

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 198 OF 2012**

Dr. A. K. Bhandari, S/o B.K. Bhandari, Aged about 55 years, R/o 40-MIG Housing Board Colony, Kota, Raipur (C.G.)

---- Appellant

Versus

1. Kunwar Singh, S/o Kamta Prasad Singh, Aged about 30 Years, R/o Near M. Rayka Ward, Padum Nagar, Behind Kali Mandir, Bhilai, District Durg (C.G.).
(**Driver** of Vehicle Auto bearing Regd. No. C.G. 07/T/1601).
2. K.V. Shembu, S/o Late K.S. Narayanan, Aged about 34 years, R/o Panchshil Nagar (West) Bhilai, District Durg (C.G.).
(**Owner** of Vehicle Auto bearing Regd. No. C.G. 07/T/1601)
3. M/s I.C.I.C. Lombard Insurance Company, Durg (C.G.)
(**Insurer** of Vehicle Auto bearing Regd. No. C.G. 07/T/1601)

---- Respondents

For Appellant	:	Mr. K. K. Dewangan, Advocate.
For Respondents No. 1 & 2	:	None
for Respondent No. 3	:	Mr. Sourabh Sharma and Mr. Tarkeshwar Nande, Advocates

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****25/07/2018**

1. By this instant appeal, appellant has challenged the legality and validity of the impugned award dated 24/11/2011 passed by Second Additional Motor Accident Claims Tribunal, Raipur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No. 103/2010, whereby the learned Claims Tribunal awarded an amount of Rs. 8,000/- as compensation in an injury case.
2. Brief facts of the case, are that, on 15/12/2008 when appellant was travelling on a motorcycle bearing registration No.CG07/ZL/9951 of his friend Mr. K. B. Sharma as a pillion rider and going to Government Collage Bhilai on his duty, at that relevant time, at about 8.25 hours, near Venkteshwar Marble Shop,

Charauda township, one Auto-Rikshaw bearing registration No. CG07/T/1601 (offending vehicle) driven by respondent No. 1 rashly and negligently, dashed the motorcycle driven by Mr. K. B. Sharma, due to which, appellant sustained fracture over his right leg and also sustained injuries on his face and other parts of the body. The matter was reported to Police Station, Bhilai-3, District Durg. The appellant was admitted to Dr. Visharad Hospital, Raipur, where his leg was operated.

3. For the reasons stated above, the appellant/claimant filed a claim application under Section 166 of the Motor Vehicles Act, 1988 before the competent Claims Tribunal claiming Rs.2,07,900/- as compensation on the ground that he sustained fracture on his right leg and was admitted to hospital from 15/12/2008 to 17/12/2008 where his leg was operated and rod was inserted. It was further pleaded that due to aforementioned injury, he took rest for about 54 days in his house, thereafter, he took assistance by hiring one Auto-Rikshaw on Rs.15,000/- per month to attend his duties at Government College, Bhilai for a period of three months.
4. Respondent No. 1 submitted reply to the claim application and denied all the allegations and stated that it is a driver on whose negligence, the accident took place. He further submitted that on the date of accident, he was having valid and effective driving licence to drive the vehicle and the vehicle was insured with the Insurance Company on the date of accident, therefore, he is not having any liability to pay compensation, if any.
5. Respondent No. 3/Insurance Company submitted its reply to the claim application and denied adverse pleadings made in the claim application against it and stated that the accident took place due to contributory negligence of driver of motorcycle and the appellant not sustained any grievous injuries in the said accident. It was further stated that driver of the offending vehicle was not having

valid and effective driving licence on the date of accident to drive the offending vehicle, therefore, there was violation of conditions of insurance policy and Insurance Company is not liable for payment of any amount of compensation.

6. Learned counsel appearing for the appellant vehemently argued that the award passed by the learned Claims Tribunal is very meager. The learned Claims Tribunal failed to consider nature of injury and not awarding any amount towards conveyance and assistance for travelling his office and also not awarded any amount towards pain and suffering.
7. Per contra, learned counsel appearing for respondent No.3 supported impugned award.
8. I have heard learned counsel appearing for the parties and perused records carefully.
9. The appellant submitted documents i.e. First Information Report and other documents of criminal case which has been marked as Exhibits P-1 to P-5 along with his claim application, which shows that accident took place on 15/12/2008. The final report submitted vide Exhibit P-2, in which, the charge-sheet has also been filed before the competent Court. The appellant also submitted medical documents showing treatment as indoor patient from 15/12/2008 to 17/12/2008 and on medical diagnosis, it was found fractured on Tibia Fibula bone of right leg. Document shows the operation of right Tibia Fibula bone and interlocking vide Exhibit P-6.
10. The appellant has examined himself as PW-1 and in his statement, he stated that he sustained fracture, which costed at Rs. 25,989/-, towards medical expenses but the same has been reimbursed. The appellant also stated that he expended about Rs.45,000/- for his conveyance and assistance for travelling from his house to college and returning from college to his house, in that support,

he submitted receipt of payment as Exhibit P-7. To prove Exhibit P-7, appellant examined Ram Prakash Singh, Auto-Rikshaw Driver-Cum-Owner as AW-2. The appellant in support of requirement of future treatment, has examined Dr. Shridhar Rao as AW-3, who has stated that for the purpose of removing rod from his leg, the cost of operation/treatment may be Rs.25,000/-.

11. The learned Claims Tribunal has not considered the nature of injuries sustained by the appellant on most valuable parts of body, especially, the fracture on his right leg and has straightway rejected the claim towards assistance and conveyance made by the appellant. Looking to the status of the appellant as well as the place of posting of appellant at Bhilai and residence of appellant at Raipur, the appellant has to take help of public conveyance, which the learned Claims Tribunal has completely ignored. In my considered opinion, the appellant is entitled for Rs.10,000/- towards conveyance and assistance for travelling to his place of work. Looking to the nature of injury and operation of right Tibia fibula bone, the appellant is also entitled for Rs.10,000/- towards pain and suffering. The total compensation for which the appellant is entitled for Rs.28,000/-, out of which, Rs. 8,000/- has already been awarded by the learned Claims Tribunal. Now, the appellant is entitled for additional compensation of Rs.20,000/- apart from Rs. 8,000/-, which has already been awarded by the learned Claims Tribunal.
12. In the result, the appeal is allowed in part. The impugned award is modified to the extent indicated herein-above. No order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge