

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 601 of 2017**

Vimal Kumar Sahu S/o Rameshwar Prasad Sahu, Aged About 34 (Now 55) Years, Occupation Transporter (Ex.) R/o 65 Gayatri Nagar Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Nathulal Gupta S/o Mohanlal Gupta, Aged About 45 Years R/o 26, Indrawati Colony, Raipur, Chhattisgarh(Driver Of The Maruti Car Bearing Regn. No. M I R 161).
2. National Insurance Company Limited, Mobin Mahal, G.E.Road Raipur, Chhattisgarh(Insurer Of Maruti Car Bearing Regn. No. M I R 161, Cover Note No. A-155736, Dated 17.01.95 For The Period From 18.01.95 To 17.01.96)

---- Respondents

For Appellant	:	Shri Neeraj Choubey, Advocate
For Respondent No.2	:	Shri B.N.Nande, Advocate

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****25/07/2017**

1. With the consent of the parties the appeal is heard and disposed of at the admission stage itself.
2. The present is an appeal under Section 173 of the Motor Vehicles Act against the award dated 11.01.2017 passed by the 8th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.97/1996.
3. The relevant facts and brief is that the Appellant in the instant case met with an accident on 24/10/1995 when he was riding a motorcycle bearing Registration No.MP-23-F-3848 along with one Manojkumar Shrivastava was dashed by Maruti Car bearing Registration No.MIR-161 owned and driven by Respondent No.1. It is also not in dispute that said Maruti Car was insured with the Respondent No.2 National

Insurance Co.Ltd. As a result of the said accident, the Appellant sustained injuries on his right leg who got fractured and had to be inserted steel plates. He had remained in hospital for a considerable period of time and only thereafter he could resume his normal duties. The Appellant had filed claim petition under section 166 of the MV Act. The Tribunal initially vide its award dated 13/08/1999 had dismissed the claim application on the ground that claimant failed to prove the accident.

4. The matter was challenged in an appeal before this court vide MA No.1974/1999. The said appeal was allowed and the matter was remitted back vide order dated 24/02/2011. Subsequently, the Tribunal taking into consideration the evidence which have been brought on record finally vide impugned award dated 11/01/2017 granted compensation of Rs.73,700/- to the claimant. While granting the said compensation the Tribunal however granted interest from on 06/04/2011 at the rate of 7% per annum. It is this award which is under challenge.
5. The contention of the Appellant is that the amount of compensation provided by the Insurance Company is on the lower side and it ought to have been much more taking into consideration the permanent disability which the Appellant had sustained on account of insertion of steel rod on his right leg. He submits that because of the accident the appellant is facing difficulty in the movement of his right leg. He further submits that the Tribunal has also erred in as much as not granting interest to the Appellant from the date of original application

that was made on 13/08/1996. The Appellant should not be put to suffer on account of delay in finalization of the award in his favour as it was not his fault because of which the matter took almost 20 years to be finally adjudicated upon. He further submits that it is a case where the earlier award was found to be erroneous by the High Court and therefore, remanded back for fresh adjudication, and therefore, prayed for the amount awarded to be modified suitably.

6. Counsel for the Respondent Insurance Company however opposing the appeal submits that there does not appear any error on the part of Tribunal in granting interest from the date it was remitted back to the court as per order of the High Court. He further submits that the matter was pending consideration before the High Court for a considerable long period and therefore the appellant should not be given advantage of interest on the compensation amount and thus prayed for rejection of the appeal.
7. Having considered the rival contentions put forth on either side and on perusal of record what clearly reflects is that the High Court on the earlier occasion in MA No.1974/1999 had interfered with the dismissal of the claim application by the court below on the ground that co-passenger who was travelling along with the appellant and who had also sustained injuries in the said accident was granted compensation in claim case No.14/1998 wherein it was specifically held that accident arose because of fault of the Respondent No.1, whereas, the case of present appellant has been rejected. This is apparently a conflicting and contradictory award passed by the

Tribunal while rejecting the application of the present appellant. The said award was put to challenge and the High Court accepting the same, set aside the award and remitted back the matter.

8. The matter stood transferred to the original court for deciding the matter afresh. Merely because case has been renumbered after its remand by itself would not loose seniority as regards date of filing of original application is concerned. Another aspect which cannot be lost sight is the fact that appellant cannot be faulted for the delay caused in finalization of the award. The appellant had been contesting the case before all forums and it is only in the year 2011 i.e. on 24/02/2011 the High Court allowed the appeal of the appellant and send it back for fresh adjudication. In the course of fresh adjudication, the Tribunal reached to the conclusion that the accident did occur on the fault of the Respondent No.1 and the claimant is entitled for compensation.
9. In view of the same, denial of interest from the original date of the application would definitely be too harsh. As regards the compensation which has been awarded, taking into consideration the evidence which has been led in the course of the proceeding and the compensation awarded by the Tribunal under different heads, this court finds that no strong case is made out for interference with the compensation and the same is therefore affirmed. However, it is held that as regards interest part is concerned, the award of the Tribunal requires modification and it is modified to the extent that the appellant claimant shall be entitled for interest at the rate awarded by the

Tribunal from the date of original application being made under section 166 of the MV Act i.e. 13/08/1996.

10. With the aforesaid modification to the award, the appeal stands partly allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

inder