

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 601 OF 2006

Jageshwar Dhiwar, age 32 years, S/o Mayturam Dhiwar, Village-Boriakurd, P.S. Tikrapara, Raipur.

... Appellant

Versus

1. Salim Khan, age 42 years, S/o Rahmat Ullah Khan, Nehru Nagar, Gabhrapara Colony, Opposite resi. Of owners of Mayank Medicals, Raipur.
2. Hardip Singh, age 48 years, S/o Baldev Singh Bhatia, Vivekanand Nagar, Near Bhatia Petrol Pump, Devpuri, P.S. Tikrapara, Raipur.
3. The Oriental Insurance Co. Ltd., Branch No.2, Shree Mahavir Gosala Premises, Moudahapara, Raipur.

... Respondents

For Appellant	:	Mr. Raja Sharma, Advocate.
For Respondent No.3	:	Mr. Ghanshyam Patel, Advocate, under instructions of Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/09/2017

1. The present is a claimant's appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the First Additional Motor Accident Claims Tribunal, Raipur, on 5.8.2006, in Claim Case No. 11/2006.
2. Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act initiated by the claimant, has awarded a compensation of Rs. 1,20,000/- to the claimant. However, since there was a finding of contributory negligence, the amount of compensation was reduced by 50% assessing the ratio of 50:50 and thus the total compensation payable to the claimant became Rs.60,000/-.
3. It is this award which has been assailed by the appellant-claimant on two counts. Firstly, the finding of the Tribunal assessing the contributory negligence being without any substantive piece of evidence which have come on record is bad in law. Secondly, the award has been challenged on

the ground that the quantum of compensation awarded being on the lower side the same deserves enhancement considering the nature of work performed by the appellant-claimant and also considering the nature of injuries he has sustained.

4. The accident in the instant case had occurred on 31.1.2005 and as per the records, in the course of accident, the claimant sustained fractures on both his legs and both his legs required surgical intervention for treatment and steel plates/rods had to be affixed on his right leg for proper treatment.

5. So far as the contributory negligence part is concerned, this Court is of the opinion that the contention of the learned counsel for the appellant-claimant does have force, particularly in the light of the decision of the Madhya Pradesh High Court reported in **AIR 2008 MP 18 (Devisingh v. Vikramsingh & Ors.)** wherein it has been held that merely because there were three persons travelling on a motorcycle by itself cannot be attributed as a reason for assessing contributory negligence. Thus, the finding of the Tribunal to this extent deserves to be and is accordingly set aside. In addition, the claim case also cannot be brought under the purview of contributory negligence, for the reason that the appellant-claimant was a pillion rider on the motorcycle and for him it would be a case of composite negligence. Thus, for this reason also, the finding of the Tribunal in this regard would not be sustainable and is accordingly set aside.

6. As regards the quantum part, the contention of the learned counsel for the appellant-claimant is that the claimant has made a statement before the Tribunal that he was a mason by profession and was earning Rs.150/- a day which makes it Rs.4500/- a month, but the Tribunal has not accepted the said contention, for want of proper evidence and has not calculated the compensation by taking the notional income. According to the counsel for

the appellant-claimant, the accident being of the year 2005 even a daily wage unskilled labour during the said period would have earned Rs.100/- a day which would make it Rs.3000/- a month. This Court, therefore, is of the opinion that the Tribunal in the instant case instead of granting a lump sum compensation of Rs.55,000/- without any basis, should have at least taken Rs.3000/- as the monthly wage considering at least Rs.100/- a day as income of the appellant-claimant. It is ordered so, that for the purpose of calculation of disability, the income of the appellant-claimant to be Rs.3000/- per month.

7. Further, what also reflects is the fact that during the course of evidence the appellant-claimant had led evidence so far as his medical treatment and expenditure is concerned and the bills which were proved before the Tribunal amounted to Rs.60,520/- whereas the amount awarded by the Tribunal for medical treatment is only Rs.30,000/- There is no basis for rejecting the other claims which have been duly proved by the claimant by producing bills for his treatment. Thus, the said amount deserves correction and it is held that the appellant-claimant shall be entitled for medical expenses to the extent of Rs.60,520/-.

8. So far as the other compensation of Rs.35,000/- which have been awarded towards mental agony, engagement of attendant, expenses for nutritious food and future treatment etc., are concerned, this Court is of the opinion that the Tribunal has awarded just and reasonable compensation to the claimant and the same does not warrant any interference.

9. However, the compensation towards the loss of earning capacity has not been properly assessed and it requires enhancement considering the medical evidence which have come on record and taking into consideration the opinion of the doctor who has categorically expressed that on account of the injuries which the appellant-claimant has sustained

he has some functional disability which has occurred, like - he would not be able to sit properly, he would also not be able to squat and further he would also have difficulties while climbing staircase etc. This Court thus considering the opinion of the doctor examined during the course of evidence, assesses the functional disability of the appellant-claimant at 25%.

10. Accordingly, so far as the assessment of total compensation is concerned, if Rs.3000/- (as assessed by this Court in the preceding paragraph) is taken as notional income of the appellant-claimant at the relevant point and if 50% of which is added towards his future prospects, the monthly income would come to Rs.4500/- and the early income would be Rs.54,000/- which if multiplied by applying the multiplier of 16 it would reach to Rs.8,64,000/- of which if 25% is accepted to be the loss of earning capacity, the appellant-claimant would be entitled for a compensation of Rs.2,16,000/-.

11. Thus, the appellant-claimant shall be entitled for a total compensation of Rs.3,11,520/- instead of Rs.1,20,000/- as was assessed by the Tribunal. By virtue of setting aside of the finding of contributory negligence, the appellant-claimant shall be entitled for the entire compensation as assessed by this Court and it shall be the liability of respondent no.3-insurance company to pay the said enhanced amount of compensation along with interest at the same rate as has been awarded by the Tribunal.

12. With the aforesaid observations, the appeal stands allowed.

Sd/-
(P. Sam Koshy)
Judge