

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1510 of 2018**

- Shesh Ram Sahu, aged 37 years, S/o Sunder Lal Sahu, R/o Village Mungasher, P/S Bagbahara, Tahsil and Dist-Mahasamaund C.G.

---- Appellant**Versus**

1. Smt. Rekha Bai, aged about 48 years W/o Late Kirtan Ram, R/o- Village Mongra, P/s Tahsil and District- Mahasamund C.G.

(Legal heir of the Driver of the offending Vehicle Truck Reg. No.- CG-04ZC/2158)

2. Lekhram Sahu, S/o- Karik Ram Sahu R/o- Village Mongra, P/s Tahsil and District- Mahasamund C.G.

(Owner of the offending vehicle Truck Reg. No.-CG-04/ZC-2158)

3. Branch Manager, The New India Insurance Company Ltd., Divisional Office- Madina Building, Jail Road Raipur C.G.

(Insurer of the offending vehicle Truck Reg. No.- CG-04/ZC-2158).

---- Respondents

For Appellant	: Shri Dashrath Kushwaha, Advocate
For Respondent.	: Shri Azad Siddqui, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

26.11.2018

This is claimant's appeal seeking enhancement of compensation awarded by the Second Additional Motor Accidents Claims Tribunal to the First Additional Motor Accidents Claims Tribunal, Raipur C.G. in claim case No. 119/2012 vide award dated 12.04.2018.

2. Facts of the case leading to filing of claim petition are that on the fateful day i.e. 05.07.2011 appellant- Sheshram Sahu alongwith his friend after getting petrol tank refilled of his motorcycle was going towards Bagbahra from Swami Chowk Mahasamund C.G that time, driver of offending vehicle Truck bearing registration No. C.G.-04ZC/2158 dashed the motor cycle in a rash and negligent manner as a result of which, claimant sustained multiple injuries in private part of the body and he also suffered injuries in the pelvic bone and hip joint including fractures.

3. As against compensation of Rs. 3,20,000/- claimed by the appellant by filing claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the injuries sustained by him in the motor accident on 05.07.2011, the Tribunal awarded a total sum of Rs. 1,98,077/- as compensation along with interest @ 7.5 % per annum from the date of filing of claim petition till its actual payment to the appellant/claimant.

4. The Tribunal, on a close scrutiny of the evidence, held : the accident had occurred due to rash and negligent driving of driver of the offending vehicle who dashed the motorcycle of the appellant in a rash and negligent manner, as a result of which he sustained multiple injuries. Learned Tribunal, after considering the material available on record awarded aforesaid sum as compensation in favour of appellant fastening liability on the Insurance Company. There is no counter appeal by the Insurance Company.

5. Contention of the learned counsel for the Appellant/Claimant is that the Appellant sustained permanent disability to the extent of 50% due to

accident, but the Tribunal has not appreciated permanent disability certificate Ex. 109 and not appreciated the evidence of Dr. N. K. Mandape (AW/3) in support of the said document. He further submits that the Tribunal has erred in not awarding the sufficient amount towards attendant and not awarded any amount towards loss of earning capacity.

6. Learned counsel for the respondent No.3, however, oppose the appeal and submits that the learned Tribunal has rightly assessed the compensation of the injured/Claimant, therefore, the award is just and reasonable and does not call for any interference in the instant appeal.

7. I have heard the learned counsel appearing for the parties and perused the impugned order including the records of the Claims Tribunal.

8. So far as permanent disability to the claimant is concerned as per Ex.P/109 i.e. disability certificate issued by the Medical Board, the claimant suffered 50 percent temporary disability. According to Dr. N. K. Mandape (AW/3) who was one of the members of the District Medical Board issuing the said certificate, disability of 50 percent sustained by the claimant is temporary in nature in cross-examination he has admitted this fact, thus, considering the overall evidence documentary and oral available on record this Court finds that the claimant has failed to establish that he suffered permanent disability on account of the injuries sustained in the accident.

9 Being so, the Tribunal was justified in not awarding permanent disability. However, looking to the facts and circumstance of the case the nature and extent of the injuries suffered by the claimant, the period of hospitalization of the claimant i.e. from 05.07.2011 to 27.07.2011 this Court is of the opinion that the needs of justice would be served if the claimant is awarded further sum of Rs. 10,000/- towards attendant and looking to the document produced and exhibited before the Tribunal,

Rs. 30,000/- towards future treatment & further medicine for the injuries sustained on the private part of the body and pelvic bone fracture. Therefore, the claimant is entitled for additional sum of Rs. 40,000/- as compensation with interest as awarded by the Tribunal. In the result the appeal is partly allowed. Rest of conditions mentioned in the award shall remain intact.

10. The respondent No. 3/The New India Assurance Company Limited is granted two months' time to deposit enhanced amount of compensation of Rs.40,000/- along interest before the concerned Tribunal. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita