

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 728 of 2010**

Sanat Kumar Sahu S/o Shri Jhumar Lal Sahu, aged about 34 years, R/o
Telibandha, Raipur (CG)

---- Appellant**Versus**

1. Vinod Kumar Agrawal S/o Shri Jagdish Prasad Agrawal, aged about 30 years, R/o Bastar Dada, Fafadih Chowk, Raipur (CG).....Driver, motorcycle No. CG06/CN-1799
2. Girish Kumar Verma S/o Shri Lakhan Lal Verma, aged about 40 years, R/o Bade Urla, Abhanpur, District Raipur (CG)..... Owner motorcycle No. CG06/CN-1799
3. IFFCO TOKYO General Insurance Company Limited, through Divisional Manager, Divisional Office, Lalganga Shopping Mall, IIIrd Floor, G.E. Road, Raipur (CG) Insurer, motorcycle No. CG06/CN-1799

---- Respondents

For Appellant	:	Shri Shikhar Sharma, Advocate
For Respondent no.3	:	Shri Amrito Das with Shri P. Acharya, Advocates

Misc. Appeal (C) No. 887 of 2010

IFFCO TOKIO General Insurance Company Limited, through the Branch
Manager, Iffco Tokio General Insurance Co. Ltd. 3rd Floor 345-347,
Lalganga Shopping Mal, G. E. Road, Raipur (CG)

---- Appellant**Versus**

1. Sanat Kumar Sahu S/o Jhumar Lal Sahu, aged about 34 years, R/o Telibandha, Raipur (CG)
2. Vinod Kumar Agrawal S/o Shri Jagdish Prasad Agrawal, R/o Bastar Dada, Fafadih Chowk, Raipur (Driver of the vehicle)
2. Girish Kumar Verma S/o Lakhan Lal Verma, R/o Bade Urla, Abhanpur, District Raipur (Owner of the vehicle)

---- Respondents

For Appellant	:	Shri Amrito Das with Shri P. Acharya, Advocates
For Respondent no.1	:	Shri Shikhar Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

03/10/2017

These are two appeals filed by the claimants as well as by the Insurance Company challenging the award dated 07.01.2010 passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 149/2009. Vide the impugned award, The Tribunal in an injury case under Section 163A of MV Act has awarded compensation of Rs.40,513 with interest @ 6% per annum from the date of application.

2. Counsel for the claimant submits that the compensation awarded by the Tribunal is unreasonably low and the same deserves suitable enhancement. According to the counsel for the claimant, it is a case where the claimant as a result of the accident that took place on 26.08.2006 sustained injuries on various parts of his body but the major injury was caused to the right eye which resulted in total loss of vision. Therefore, the Tribunal ought to have considered this aspect while quantifying the compensation and prayed for suitable enhancement of the compensation awarded.

3. Counsel for the Insurance Company assailing the impugned award questions the finding of the Tribunal in as much as not appreciating the element of contributory negligence in the accident that occurred. He further questions the compensation awarded on the ground of injury not having been established and proved by a competent doctor. According to the counsel for the Insurance Company, the doctor who has been examined is a treating doctor and not an eye specialist to give the opinion regarding the disability caused to the eye. The disability certificate produced by the claimant also is not from a competent Board authorized to grant disability certificate. Therefore the impugned award

deserves to be set aside. The Insurance Company has thus preferred the appeal challenging the said finding.

4. Having considered the rival contentions put forth on either side and on perusal of the record what is established is the fact that the claimant, aged around 34 years, in the course of his evidence had examined a doctor namely Dr. Kishore Jha, a neurologist from Heritage Hospital at Raipur. Dr. Kishore Jha had deposed before the Tribunal establishing the fact that the claimant had lost total vision of his right eye and had assessed the disability to the tune of 60%. So far as the injury part is concerned, there is no dispute. However, the only dispute seems to be that of the disability having not been proved or established by a competent authority or by an eye specialist.

5. Perusal of Exhibit P-7 which is a medical report issued by Dr. Kishore Jha, the treating doctor, the neuro surgeon it reveals that the doctor had given treatment on the advice and consultation of an ophthalmologist in so far as the ailment pertaining to the eyes are concerned. Thus, it cannot be said that the doctor examined before the Tribunal was not qualified or competent to impart such treatment. Even if the percentage of disability as assigned by Dr. Kishore Jha may not have been issued by a District Medical Board which is authorized to issue the disability certificate, what is conclusively proved is the fact that the claimant has lost total vision of his right eye. The claim case is under the Motor Vehicles Act which is social piece of legislation with an intention of providing benefit to the persons who meet with a road accident. Taking a pragmatic and more liberal approach if we take into consideration the disability assigned to such nature of injuries as per the provisions of the Workmen's Compensation Act, it appears that under the Schedule of the Employees Compensation Act a person who has lost total vision of one eye, the percentage of disability would be 30%.

6. Considering the total facts and circumstances of the case, this Court is of the opinion that ends of justice would meet if a lump sum compensation of Rs.1,00,000/- is provided to the claimant in addition to what has already been awarded by the Tribunal towards the disability which has been caused to him. It is ordered accordingly. The said enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.

7. So far as the appeal of the Insurance Company is concerned, since there is no sufficient material strong enough to reach to a conclusion that there was any element of negligence on the part of the claimant for the accident to occur, the appeal of the Insurance Company does not have any force and the same deserves to be and is accordingly dismissed.

8. Thus, the appeal of the claimant stands allowed and the appeal of the Insurance Company stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE