from the date of application till realization. The impugned award thus stands modified as above.

Sd/-
(Pritinker Diwaker)
Judge

