

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 585 OF 2007

Mahendra Kumar, S/o Shri Thakurram Lodhi, aged about 21 years, R/o Village Peti, P.S. and Tahsil Khairagarh, District Rajnandgaon (C.G.)

... Appellant

versus

1. Somnath, S/o Shri Dularawaram Lodhi, aged about 32 years, R/o Village Peti, P.S. and Tahsil Khairagarh, District Rajnandgaon (C.G.)

2. The Oriental Insurance Company Limited, Divisional Office, Kamthi Line, Rajnandgaon (C.G.)

... Respondents

MISC. APPEAL (C) NO. 889 OF 2007

The Oriental Insurance Company Limited, Divisional Office, Kamthi Line, Rajnandgaon (C.G.)

... Appellant

versus

1. Mahendra Kumar, S/o Shri Thakurram Lodhi, aged about 21 years, R/o Village Petti, Tehsil Kheragarh, District Rajnandgaon (C.G.)

2. Somnath, S/o Shri Dularwaram Lodhi, aged about 32 years, R/o Village Petti, Tehsil Kheragarh, District Rajnandgaon (C.G.)

... Respondents

• Mr. Abhishek Sharma, Advocate, for the Appellant in MAC No. 585/2007 and for Respondent No.1 in MAC No. 889/2007.

• Mr. Sudhir Agrawal, Advocate, for the Appellant in MAC No. 889/2007 and for Respondent No.2 in MAC No. 585/2007.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/10/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, have been filed assailing the award dated 23.3.2007 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, in Motor Accident Claim Case No. 16/2006.

2. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.1,37,000/- to the claimant with interest thereon at the rate of 9% per annum from the date of presentation of the claim application and fastened the liability for payment of the same upon the insurance company indemnifying the owner-cum-driver of the offending vehicle.

3. MAC No. 585/2007 is an appeal filed by the claimant seeking for enhancement of the compensation awarded whereas MAC No. 889/2007 has been filed by the insurance company assailing the liability fastened upon it.

4. So far as the appeal of the claimant is concerned, this Court vide its order dated 2.12.2016 had directed the claimant to get himself examined from the District Medical Board afresh and to furnish a disability certificate before this Court. In spite of sufficient time being granted to the claimant, he has not got himself examined nor has he produced before this Court the certificate subsequently obtained. In the absence of any certificate produced by the claimant in spite of directions given, this Court does not find any strong case made out by the claimant calling for an interference with the impugned award and the appeal of the claimant thus fails and is accordingly rejected.

5. So far as the appeal of the insurance company is concerned, the primary ground of challenge is that the doctor examined was not the treating doctor and that the certificate of disability issued was also not proper and that it has been wrongly held that the claimant was suffering a permanent disability.

6. Perusal of record would show that the accident, the vehicle involved in the accident, the insured and the insurer are not in dispute. The only issue is, whether the amount of compensation has been properly assessed or not. The learned Tribunal for an accident that took place on September, 2005 has assessed the income of the claimant at Rs.15,000/- an year and of which 40% was accepted for the purpose of quantifying the compensation, accepting his disability to be 40%.

7. This Court considering the income assessed by the learned Tribunal in respect of the accident being of the year 2005 does not think it fit to interfere with the computation of compensation arrived at by the learned Tribunal. Moreover, admittedly a doctor was examined and that the injury suffered discussed in the proceeding shows its gravity. Thus in the given facts and circumstances of the case, this Court does not find any strong case made out by the insurance company for interfering with the impugned award and the appeal of the insurance company also deserves to be and the same is accordingly dismissed.

8. As a result, the appeal of the claimant i.e. MAC No. 585/2007 and the appeal of the insurance company i.e. MAC No. 889/2007 both being devoid of merits are dismissed accordingly.

Sd/-
(P. Sam Koshy)
Judge