

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 427 of 2013

- Tuleshwar Lahare S/o Dahak Ram Lahare Aged About 28 Years R/o Thru- Dr. P. Orashad Lahare, Village- Chote Sipath, Post- Bade Sipath, P.S. Malkharoda, Distt. Janjgir-Champa C.G.

---- Appellant (Claimant)

Versus

1. Sunil Kumar Chandrakar S/o Vijay Prasad Chandrakar R/o Chawla Petrol Pump, P.S. Mandir Hasaud, Tah. And Distt. Raipur C.G.
2. Dilip Kumar Keshwani S/o Attarchand Keshwani R/o Shankar Nagar, Near Rajendra Park Chowk, G.E. Road, P.S. Durg, Distt. Durg C.G.
3. The Oriental Insu.Co.Ltd. Thru- Divisional Manager, Divisional Office, Madina Manjil, Kachhari Chowk, Jail Road, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant	:	Shri Pawan Kesharwani, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

Per P. Diwaker, J

18/07/2017

1. This appeal filed by the claimant/appellant arises out of the award dated 14.12.2012 passed by the 6th Additional Motor Accident Claims Tribunal, Raipur (henceforth 'the Claims Tribunal') in Claim Case No.102/11 whereby in an injury case compensation of Rs.3,11,524/- has been awarded to the claimant/ appellant herein.
2. Facts of the case, in brief are that on 22.6.2010 the claimant was driving

going to Raipur from Sarangarh on his motorcycle. He was driving his vehicle very slowly and moderately. At about 9.45 a.m. when he reached near Monnet Railway Track, NH No.6, Aarang Road, the offending vehicle i.e. Truck No.CG04-AC-8682 being driven by respondent No.1 herein rashly and negligently, came from the opposite direction and gave dash to the motorcycle of the claimant, as a result of which, he suffered fracture in both his knees, left wrist and also suffered number of injuries on various parts of his body. A claim case was filed by the claimant/appellant claiming compensation to the tune of Rs.43,50,000/- under various heads, *inter alia*, pleading that after the accident, he was taken to Dr. Bhimrao Ambedkar Hospital, Raipur however looking to his condition, he was referred to Ayush Hospital & Maternity Home, Raipur after providing preliminary treatment to him and where a rod was inserted in his leg. It has been further pleaded that due to the said accident, the claimant is unable to perform his day to day work and due to permanent disablement he was constrained to leave his job. His treatment is still continuing.

3. Respondent No.3-Insurance Company contested the claim case and denied its liability on the ground that the accident occurred due to rash and negligent driving of the appellant himself and there was breach of insurance policy also as the offending vehicle was being plied without any valid documents like driving license, permit, fitness certificate.
4. The Claims Tribunal by the impugned award has awarded a compensation of Rs.3,11,000/- to the appellant under various heads such as pain & suffering, loss of income and expenses incurred in the treatment. It is this award which has been challenged by the appellant in this appeal.
5. Counsel for the appellant submits that;-

- the Claims Tribunal has erred in law in awarding very negligible compensation for the injuries sustained by the claimant.
 - no amount has been granted under the head "future treatment", loss of income during treatment. The sum awarded under the head 'pain & suffering' is also on the lower side.
 - The appellant lost his job due to the accident in question and is not able to do any work due to permanent disability, but nothing has been awarded by the Claims Tribunal under the head of permanent disablement.
 - the Claims Tribunal has not considered the important aspect of the case that in future also the appellant had to undergo surgery for removing the rod inserted in his leg.
 - the rate of interest awarded at the rate of 6% per annum from the date of application till payment is also very low and it requires upward revision and enhancement.
6. On the other hand, it has been argued on behalf of the counsel for respondent No.3 that the compensation awarded by the Claims Tribunal is already on the higher side and as such, the same is not required to be enhanced at all.
7. Heard counsel for the parties and perused the material available on record.
8. Considering the fact that the claimant/appellant remained hospitalized for more than 14 days in the hospitals and during this period a rod was inserted in his leg and further considering that in future also he would be required to undergo surgery for removal of said rod, it is apparent that the claimant would have suffered much pain and agony and would also be required to incur expenses in future treatment.

9. As regards the compensation towards permanent disability, this Court feels that the Tribunal has erred in not awarding the same. The claimant has placed on record permanent certificate indicating the claimant to have suffered 20% permanent disability. The disability certificate has been proved by examining doctor who issued the said certificate. In these circumstances, the Tribunal ought to have awarded some compensation.
10. Thus, keeping in view all the above things, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimant/appellant is entitled for compensation in the following manner;-

Heads		Amount Awarded
For Medical Expenses	:	Rs.2,04,524/-- (Maintained)
For loss of income during treatment	:	Rs.50,000/-
For Pain & Suffering	:	Rs.1,00,000/-
For future treatment	:	Rs.1,00,000/-
For Special Diet	:	Rs.20,000/-
For Permanent Disability	:	Rs.1,00,000/-
Total	:	Rs.5,74,524/-

11. On the basis of aforesaid discussions, the claimant/appellant is held entitled for a total compensation of Rs.5,74,524/-. Since the Claims Tribunal has already awarded Rs.3,11,524/-, after deducting the said amount, the claimant/appellant is entitled for enhanced amount of Rs.2,63,000/- (5,74,524-3,11,524). This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of

claim application till realization.

12. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(P. Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

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