

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 943 of 2016**

Bittu @ Aditya Kumar S/o Anand Mogre, Aged About 4 Years Minor Represented Through Amravati @ Amrata Wife Of Anand Mogre, Aged About 30 Years, R/o- Pauradhar, Police Station- Ramnagar, Tahsil- Kotma, District- Anuppur, (Madhya Pradesh).

---- Appellant**Versus**

1. Sudershan Singh S/o Samlu Singh, Aged About 40 Years R/o- Fulwari Tola, Police Station- Rajnagar, District- Anuppur, (Madhya Pradesh), (Driver),
2. Mohd. Istayaq, S/o Mohd. Raja, Aged About 30 Years R/o- Ward No. 21, Roji Battery, Ambikapur Road, Manendragarh, District- Korea, (Chhattisgarh), (Owner),
3. The Reliance General Insurance Company Ltd. Plot No. 29, Nehru Nagar, East Commercial Complex, Bhilai, District- Durg, (Chhattisgarh), (Insurer).

---- Respondents

For Appellant	:	Shri Pushkar Sinha, Advocate.
For respondent No.2	:	Shri AL Singroul, Advocate.
For respondent No.3	:	Shri Sourabh Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****13/07/2017**

1. Since the owner as well as insurance company are already represented, non appearance of respondent No.1 stands ignored in the given facts of the case.
2. This is claimant's appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation against the award dated 29.01.2016 passed by the 1st Additional Motor Accident Claims Tribunal, Manendragarh (in short, the Tribunal) in Claim Case No.27 of 2014. Vide the said award, the Tribunal has granted compensation

of Rs.27,000/-to the appellant/claimant, aged about 4 years, who had received fracture on his shoulder.

3. The facts of the case is that, on 30.12.2012 when the appellant was along with his father were standing on road side awaiting the Bus, he was dashed by the Truck bearing registration No. CG-16-A-1586 on account of which he received injuries all over his body but the main injury was fracture of his shoulder which had to be operated and steel rod/plates were installed. The appellant was also operated for the injury that he received on his jaw.
4. A claim application was filed under Section 166 of the Motor Vehicles Act. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made, allowed the claim application of the appellant-claimant and awarded an amount of Rs.27,000/-. Since the offending vehicle was insured with the respondent No.3, the liability was fastened upon the insurer of the offending Truck. It is this award which is under challenge in this appeal by the claimants seeking enhancement.
5. Learned counsel appearing for the appellant submits that the amount of compensation granted by the Tribunal is highly disproportionate and is on lower side. He contends that the Tribunal has committed an error of law in not considering the bill of the Apollo Hospital which was exhibited before the Tribunal. He further submits that the Tribunal has erred in not granting any compensation towards the medical expenses incurred by the appellant.
6. The counsel for the respondents opposes the appeal on the ground

that the award of the Tribunal seems to be fair and reasonable and is based on the evidence which have come on record.

7. Having considered the rival contentions put forth on either side and on perusal of records what is striking the conscious of this court is how the Tribunal could have ignored the medical expenses to the appellant the bills of which is produced before the court vide Ex. P/27 i.e. bills from the Apollo Hospital for an amount of Rs.1,61,998/-. There is no dispute from any of the respondents so far as accident and injury caused to the appellant. The nature of injury has been proved by PW-3, Dr. L.P. Maravi, who has provided initial treatment to the appellant. The said doctor has also proved that looking to the injuries the applicant was referred to Apollo Hospital, Bilaspur and from the said Apollo Hospital there is a bill of Rs.1,61,998/-. There is no rebuttal from the respondents in this regard. There was no reason why the said bill could not have been honoured for being part of the compensation to be paid to the appellant.
8. Further, if we look at the compensation paid to the appellant on the head of pain and suffering which a four years old boy had undergone, the amount of Rs.10000/- seems to be definitely on lower side. Indisputably, the appellant had to undergo surgery of his shoulder where steel rod/plate had to be put. Likewise, there was also surgery on the jaw of the appellant and in the process the appellant must have undergone great amount of pain and suffering.
9. In view of the same, this court is of the opinion that the Tribunal should have granted at least Rs.50,000/- towards pain and suffering

instead of Rs.10,000/- and the impugned award stands modified accordingly under the head of pain and suffering. Likewise, for the mental agony also considering the age of the appellant as also the nature of injuries sustained, the amount of Rs.10,000/- awarded seems to be lower and the same needs to be enhanced and is accordingly enhanced to Rs.25000/-.

10. Thus, the appellant shall now be entitled for Rs.1,61,998/- towards medical expenses, Rs.50,000/- under the head of pain and suffering and Rs.25000/- towards mental agony. Thus, the total award amount would come to Rs.2,36,998/- in place of Rs.27,000/- awarded by the Tribunal.

11. The appeal is allowed. The appellant is entitled for Rs. 2,09,998/- over and above the award amount of Rs.27,000/- awarded by the Tribunal. The respondent-Reliance General Insurance Co. Ltd. is granted two months time to deposit the enhanced amount of compensation of Rs.2,09,998/- before the concerned Tribunal. Rest of the conditions mentioned in the award including that of interest part shall remain intact.

Sd/-
(P. Sam Koshy)
Judge

inder