

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1655 of 2018**

1. Ashish Bharti S/o Rohit Bharti aged about 24 years, Jarhagaon Tahsil & District- Mungeli (C.G.).

---- Appellant**Versus**

1. Ashwani Kumar Kurre S/o Late Bahorik Lal Kurre aged about 45 years, R/o- Dasrangpur Thana Jarhagoan Tahsil & District- Mungeli (C.G.) (Driver of the offending Vehicle Bolero No. C.G. 10/W/5654).
2. Sanjay Kumar Banjare S/o Midat Banjare aged about 50 years R/o- C/o Indra Kumar Village- Nirtu Thana Takhatpur Tahsil Takhatpur District- Bilaspur (C.G.).

Hall Mukam House No. 114 Banjarepara Village Badhapara Mungeli Thana Tahsil & District- Mungeli (C.G.).

(Owner of the offending vehicle Bolero No. C.G.10/W/5654).

3. Branch Manager, The United India Insurance Company Ltd., Branch Office- 2nd Floor Guru Kripa Tower, Byapar Vihar Road In front of Amber Auto Mobile Bilaspur Tahsil and District- Bilaspur (C.G.) (Insurer of the offending vehicle Bolero No. C.G.10/w/5654).

---- Respondents

For Appellant	: Shri A.L. Singroul, Advocate
For Respondent No. 3.	: Shri Raj Awasthi, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

26.11.2018

1. This is claimant's appeal seeking enhancement of compensation awarded by 1st Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Tribunal') in claim case No.592/2017 vide award dated

16.04.2018.

2. Facts of the case, as per claim petition, are that on 17.07.2017 respondent No. 1- Ashwani Kumar Kurre while driving the offending vehicle Bolero bearing registration No. C.G.10/W/5654 rashly and negligently, dashed the motor cycle, in which the appellant/claimant was pillion rider, a result of which the appellant sustained grievous injuries resulting into permanent disability.

3. As against compensation of Rs. 10,10,000/- claimed by appellant/claimant, 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 17.07.2017, the Tribunal awarded a total sum of Rs. 1,51,538/- as compensation along with interest @ 6 percent per annum from the date of filing of claim petition till its actual payment in favour of the appellant/claimant.

4. The Tribunal, on a close scrutiny of the evidence led by both the parties, held : the accident had occurred due to rash and negligent driving of Bolero bearing registration No. C.G.10/W/5654 by its driver respondent No.1 – Ashwani Kumar Kurre ; appellant/claimant sustained grievous injuries in the accident occurred on 17.07.2017. Learned Tribunal, after considering the material available on record fastened the liability to pay compensation upon the respondent No. 3 /Insurance Company as it could not establish the violation of policy conditions and awarded aforesaid sum as compensation to the appellants /claimants.

5. Learned counsel appearing for the appellant would submit : the

appellant sustained compound fracture and also head injuries in the said accident and incurred huge amount towards medical expenses, however, the Tribunal did not award any sum on the head of conveyance and has also awarded inadequate sum on the head of pain and suffering and loss of income during treatment and thereby awarded low amount of compensation, which deserves to be suitably enhanced.

6. Per contra, counsel for the respondent No. 3/Insurance Company submits that the amount of compensation awarded by the Tribunal to the claimant for the injuries sustained by him in the motor accident is just and proper which does not call for any interference.

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

8. So far as job part of the injured claimant as mason is concerned, the same has been duly proved by the claimant by adducing oral evidence. Though the claimant monthly income as Rs. 15,000/-, however for want of any document or evidence in support thereof, the Tribunal has taken his income as Rs. 7,930/- per month as per minimum wages prevalent at the relevant time. This court find no illegality in the said finding however, looking to the nature and extent of injuries including compound fractures sustained by the claimant, his MLC report Ex. P/16, the period of his hospitalization i.e. 11 days, the fact that the claimant had to undergo surgical operations for interlocking of tibia bone, this Court is of the opinion that the Tribunal was not justified in assessing the loss of income of the claimant as Rs. 47,500 for a period of 6 months. In the given facts and circumstances of the case, the claimant must be unable

to do his work for a period of one year therefore, his loss of earning comes to Rs. 95,160/-

9. As regards, the amount towards pain and suffering of Rs. 5,000/-, the same being on the lowside is enhanced to Rs. 15,000/-. However the amount awarded towards Special diet of Rs. 10,000/- being just and proper needs no interference by this Court. No amount has been awarded by the Tribunal to the claimant towards conveyance and therefore, Rs. 5,000/- is awarded under this head. So far as award of Rs. 88,958 towards medical expenses is concerned the same appears to be just and proper appreciation of the oral and documentary evidence adduced by the claimant and as such requires no enhancement. Thus, the claimant is entitled for compensation in the following manner:

Sl.No.	Heads	Calculation
1.	Towards loss of earning	Rs. 95160/-
2.	Towards pain and suffering	Rs. 15,000/-
3.	Towards special diet	Rs. 10,000/-
4.	Towards conveyance	Rs. 5,000/-
5.	Towards medical expenses	Rs. 88,958/-
	Total Compensation	Rs. 2, 14,118/-

(10) In view of foregoing, the appeal is allowed in part. The compensation of Rs. 1,51,538/- awarded by the Tribunal is enhanced to Rs. 2,14,118/-. The appellant is entitled for a further sum of Rs. 62,580/- with 6% interest over and above the amount awarded by the Tribunal.

Rest of conditions mentioned in the award shall remain intact.

(11) The respondent No. 3/ Insurance Company is granted three months' time to deposit enhanced amount of compensation of Rs. 62,580/- along with interest before the concerned Tribunal. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita