

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 20-6-2018

Order passed on 5-7-2018

MAC No. 213 of 2010

- United India Insurance Co Ltd

---- Appellant.

Versus

1. Sunil Kumar Pandey S/o Ramsubhag Tripathi,,occupation-Driver,r/o Village-Hathbar,ps-Patna,tahsil-Baikunthpur,distt.-Koriya
2. Vijay Kumar @ Vijay Kant S/o Ramsubhag Tripathi,,occupation-Driver,r/o Village-Hathbar,ps-Patna,tahsil-Baikunthpur,distt.-Koriya
3. Satish Kumar Jaswal S/o Narbada Prasad Jaiswal, occupation-Student,r/o Pandopara,PS -Patna,distt.-Koriya

---- Respondents

For appellant	:	Mr. Dashrath Gupta, Advocate.
For respondent No.1	:	Mr. Vinod Deshmukh,Advocate
For respondent No.2	:	Mr. Rabiya Khan, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. This appeal is preferred under Section 173 of the Motor Vehicle Act, 1988 (For short, "the Act, 1988") against the award dated 14-10-2009 passed by the Additional Motor Accident Claims Tribunal (for short, "the Tribunal") Baikunthpur, District Koriya, (CG) in Claim Case No. 46 of 2006 wherein the said Tribunal awarded a compensation of Rs.3,00,000/- to respondent No.3 on account of permanent disability arising out of motor accident.
2. The claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 by respondent No.3 alleging *inter alia* that at the relevant time on 6-9-2004 at about 2.00 pm when he was returning to his village

Pandopara by his friend's motor-cycle (Hero Honda), near Jindar Dhaba driver of the offending vehicle Tractor bearing registration No. CG 15-A/3025 driving the said vehicle rashly and negligently dashed the motor cycle as a result of which he sustained grievous injury which resulted in a permanent disability.

3. First contention of the learned counsel for the appellant is that in absence of evidence of permanent disability, the Tribunal erred in awarding a sum of Rs.50,000/- on this count and further erred in awarding a sum of Rs.50,000/- towards future medical treatment.
4. Now the point for consideration is as to whether the finding arrived at by the Tribunal is based on material placed on record.
5. From the evidence of claimant/respondent No.3, it is established that he suffered fracture in hand and leg and operated upon at Modern Medical Institute at Raipur. As per medical expert reports (Ex. P/26 and P/30), there was fracture on right hand and right leg of the claimant and he was unable to walk freely and he was advised to walk with the help of crutches. As per version of claimant he was unable to work for six months because his leg and hand were plastered. Looking to this evidence, the Tribunal opined that it is a case of disability and awarded Rs.50,000/- on this count which cannot be termed to be on higher side as it can be presumed that the claimant was not able to work for six months.
6. Again from the evidence it is clear that the claimant has not recovered fully for his regular work and, therefore, he is in need of treatment in future. Looking to the evidence, the tribunal awarded Rs.50,000/- for

future treatment and same cannot be termed to be on higher side. The tribunal awarded Rs.30,000/- for pain and suffering for all these days and the amount so awarded is also not on higher side, but the same is just compensation on this count.

7. It is contended on behalf of the Insurance Company that the vehicle was not used for agricultural purpose and the driver was not having a valid driving licence. The Insurance Company was under obligation to establish breach of insurance contract, but it led no evidence before the tribunal, therefore, it cannot be said that any breach was committed against the term of Insurance Company.
8. Considering all the facts and circumstances of the case and evidence available on record, this court is of the view that the finding arrived at by the tribunal is based on material on record and the same is not liable to be interfered while invoking jurisdiction of appeal.
9. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju