

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 302 of 2015**

1. Ashutosh Bhariya S/o Dr. Manharan Lal Bhariya Aged About 21 Years R/o Quarter No. 268, Ompur, Rajgamar, Tahsil Korba, Civil and Revenue District Korba (CG.) (**Non-applicant No. 1**)
2. Dr. Manharan Lal Bhariya S/o Kalesh Ram Bhariya Aged About 51 Years R/o Quarter No. 268, Ompur, Rajgamar, Tahsil Korba, Civil and Revenue District Korba (CG.) (**Non-applicant No. 2**)

---- Appellants**Versus**

1. Abdul Kabir S/o Late Shri Baba Kunji Aged About 45 Years R/o G/2, District Hospital Colony Korba, P.S. Balco, Tahsil and District Korba (C.G.). (**Claimant**)

---- Respondent

For Appellants	: Shri Basant Kaiwartya, Advocate.
For Respondent	: Shri Anil Gulati, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****20/06/2019**

- 1) This appeal is by the Owner and Driver of the offending vehicle against the award dated 23.12.2014 passed by 2nd Additional Motor Accident Claims Tribunal, Korba, District Korba (C.G.) in M.A.C.T. No. 35/2014 awarding total compensation of Rs. 34,233/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants no. 1 & 2.
- 2) Respondent/claimant has filed cross objection under Order 41 Rule 22 of CPC seeking enhancement of compensation.
- 3) As per averments in the claim petition, on 16/10/2012 at around 12:30 PM, claimant Abdul Kabir, aged about 45 years earning

Rs. 3,000/- per month as Lab Technician in Blood Bank riding vehicle Activa bearing No. CG12 N 1467 was coming from Korba to Balco. However, on the way Non-applicant No. 1 by riding motorcycle bearing No. CG12 AA 6422, owned by Non-applicant No. 2, in rash and negligent manner came from opposite direction and dashed the vehicle of the claimant as a result of which the claimant suffered grievous injuries as also permanent disability.

- 4) On claim petition being filed by the injured claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
- 5) Learned counsel for the appellants submit that the Tribunal has wrongly fastened the liability upon the appellants as the claimant himself was responsible for the accident. In the said accident non-applicant No. 1 also sustained injuries.
- 6) Learned counsel for the respondent/claimant opposes the contention made by counsel for the appellants and submits that no counter FIR was lodged against the claimant whereas charge sheet was filed against the non-applicants for the offence under sections 279, 337 and 338 of IPC. No evidence has been adduced by the non-applicants to prove that the accident occurred due to negligence on the part of the claimant whereas according to the claimant and the eye witness AW-02 Shiv Narayan Soni it has been duly proved that the accident occurred due to rash and negligent riding by the Non-applicant No. 1.
- 7) Learned counsel for the respondent/claimant submits that the Tribunal has awarded a meager amount under pain and suffering and other heads looking to the injuries sustained by the claimant and therefore, the amount awarded by the Tribunal deserves to be enhanced suitably.
- 8) Learned counsel for the appellants submit that the Tribunal

considering all the aspects of the matter has rightly assessed the compensation which needs no enhanced by this Court.

- 9) Heard learned counsel for the parties on appeal as well as cross objection and perused the material available on record including the impugned award.
- 10) So far as liability is concerned, admittedly the offending vehicle ridden by non-applicant No. 1 was not insured on the date of accident. As per pleadings of the claimant and the eye witness account rendered by AW-02 Shiv Narayan Soni, it is non-applicant No. 1 who was riding the offending vehicle in a rash and negligent manner and dashed the vehicle ridden by the claimant which resulted in injuries to the claimant. As per Ex. P-1 after due investigation charge sheet was filed against non-applicants for the offence under sections 279, 337 and 338 of IPC. No counter FIR was lodged against the claimant by the non-applicant No. 1 though he claims that the accident occurred due to negligence on the part of the claimant. No evidence whatsoever has been adduced by the non-applicants to substantiate their pleadings. Therefore, considering the facts and circumstances of the case, the manner in which accident occurred, the oral and documentary evidence available on record, the fact that no evidence in rebuttal has been adduced by the non-applicants to substantiate their pleadings, this Court is of the opinion that the Tribunal has rightly fastened the liability upon the non-applicants jointly and severally.
- 11) As regards the quantum of compensation, the Tribunal considering the nature and extent of injuries suffered by the claimant, the period of his hospitalization, oral and documentary evidence adduced by the claimant, the fact that the claimant is a Government servant and as such has not suffered any loss of income due to injuries sustained by him, the medical bills filed and proved by the claimant, awarded Rs. 18,233/- towards medical expenses, Rs. 5,000/- towards pain and suffering, Rs.

2,000/- towards special diet, Rs. 4,500/- towards conveyance, Rs. 4,500/- towards expenses incurred in exercise during treatment. As such the Tribunal award total amount of Rs. 34,233/- with interest @ 6% per annum from the date of application till realization. In the totality of the case, the nature of injuries sustained by the claimant and the evidence adduced by him, this Court finds no illegality in the findings recorded by the Tribunal warranting enhancement of the compensation.

- 12) In the result, the appeal filed by the owner and driver and cross objection filed by the claimant being without any substance are hereby dismissed.

-Sd/-
(Gautam Chourdiya)
Judge

Akhilesh