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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1753 of 2018

- The Oriental Insurance Company Limited, through- Branch Manager, Branch Office- Rama Trade, Center, Infront of Rajeev Plaza Old Bus stand Bilaspur, tehsil and district- Bilaspur (C.G.) (Insurer of Truck No. C.G.04/JA/7757).

---- Appellant

Versus

1. Rishi Sahu age 37 years S/o Late B. R. Sahu, resident- Behind old High Court, Tikrapara, Thana City Kotwali, Tehsil and District Bilaspur (C.G.).

2. Shyam Sundar Sharma age 50 years S/o Koleshwar Sharma, resident- M.S. Petrol Pump, near Chhokranala, Raipur Thana- Gudihari, Tehsil and District- Raipur (C.G.) (Driver of truck No. C.G.04/JA/7757).

3. Smt. Harjindar Kaur Kabarwal, age 58 years W/o Shri Surendra Singh Resident- Santrabadi Durg, tehsil and District- Durg (C.G.) (owner of truck No. C.G.04/JA/7757).

---- Respondents

For Appellant	:Shri Sudhir Agrawal, Advocate.
For Respondent No.1	:Shri Rishi Sahu, Advocate (in person).

MAC No. 1543 of 2018

1. Rishi Sahu age 37 years S/o Late B. R. Sahu, resident- Behind old High Court, Tikrapara, Thana City Kotwali, Tehsil and District Bilaspur (C.G.).

---- Appellant

Versus

2. Shyam Sundar Sharma age 50 years S/o Koleshwar Sharma, resident- M.S. Petrol Pump, near Chhokranala, Raipur Thana- Gudihari, Tehsil and District- Raipur (C.G.0 (Driver of truck No. C.G.04/JA/7757).

3. Smt. Harjindar Kaur Kabarwal, age 58 years W/o Shri Surendra Singh Resident- Santrabadi Durg, tehsil and District- Durg (C.G.) (owner of truck No. C.G.04/JA/7757).

4. The Oriental Insurance Company Limited, through- Branch Manager, Branch Office- Rama Trade, Center, Infront of Rajeev Plaza Old Bus stand Bilaspur, tehsil and district- Bilaspur (C.G.) (Insurer of Truck No. C.G.04/JA/7757).

---- Respondents

For Appellant	:Shri Rishi Sahu present in person.
For Respondent No.3	:Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

14/12/2018

As both these appeal arise out of the award dated 19.06.2018 passed by 7th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.600/2016, they are heard together and are being disposed of by this common judgment.

02. As per averments in the claim petition, on 19.09.2014, the claimant/injured, earning Rs.30,000/- per month, as an advocate, was riding on the motorcycle bearing No. CG10-EB/5488 and while he was coming back to his house by the said vehicle, near Tifra over bridge, non-applicant No.1 Shyam Sundar Sharma due to rash and negligent driving of the vehicle (Truck) bearing No. CG04-JA/7757 from back side hit the motorcycle of the claimant/ injured- Rishi Sahu, as a result thereof, the claimant suffered grievous injuries on his head, shoulder, mouth and spinal bone and other parts of the body. On report being made, offence was registered against non-applicant No.1 by the police.

03. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act claiming compensation to the tune of Rs.13,00,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs. 2,88,346/- along with interest @ 8% per annum from the date of application till its reliazation.

04. **MAC No. 1753 of 2018**: This appeal has been filed by the insurance company challenging its liability. Learned counsel for the appellant/Insurance Company submits that the learned Claims Tribunal has erred in fastening liability upon the Insurance Company as at the time of accident, the driver of offending vehicle did not have valid and effective driving licence to drive the said vehicle. He further submits that at the time of accident, the claimant/injured was riding the motorcycle and he could not take proper care and caution, therefore, the Tribunal ought to have held contributory negligence on the part of the claimant/injured to the extent of 50% also. He also submits that the claim petition as filed is not maintainable as accident had occurred on 19.09.2014 whereas FIR (Ex. A/2) was lodged on 15.07.2015 i.e. after an inordinate delay of 10 months. This apart he has also challenging the quantum of compensation on the ground that the Tribunal has assessed the income of the claimant @ Rs. 20,000/- without any basis and also awarded interest on the higher side.

05. On the other hand, learned counsel for respondent No.1/claimant supports the impugned award insofar as it relates to fastening of liability on the insurance company. However, the claimant has also

challenged the award on the point of quantum and has filed a separate appeal i.e. MAC No.1543/2018 for enhancement of compensation.

06. **<u>MAC No. 1543/2018</u>** : This appeal has been filed by the claimant/injured for enhancement of compensation. Learned counsel for the appellant/claimant submits that in the said accident the injured suffered grievous injuries on the various part of the body and taken long treatment in the Appolo Hospital the Tribunal has erred in assessing loss of earning capacity of the claimant for two months whereas it should be considered for about four months because of taking treatment and injuries sustained by him claimant could not go for his work for about four months. The Tribunal was also not justified in not granting any amount regarding future treatment etc. and the amount awarded by the Tribunal towards medical treatment and pain & suffering is also on the lower side. Therefore, he prays for enhancement of the total compensation by this Court suitably.

07. Opposing the above contention, learned counsel for the insurance company submits that the Tribunal has already awarded compensation on the higher side and therefore, there is no need for its enhancement by this Court.

08. Heard learned counsel for the parties and perused the material available on record.

09. So far as appeal preferred by the insurance company is concerned, the insurance company has assailed the award of the Tribunal on three grounds, first that at the time of accident the driver of

the offending vehicle was not having valid and effective driving licence; secondly that there was contributory negligence on the part of the claimant/injured to the extent of 50%; and thirdly that there was no prompt FIR lodged against the driver of the offending vehicle with regard to accident and there is an inordinate delay of about 10 months in lodging the FIR (A/2).

10. The claimant in his claim petition, filed an affidavit under Order 18 Rule 4 of CPC in which he has stated that on the date of accident i.e. 19.09.2014 while he was riding his motorcycle, near Tifra over bridge non-applicant No. 1 by driving in a rash and negligent manner dashed from behind, as a result of which, he fell down form his motorcycle and sustained grievous injuries on various part of his body. The said evidence of the claimant/injured remained unrebutted in his cross-examination. The claimant also lodged the FIR vide Ex. A/2 against the non-applicant No. 1, the offending vehicle was seized from non-applicant No. 1 vide sezure memo (ExA/6) and after investigation chargesheet was filed against the non-applicant No. 1 for the offence punishable under Sections 279, 336 & 338 vide Ex. A/1. Though the Insurance Company has pleaded that at the time of accident non-applicant No. 1 was not having a valid and effective driving licence and there was no contributory negligence on the part of the claimant, however, from perusal of the entire record it is seen that no evidence whatsoever has been adduced by the Insurance Company to substantiate its plea. It the settled principles of law that mere raising of plea is not sufficient to prove the case and the party raising any plea is required to substantiate the same by adducing cogent and reliable

evidence in support thereof. This being the position, the Tribunal was fully justified in fastening the liability on the Insurance Company of satisfying the award and not holding the claimant's any negligence to any extent. Thus, the appeal filed by the Insurance Company challenging its liability being without any substance is liable to be dismissed. As regards the quantum of compensation challenged by the Insurance Company the same would be considered while deciding the appeal (MAC No. 1543) filed by the claimant for enhancement of compensation.

11. As regards the appeal filed by the claimant for enhancement, the Tribunal was justified in assessing the income of the claimant as Rs.20,000/- per month as an advocate at the relevant time as the claimant could not prove his income as Rs.30,000/- by any oral or documentary evidence. The accident occurred on 19.09.2014 and the claim petition was filed on 22.10.2016. In the claim petition the claimant has pleaded that due to injuries suffered by him he is not able to do any work till date. In his affidavit filed under Order 18 Rule 4 of CPC dated 27.01.2018 claimant has also stated in para 3 that on account of injuries sustained by him he was not able to do any work for two years and still he is required to have medical treatment for the same. No evidence to the contrary has been adduced by the non-applicant. As per Ex. A/13 i.e. discharge summary, the claimant suffered extensive facial injuries with multiple fracture of facial bone due to RTA and various surgical procedures for eye and orbital were done. The document of Ex A/3 comes to show that the claimant remained admitted in hospital for four days i.e. from 20.09.2014 to 24.09.2014.

Thus, considering the nature and extent of injuries suffered by the claimant, the part of the body where the injuries were caused and the nature of job of the claimant, this Court is of the opinion that the Tribunal was not justified in assessing the loss of earning of two months it can safely be taken for four months. Thus, the claimant is entitled for loss of earning for four months @ Rs. 20,000/- per months i.e. Rs. 80,000/-. Likewise the claimant is also entitled a sum of Rs. 10,000/- for future treatment and Rs. 40,000/- towards pain & suffering in place of Rs. 10,000/- as awarded by the Tribunal. So far as the amount awarded by the Tribunal towards medical, special diet conveyance and attendant is concerned, the same being passed on proper evidence, oral and documentary, available on record need no interference by this Court. Being so, the claimant is held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Loss of earning of the claimant for four months @ Rs. 20,000/- per months	Rs. 80,000/-
02.	Towards medical expenses	Rs. 2,28,346/-/-
03.	For future treatment	Rs. 10,000/-
04.	Nutritional diet	Rs. 5,000/- as awarded by the Tribunal
05.	Towards attendant & conveyance	Rs. 5,000/-
06.	Towards pain and suffering	Rs. 40,000/-
08	**Total :**	**Rs. 3,68,346/-**

Since the Tribunal has already awarded Rs2,88,346/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.80,000/- with interest as awarded by the Tribunal.

12. In the result:

- MAC No. **1753 of 2018**preferred by the insurance company being without any substance is hereby dismissed.

- MAC No. **1543/2018** filed by the claimant is allowed with modification in the impugned to the above extent that the claimant shall be entitled for additional compensation of Rs.**80,000**/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

Sd/-

(Gautam Chourdiya)
Judge

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