

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1564 OF 2009

Ku. Dhaneshwari Sahu, S/o Vishnuram Sahu, aged about 18 years, R/o Village Aamdi, Tahsil and District Dhamtari (C.G.)

... Appellant

Versus

1. Arun Kumar @ Mohan Sinha, S/o Chovaram Sinha, aged about 27 years, R/o Village Bortara, Police Station Gurur, Tahsil Balod, District Durg (C.G.)

2. Birsingh, S/o Chaitram Nag, aged about 62 years, R/o Village Gurur, Tahsil Balod, District Durg (C.G.)

3. The Oriental Insurance Company Limited, behind Amar Talkies, Dhamtari, Tahsil and District Dhamtari (C.G.)

... Respondents

For Appellant	:	Mr. R.K. Pali, Advocate.
For Respondents	:	None present.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/09/2017

1. Since there was no representation on behalf of the respondents though they are duly served and have been represented through their respective lawyers on the previous dates of hearing, this Court considering the fact that the present appeal is of the year 2009, proceeds to decide the appeal on merits, in the absence of the respondents.

2. The present is a claimant's appeal under Section 173 of the Motor Vehicles Act, 1988, seeking for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Dhamtari, on 2.4.2009, in Claim Case No. 43/2008.

3. Vide the impugned award, the Tribunal, in a proceeding under Section 166/140 of the Motor Vehicles Act, has however quantified a compensation of Rs.72,000/- but on a finding of contributory negligence has held that the claimant shall be entitled for only 50% of the awarded compensation, i.e., Rs.36,000/-.

4. Contention of the learned counsel for the appellant-claimant is that the finding of the Tribunal in deducting 50% of the awarded amount on account of contributory negligence is bad in law, for the reason that the claimant was a pillion-rider and for which the deduction of contributory negligence cannot be made applicable. He further submits that the amount of compensation awarded towards pain and suffering is unreasonably low, for the reason that the claimant had to undergo great element of pain and suffering as there was grievous injuries all over her body, particularly on her jaw which had to be operated upon. It was also contended that she was not granted any compensation towards the engaging of an attendant as also for special and nutritious diet. He thus prayed for a suitable enhancement of the compensation awarded by the Tribunal.

5. Having heard the learned counsel for the appellant-claimant and on perusal of the record, some of the undisputed facts are that :

- (i) an accident to have occurred on 23.9.2007;
- (ii) the resultant injuries which have been sustained by the claimant;
- (iii) she had to be hospitalized for about a week's time;

Apart from the injuries on her body she had sustained grievous injuries on her jaw and had to undergo surgical intervention also is undisputed.

6. It is anybody's guess that a person who undergoes an operation of his jaw would undergo a tremendous amount of pain and suffering for a considerable period of time and such person would also find it difficult to eat food for a long duration and during this period of treatment he would have to remain on either liquid diet or semi liquid diet. In the given circumstances, the claimant must have spent a substantial amount for special and nutritious diet required for regaining her health. Likewise, during such period of time she must also have engaged an attendant to attend upon her.

7. In the given facts and circumstances, this Court is of the opinion that the law so far as the applicability of contributory negligence in case of a pillion-rider is by now well settled and that the said contributory negligence cannot be attributed in the case of a pillion-rider. The finding of the Tribunal so far as the claim of the appellant-claimant is concerned, the same therefore is set-aside/quashed and it is held that the claimant shall be entitled for the entire compensation quantified by the Tribunal.

8. So far as the claim for pain and suffering is concerned, considering the operation of the jaw as also the other injuries which the claimant had suffered and also keeping in view the Doctor's deposition, this Court is of the opinion that ends of justice would meet if a lump sum compensation of Rs.30,000/-, towards pain and suffering, special & and nutritious diet and for engaging of an attendant, is given to the appellant-claimant in addition to the compensation of Rs.72,000/- which was quantified by the Tribunal; the whole of which, the claimant shall be entitled for.

9. It is thus ordered that the appellant-claimant shall be entitled to receive a total amount of compensation of Rs.1,02,000/- instead of Rs.36,000/-, as was awarded by the Tribunal to the claimant, with interest thereon at the same rate as has been awarded by the Tribunal.

10. With the aforesaid observation, the appeal stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge