

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 767 of 2010

Laxmi Narayan S/o Kamal Narayan Sahu, aged about 28 years, R/o Rampendri, PS-Dhamdha, Distt. Durg (CG).

---- Appellant

Versus

1. Krishna Kumar Thakur S/o Khem Singh, aged about 39 years, R/o Rampendri, PS Dhamdha, Distt. Durg (CG).
2. Bhagirathi Sahu, S/o Rajai Sahu, aged about not mentioned, R/o Birjhapur, PS Dhamdha, Distt. Durg (CG).

---- Respondents

For Appellant	:	Shri Praveen Dhurandhar, Advocate.
For respondent No.1	:	Shri AL Singrul, Advocate on behalf of Shri Amiykant Tiwari, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy
Judgment On Board

27.10.2017.

1. The present is an appeal filed by the owner under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 19.04.2010 passed by the 12th Additional Motor Accident Claims Tribunal, Durg (for short, the Tribunal) in Claim Case No.04 of 2010. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act has awarded a compensation of Rs.78,653/- to the claimant along with interest @ 7.5 percent per annum from the date of application. The liability of payment of compensation has been fastened upon the appellant owner exonerating the insurance company of its liability.
2. It is a case where the claimant is said to have been working as a Chowkidar. On the date of incident i.e. on 05.12.2005 while he was riding bicycle was hit by a Truck bearing registration No.CG-07-ZC-3134 driven by respondent No.2 and owned by the present appellant.

The said vehicle at the time of accident was not insured. The liability of payment of compensation therefore was fastened upon the present appellant.

3. Learned counsel appearing for the appellant challenges the impugned award on the ground that accident itself is disputed to have occurred from the vehicle owned by the appellant. The claim case has been filed by the claimant falsely implicating the appellant. FIR in the instant case itself was also lodged after more than one months time from the date of accident. The claimant was on earlier occasion working as driver under the appellant and therefore, he has falsely implicated the appellant. It was also contended that the claimant at the time of accident was also on the drunken condition and as such an adverse inference be drawn against the injured claimant for contributory negligence as is evident from the MLC conducted, Ex. P/10 where the doctors have stated that smell of Alcohol was found when the injured was being examined.
4. Further, it was also contended that the amount awarded by the Tribunal is also on the higher side as the treating doctor was not examined. The doctor who has been examined was not a member of district medical board competent and qualified to issue disability certificate and that the doctor who has examined and issued certificate of disability has himself admitted before the Tribunal of having examined the injured after about 1 and ½ years from the date of accident. Thus, the evidence of doctor also is not worth accepting and prayed for setting aside of the award or the awarded amount atleast

be reduced suitably.

5. The claimant in the instant case i.e. respondent No.1 has also filed cross objection under Order 41 Rule 22 CPC seeking for enhancement of compensation awarded.
6. Considering the total facts and circumstances of the case it is revealed that the claim application of the claimant on an earlier occasion was rejected by the Trial court on 30.04.2008. The said order was subjected to challenge in an appeal before this court vide MAC No.1021/2008. The Division Bench of this court vide its order dated 01.12.2009 remitted the matter back for reconsidering the case of the claimant and thereafter to pass fresh award. It is only thereafter that the impugned award has now been passed holding offending vehicle to be involved in the accident which was driven by the respondent No.2 and an amount of Rs.78,653/- has been awarded in favour of the claimant.
7. So far as the involvement of the vehicle is concerned, since there is an evidence of the claimant which is supported by the FIR which has been lodged against the respondent No.2-driver, a strong inference is drawn in favour of the claimant. Further, so far as delay in lodging FIR is concerned, since the claimant had received grievous injuries on his leg and he had to be immediately hospitalized, the delay in lodging FIR stands duly explained.
8. As regards contributory negligence is concerned, there is no evidence which has been adduced by the appellant before the Tribunal with which it could be assumed that there was some element of negligence

shown on the part of the injured when he was moving on his bicycle. Only because the doctor has opined that during the course of examination smell of Alcohol was coming from the claimant by itself cannot be a strong ground to reach to the conclusion that the claimant was in a highly inebriated condition inasmuch as he was not able to ride a bicycle smoothly. Therefore, the said ground of the appellant stands negated.

9. So far as the doctor's evidence is concerned, true it is that the treating doctor has not been examined. Further, it reflects that the doctor who has been examined was not a member of the district medical board. Further, the doctor who has deposed before the Tribunal also was consulted after more than 1 and ½ years from the date of accident. But, undisputed when there was an accident and the claimant having received injuries to which he was subjected to medical treatment, the injuries sustained cannot be simply brushed aside for the only reason that treating doctor has not been examined. The doctor has given a report on the basis of the X-ray and the treatment papers which were in his possession of the time of accident which co-relates with the date of accident and the nature of injuries sustained. Further, the gravity of injuries is reflected from paragraph 13 of the impugned award.
10. Thus, this court does not find any strong case made out by the appellant and the appeal of the owner thus being devoid of merit deserves to be and is hereby rejected.
11. So far as cross objection of the claimant-respondent No.1 is concerned, if we look into the over all factual matrix of the case as has

been reflected in the preceding paragraphs, the treating doctor in the instant case was not examined, the disability certificate was not that of district medical board, the doctor who has given certificate of disability was consulted after a considerable lapse of time from the date of accident and that he had not treated the injured claimant at any point of time except for the issuance of certificate. In spite of all these facts, the nature of injuries and the gravity is well reflected from the narration of the facts in paragraph 13 of the impugned judgment which clearly shows that injured did receive some grievous injuries on his right leg.

12. Considering the total facts and circumstances of the case, this court is of the opinion that ends of justice would meet if the claimant is awarded an additional lump sum compensation of Rs.50,000/- in addition to what has already been awarded by the Tribunal. It is ordered accordingly. Thus, the total compensation payable to the claimant by adding additional compensation of Rs.50,000/- would become Rs.1,28,653/- instead of Rs.78,653/-.

13. The said enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal. It is made clear that any amount which has been deposited by the appellant-owner while filing the present appeal shall be adjusted while depositing the balance amount.

14. Accordingly, the appeal of the owner stands rejected and the cross objection filed by the claimant stands allowed.

Sd/-
(P.Sam Koshy)
Judge