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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1239 of 2016

- Minor Kumari Nageshwari Yadav D/o Nandkishore Yadav, Aged About 7 Years Through Natural Guardian Father Nandkishore Yadav S/o Ramulal Yadav, Aged About 50 Years, R/o Nehru Ward, Bhatapara, Police Station- Bhatapara (City), Tahsil- Bhatapara, District- Baloda Bazar- Bhatapara, (Chhattisgarh),.......(Claimant).

---- Appellant

Versus

1. Sunil Gautam S/o Late Ydunandan Singh Gautam, Aged About 46 Years R/o- Sundar Nagar, Raipur, District- Raipur, (Chhattisgarh),....... (Driver Of The Offending Vehicle No. C.G. - 04- H.A.- 3174).
2. Sudhir Gautam, S/o Late Yadunandan Singh Gautam, Aged About 50 Years R/o- Sundar Nagar, Raipur, District- Raipur, (Chhattisgarh),....... (Owner Of The Offending Vehicle No. C.G. - 04- H.A.- 3174).
3. Future General Insurance Company Limited, Near Rajkumar College, G.E. Road, Raipur, District- Raipur, (Chhattisgarh),......(Insurer Of The Offending Vehicle No. C.G.-04- H.A. - 3174).
4. Ajay Kumar, S/o Gajanand Singh Rajput, Maa Sarveshwari Auto Limtara, Tahsil- Simga, District- Baloda Bazar- Bhatapara, (Chhattisgarh),.......(Owner Of Motorcycle No. C.G. 04- Cx- 8648).
5. The New India Assurance Company, Baloda Bazar, District- Baloda Bazar- Bhatapara, (Chhattisgarh),........(Insurer Of Motorcycle No. C.G. 04- Cx- 8648),.......(Non-Applicants).

---- Respondents

For Appellant:	Smt. Nand Kumari Kashyap, Advocate
For Respondent No.3	Shri Rohitashwar Singh, Advocate.
For Respondent No.5	Shri Sourabh Sharma, Advocate

Single Bench: Hon'ble Shri Sanjay Agrawal, J

Order On Board

27.07.2017

1. This is the Claimant's Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') against the award dated 17.06.2016 passed by 1st Additional Motor Accidents Claims Tribunal, Baloda Bazar, Dist. Baloda Bazar (for short 'the Tribunal') in Claims Case No.60/2013, by which, the Tribunal has awarded a total sum of Rs.18,,000/- to the Claimant and also awarded interest @ 7% p.a. from the date of the claim petition till its realisation.

2. Brief facts of the case are that on 15.11.2012 at 05.30 PM, the applicant was going on by motorcycle bearing its registration No.C.G.-04-CX/8648 along with her parents and when they reached near the Bus-Stand at village Binoura, it was dashed vehemently from its opposite side by the offending vehicle (I-10) bearing its registration No. C.G.04-HA-3174 driven by its driver rashly and negligently. On account of the said accident, the applicant received injuries including fracture on her leg. Therefore, the claimant has instituted a claim petition enumerated under Section 166 of the Motor Vehicles Act by claiming total compensation to the tune of Rs.7,00,000/-.

3. The respondents have contested the claim. The Respondent No.3, Future General Insurance Company Limited contested on the ground that the alleged accident has occurred not because on part of driver/respondent No.1 but in fact because of the driver of the motorcycle as he himself was driving the same in rash and negligent manner without having any driving licence, therefore, the Insurance Company cannot be held liable to indemnity the insured. The Respondent No.5, the New India Assurance Company Limited has contested the claim on the ground that since the driver of the motorcycle, namely, Ajay Kumar, was not possessing the valid and effective driving licence at the relevant time, therefore, no liability can be fastened upon it.

4. After considering the evidence led by the parties, the Claims Tribunal held both the drivers, Ajay Kumar and Sunil Goutam, respondents No.1 & 4 respectively guilty for contributory negligence to the extent of 50% each. It was further observed that the claimant Ku. Negeshwar Yadav has suffered serious injuries including fracture on her leg and was admitted into the hospital from 16.11.2012 to 15.12.2012. As a consequence, the Claims Tribunal, while fastening the liability upon the respondents, has awarded the total compensation under the following heads:

1)	Towards expenses incurred on treatment, as per medical bills.	-	Rs.13,000/-
2)	Towards expenses incurred on attendant	-	Rs. 3,000/-
3)	Towards transportation expenses	-	Rs. 1,000/-
4)	For Special Diet	-	Rs. 500/-
5)	Towards pain and suffering	-	Rs 500/-
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	Total:		Rs.18,000.00
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5. While awarding the compensation as such, the Claims Tribunal has directed the respondents No. 3 & 5, i.e., Future General Insurance Company Limited and the New India Insurance Company Limited to pay the said amount of compensation with the ratio of 50% each, along with the interest @ 7% p.a. from the date of the claim petition till its realisation.

6. Being aggrieved with the aforesaid award, the appellant/claimant has preferred this appeal for enhancement of the amount of compensation.

7. Counsel for the appellant submits that the amount as awarded by the Claims Tribunal under the aforesaid heads is on lower side, and therefore, the same deserve to be enhanced. It was argued further that since the appellant/claimant was admitted into hospital for about one month, therefore, the amount of compensation as awarded under the aforesaid heads is extremely on lower side and prayed for its enhancement.

8. On the other hand, Shri Rohitashwa Singh and Shri Sourabh Sharma, counsel for the Insurance Companies submit that the amount of compensation is just and proper. It is submitted further that though the appellant/claimant was admitted into the hospital for about one month, but neither the permanent disability certificate was produced nor any Doctor was examined in order to establish that the claimant has suffered serious injuries on account of the alleged accident occurred on 15.11.2012.

9. I have heard learned Counsel for the parties and perused the record carefully.

10. Admittedly, on account of the accident, the claimant Ku. Nageshwar Yadav was admitted into the hospital from 16.11.2012 till 15.12.2012. X-ray report, marked as Ex.P.8, shows that her leg was fractured on account of the said accident. Although no doctor was examined to testify the same but the appellant was admitted into the hospital for about one month and has suffered pain and agony on account of injuries caused to her due to the said accident. In view of this fact, the appellant must have incurred more than Rs.13,000/- towards her treatment. In my opinion, the amount worked out by the Claims Tribunal towards her treatment is on lower side and it should have been Rs.28,000/- and accordingly, I award as such in this regard. Likewise, the amount awarded towards other heads, i.e., special diet and pain and suffering is also on lower side and in fact, under the facts and circumstances of the case, the amount under the above heads should have been at least Rs.5,500/- and Rs.25,500/- respectively. Consequently, the claimant is entitled to be compensated as under:

1)	Towards expenses incurred on treatment, including medical bills.	-	Rs.28,000/-
2)	Towards expenses incurred on attendant	-	Rs. 3,000/-
3)	Towards transportation expenses	-	Rs. 1,000/-
4)	For Special Diet	-	Rs. 5, 500/-
5)	Towards pain and suffering	-	Rs .25,500/-
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	Total compensation		Rs.63,000.00
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11. Thus, the claimant is now entitled to Rs.63,000/- instead of Rs.18,000/-, as awarded by the Claims Tribunal.

12. In view of the foregoing reasons, this appeal filed by the claimant for enhancement of the compensation is allowed in part and the respondents are held jointly and severally liable to pay the above amount of compensation as enhanced herein above, as per the direction of the Claims Tribunal contained in the award impugned at para 23.1.

13. The enhanced amount of compensation of Rs.45,000/- along with interest @ 7% p.a. shall be deposited before the concerned Claims Tribunal within a period of two months from today. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)

JUDGE

Anjani