

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 401 of 2014**

1. Damodar Karsha S/o Bodhram Karsh Aged About 22 Years R/o Salhe, P.S. And Tahsil Sarangarh, District, Civil & Revenue District Raigarh (C.G.)

---- Appellant/Claimant**Versus**

1. Firuram Feku S/o Paras Ram Aged About 32 Years, (**Driver** of alleged vehicle bearing registration No. CG04 HC 2870)
2. Milan Singh Khare S/o Sadhram Aged About 65 Years, (**Owner** of alleged vehicle bearing registration No. Cg04 HC 2780)

Both are R/o village Salkhanda, P.S. And Tahsil Basna, District : Mahasamund (C.G.).

3. IFCO Tokiyo General Insurance Company, Branch Office 347, Third Floor, Lal Ganga Shopping Mall, G.E. Road, Raipur (C.G.), (**Insurer** of alleged vehicle bearing registration No. CG04 HC 2780)

---- Respondents/Non-applicants

For Appellant	:	Shri S.P. Sahu, Advocate.
Respondent No. 1 & 2	:	Shri Shikhar Sharma, Advocate.
For Respondent No. 3	:	Shri P. Acharya, Advocate on behalf of Shri Amrito Das, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****25/06/2019**

- 1) This appeal is by the injured claimant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 19/12/2013 passed by the Motor Accident Claims Tribunal, Baloda Bazar, District Baloda Bazar (C.G.) in Claim Case No. 64/2013 awarding the total compensation of Rs. 1,47,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1, 2 & 3 jointly and severally.
- 2) As per averments of claim petition on 19/12/2011 at around

06:00 PM claimant Damodar Karsha, 22 years of age, was riding his motor cycle bearing No. CG13 F 4294 with a moderate speed. However, on the way non-applicant No. 1/Firuram Feku by driving vehicle Maruti Omni bearing No. CG04 HC 2870 (offending vehicle) in a rash and negligent manner dashed the motorcycle of the claimant. As a result of this accident, claimant suffered grievous injuries on jaw, mouth nose, tongue, leg and other parts of the body. At the time of accident the offending vehicle was owned by non-applicant No. 2 and insured with non-applicant No. 3.

- 3) On the claim petition being filed by the injured claimant under section 166 of Motor Vehicles Act, 1988, the Tribunal considering the evidence led by the parties passed an award as mentioned in para 1 of this judgment.
- 4) Learned counsel for the appellant/claimant submits that though he has raised various grounds in this memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds only:-
 - i. that the income of the claimant has wrongly being considered by the Tribunal as Rs. 3,000/- per month; whereas he was earning Rs. 5,000/- per month as Mason.
 - ii. that the amount awarded by the Tribunal of Rs. 3,000/- towards special diet and conveyance is on the lower side and deserves to be enhanced suitably.
- 5) Learned counsel for the respondent Nos. 1 & 2 i.e. Driver and Owner of the vehicle opposes the contention made by the appellant counsel and support the award.
- 6) On the other hand, learned counsel for the respondent/Insurance Company opposes the contention made by the appellant counsel and supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

- 7) No counter appeal has been filed by the respondent as submitted by counsel for the parties.
- 8) Heard, learned counsel for the parties and perused the material available on record.
- 9) It is not disputed by both the parties that appellant sustained grievous injury as offending vehicle was driven by non-applicant No. 1/Firuram Feku rashly and negligently dashed the motorcycle of the claimant. At the time of accident the offending vehicle was owned by non-applicant No. 2 and insured with non-applicant No. 3 and fastening liability on the non-applicants No. 1, 2 & 3 jointly and severally.
- 10) As regards income of the claimant, though the claimant has pleaded that he was earning Rs. 9,000/- per month working as Mason but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the claimant is considered as Rs. 4,500/- as per minimum wages at the relevant time. Further, considering the nature and accident of injuries suffered by the claimant, this Court is of the opinion that the amount of Rs 3,000/- awarded by the Tribunal towards special diet and conveyance can safely enhance to Rs. 7,000/-. Thus, the claimant is held entitled for compensation in the following manner :-

Sl. No.	Heads	Calculation (In rupees)
01	Towards Medical expenses (as awarded by the Tribunal)	1,22,000
02	Towards special diet and conveyance (as awarded by the Tribunal) Rs. 3000/-	7,000
03	Towards loss of earning for 4 months (Rs. 4,500/- per month) (4500x 4 = 18000)	18,000
04	Towards pain and suffering (as awarded by the Tribunal)	10,000
	Total compensation	Rs. 1,57,000/-

- 11) Since the Tribunal has already awarded Rs. 1,47,000/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 10,000/- with interest @6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.
- 12) In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant