

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1223 OF 2010

- Surendra Nayak, S/o Mahendra Nayak, aged 23 years, R/o Islam Nagar, Utkal Para, Post Supela, Bhilai, Tahsil & District Durg (C.G.)

... Appellant

versus

1. Vinod Khadse, S/o Sakha Ram Khadse, aged 26 years, R/o House of Radhey Shyam Sarthi, Pathan Para, behind Badi Maszid, Tahsil & District Rajnandgaon, P.S. Basantpur (C.G.) (vehicle driver)
2. Pratik Khandelwal, S/o Bhikhuji Khandelwal, aged 31 years, R/o Kamthi Line Rajnandgaon, Tahsil & District Rajnandgaon (C.G.) (vehicle owner)
3. Manager, New India Insurance Co. Ltd., 2nd Floor, Jivandeep Building-8, Parliament Street, New Delhi (insurer)

... Respondents

For Appellant	:	Ms. Khusbu Verma, Advocate, under instructions of Mr. B.P. Singh, Advocate.
For Respondent No.3	:	Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/10/2017

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988, has been preferred by the appellant-claimant assailing the award dated 25.9.2010 passed by the Eight Additional Motor Accident Claims Tribunal (F.T.C.), Durg in Claim Case No. 141/2009.
2. Vide the impugned award dated 25.9.2010, the learned Tribunal assessed the total compensation payable to the appellant-claimant at Rs.1,75,000/-. However, the learned Tribunal after assessing the contributory negligence on the part of the appellant-claimant, deducted 30% of the same, holding that the claimant shall be entitled for a compensation of only 70% of Rs. 1,75,000/- i.e. Rs. No. 1,22,500/-.
3. It is this award which has been challenged by the appellant-claimant in the present appeal.

4. According to the learned counsel for the appellant-claimant, there was no evidence led by the respondents to establish contributory negligence against the appellant-claimant. Likewise, the learned Tribunal has also not granted interest on the awarded amount. It was also argued that the compensation assessed by the learned Tribunal is on the lower side and the same deserves to be suitably enhanced.

5. Learned counsel appearing for respondent no.3-insurance company however opposing the appeal submits that the award passed by the learned Tribunal is just and reasonable and that so far as the aspect of contributory negligence is concerned, there are justified reasons given by the Tribunal as is evident from paragraph 12 of the award and thus the impugned award does not warrant any interference.

6. Having considered the rival contentions put forth on either side and on perusal of the record, when we peruse the factual aspects of the case the first thing which strikes the mind of this Court is the place of accident which is a junction with traffic signals at Supela in Bhilai. It is a case where while the appellant-claimant was crossing the road suddenly the lights of the signal changed and the vehicles coming from the other side came at a great speed and dashed against the vehicle on which the appellant-claimant was travelling. This has been taken as the basis for the finding of contributory negligence reached by the Tribunal.

7. The conduct of the driver of the car who had dashed against the appellant-claimant also seems to be rash and negligent, inasmuch once when it is an admitted position that it was a square where there was a red light and the moment the red light became green, the driver of the car picked up the vehicle at a great speed and dashed the claimant. Had the driver of the car been more cautious, the accident could have been avoided.

8. Thus, this Court is of the opinion that the finding of contributory negligence arrived at by the Tribunal is definitely without much substance and evidence and the same deserves to be and is accordingly set aside. It is ordered that the appellant-claimant shall be entitled for the entire compensation awarded by the Tribunal.

9. So far as the enhancement of compensation is concerned, taking into consideration the evidence which have come on record, particularly considering the nature of injuries and the compensation awarded, this Court is of the opinion that the compensation awarded is just and reasonable and the same does not warrant any interference and is ordered to remain intact.

10. However, considering the fact that the accident is of August, 2009 and the claim case was decided almost after one year, the learned Tribunal ought to have considered granting of interest on the amount awarded. However, no reason has been mentioned by the learned Tribunal as to why the claimant is also not entitled for interest on the amount of compensation awarded.

11. This Court thus is of the opinion that the the impugned award also deserves to be and is accordingly modified, to the extent that the amount of compensation awarded shall also carry interest at the rate of 6% per annum from the date of filing of the claim application.

12. In the result, the appeal is allowed and the impugned award stands modified, to the extent that the appellant-claimant shall be entitled for the entire compensation of Rs.1,75,000/- with interest thereon at the rate of 6% per annum from the date of filing of the claim application till its realization. Rest of award shall remains intact.

Sd/-
(P. Sam Koshy)
Judge