

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 637 of 2009**

G.P. Rai, S/o. Late Tejman Rai, Aged 67 years, R/o. Sattais Kholi,
Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Ghanshyam Vishwakarma, S/o. Shyamlal Vishwakarma, Aged 24 years, R/o. Jarhabhata, S.B.R. College Mini Basti, Bilaspur, Chhattisgarh
2. Manish Paatrey, S/o. T.K. Paatrey, R/o. Indu Chowk, Jarhabhata, Bilaspur, Chhattisgarh
3. IFFCO TOKYO General National Insurance Company Limited Laal Ganga Shopping Mall G.E. Road, Raipur, Chhattisgarh.

----Respondents

For Appellant	:	Mr. N.K. Vyas, Advocate (Amicus appointed by the Court)
For Respondent No.3	:	Mr. P. Acharya, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14/09/2017**

1. None for the appellant. Considering the fact that the appeal is of year 2009, this Court is not inclined to adjourn the matter and proceeded to decide the matter taking the assistance from Shri N.K. Vyas.
2. Present is an appeal under Section 173 of Motor Vehicles Act, whereby the appellant/claimant has assailed the award dated 09.01.2009, passed by the 6th Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case No.02/2008. Vide the impugned award the Tribunal has awarded a compensation of Rs.25,000/- to the appellant with interest @9% per annum.
3. The present appeal is by the claimant seeking enhancement of the award on the ground that the compensation paid by the Tribunal is unreasonably low. It was also contended that no amount of compensation has been paid for the medical expenses, which were incurred by the appellant in spite of the bills pertaining to the expenses exhibited before the Tribunal and the Doctor also having being examined to prove the same.

4. The brief fact of the case is that the appellant, who is a retired Headmaster met with an accident on 07.11.2006, when he was hit by a motor cycle bearing registration No. CG-10-A-5087, which was being driven by the respondent No.1 and owned by the respondent No.2. The said vehicle was insured with the respondent No.3. The accident occurred when the appellant walking on the road and was hit by motorcycle driven by the respondent No.1.
5. According to Shri N.K. Vyas, the Tribunal has erred in not appreciating the evidence which has come on record. According to the appellant in addition to the evidence of the injured appellant himself he had also examined one Dr. Sunil Sharma, who was a Doctor at the Apollo Hospital, Bilaspur and who has deposed before the Court and proved the fact as regards the injuries sustained by the appellant and the treatment provided at the Apollo Hospital, Bilaspur. He also referred to Exhibit P/8 to P/25 which were the bills pertaining to the treatment undergone by the appellant. According to the appellant the Tribunal has miserably failed to appreciate the medical bills and honour the same. According to the appellant, the bills from the Apollo Hospital itself was of Rs.4,02,051/- and in addition there were certain other incidental expenses incurred by the appellant and the Tribunal failed to grant any compensation whatsoever in respect of the medical expenses incurred by the appellant. This according to the appellant was not proper and is an erroneous conclusion arrived at by the Tribunal and prayed for suitable modification.
6. Counsel for the Insurance Company however opposing the appeal submitted that it is a case where the finding of the Tribunal appears to be just and reasonable and the same does not warrant any interference. He further submits that the finding of the Tribunal also reflect some element of contributory negligence and on this ground also the appellant shall not be entitled for any further compensation and prayed for the dismissal of the appeal.
7. Having heard the rival contentions put forth on either side and on perusal of the record, this Court is of the opinion that once when the Tribunal has accepted the accident to have occurred, the resultant injury suffered by the appellant and the treatment which have been

given to him, then the reasons arrived at by the Tribunal as regards the cause of the injury not being known to the Doctor treating the appellant for refusal of the medical bills seems to be unjustified and unreasonable. The fact that the Tribunal has held that there appears to be some negligence on the part of the appellant cannot be a ground for denying the medical bills for the reasons that the Tribunal has not given a finding of contributory negligence nor has the Insurance Company challenged the liability.

8. Under the given circumstances, this Court is of the opinion that the appeal of the appellant deserves to be enhanced to the extent holding the appellant shall be entitled for compensation towards the medical expenditure incurred for an amount of Rs.4,02,051/- for which bills exhibit P/8 to P/25 was submitted and proved before the Tribunal, which was further corroborated by a statement of Doctor Sunil Sharma. For these reasons, the appeal stands allowed to the aforesaid extent.
9. The respondents are directed to deposit an amount of Rs.4,02,051/-. The said amount shall also carry interest @ 6% per annum from the date of application.
10. So far as the compensation for the injury sustained, this Court does not find any substantial material adduced by the claimant to establish the disability aspect, hence the amount of Rs.25,000/- awarded by the Tribunal is held by to be just and reasonable. Thus, the appellant shall be entitled for a total amount of Rs.4,27,051/-.
11. This Court will like to render a word of appreciation to Mr. N.K. Vyas, Advocate for providing legal assistance in the disposal of the claim. The High Court Legal Services Authority, Bilaspur is directed to send the judgment of this case to the Secretary, District Legal Services Authority, Bilaspur, who, in turn, shall make all endeavors in serving the copy to the appellant or his family members at the earliest.
12. The appeal thus stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge