

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1245 of 2015**

1. Dilip Kumar S/o Shri Kanwal Singh Aged About 19 Years R/o Village Konari, P. S. - Pulgaon, Tahsil And District (C.G.).

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

1. Rajivlal Churendra S/o Faguram Churendra, Aged About 29 Years R/o Village Gudatola (Kahegaon) Thana Manpur, District Rajnandgaon (C.G.) present R/o Through Chhattar Singh, Village and Post Kusumkasa, Tahsil And District Balod (C.G.) **(Driver)**
2. Smt. Gatendra Kaur W/o Darbara Singh, Aged About 44 Years R/o Salita Para, Bhanupratappur, District Kanker (C.G.) presently Riding at Qr. No. 238, Taram Para, Dalli Rajhara, P. S. - Dalli Rajhara, District Balod (C.G.) **(Owner)**
3. Divisional Manager, Magma H.D.I. General Insurance Co. Ltd., Qr. No. 3/Naya, Bhutal, Chirhuldi Ward, In Front Of Rajkumar Collage, N. H. Road, Tahsil And District Raipur (C.G.).

---- Respondents

For Appellant	:	Shri Vedant Bhelonde, Advocate on behalf of Shri P.R. Patankar, Advocate
Respondent No. 1 & 2	:	None.
For Respondent No. 3	:	Shri Rohitashva Singh, Advocate.

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

- 1) This appeal is by the claimant injured under Section 173 of the Motor Vehicles Act, 1988 against the award dated 24/07/2015 passed by the First Additional Motor Accident Claims Tribunal, Durg (C.G.) in Claim Case No. 128/2013 awarding the total compensation of Rs. 2,97,341/- with interest @ 6% per annum from the date of application till realization, considering 50% negligence on part of claimant himself, fastening liability upon the Non-applicant Nos. 1, 2 and 3.

- 2) As per averments of claim petition on 21/05/2013 at around 05:30 AM claimant Dilip Kumar, 19 years of age, was riding his motor cycle bearing No. CG07 AH 9007 and coming from Durg Bus Stand with a moderate speed. However, on the way, near Pulgaon culvert non-applicant No. 1/Rajivlal Churendra by driving vehicle Truck bearing No. CG07 AE 9333 (offending vehicle) in a rash and negligent manner dashed the motorcycle of the claimant. As a result of this accident, claimant suffered grievous injuries and fractured on left fibula bone, left wrist, arms and implants steel rod in his hand. Due to injury suffered by him he has become permanent disabled. He was earning Rs, 5000 per month as Mason 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 claimant injured 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 learned Tribunal wrongly held that there was 50% contributory negligence on part of the appellant, as it is against the evidence available on record and perverse finding, therefore, it needs to be set aside.
- 5) Looking to the facts and circumstances of the case and liability fastened upon non-applicant No. 3/Insurance Company jointly

and severally with the driver and owner of the vehicle and no any counter appeal is filed by the respondent as submitted by the appeal counsel, therefore, liability on non-applicant No. 3/Insurance Company heard on finally, no need to be notices to Respondent Nos. 1 and 2.

- 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 that no any evidence is adduced by the respondent in this case except the claimant examined himself as AW-01, AW-02 Dr. Sourabh and AW-03 Dr. P.C. Deshmukhh, no any witness examined by Insurance Company or the owner or Driver of the vehicle.
- 10) Fact is proved by the claimant as per charge sheet filed against the non-applicant No. 1/Rajivlal Churendra driver of the offending vehicle under section 279, 337 and 338 of I.P.C. and prompt F.I.R. has also been lodged against the non-applicant No. 1 as per Ex. P-2. In M.L.C. report as per Ex. P-3, seizure report Ex. P-4, P-5 and P-6 is proved by the claimant and as per evidence of injured himself, who is the eye witness of the case stated specifically that the driver of the offending vehicle driven the vehicle rashly and negligently and dashed the vehicle from the side of the vehicle, only the two vehicle in involved in this case and learned Tribunal considering 50% contributory negligence on part of the claimant is no substance looking to the

no evidence adduced by the respondent in this case and as per evidence of the claimant himself and documents produced by the claimant as per Ex. P-1 to Ex. P-3, the absolute liability on the non-applicant no. 1 for the said accident occurred on the date of accident.

- 11) In this case the driver of the offending vehicle non-applicant No. 1/ Rajivlal Churendra has not examined before the Tribunal, he is a better person to give explanation regarding the accident and no any counter F.I.R. has been lodged against the claimant regarding any contributory negligence, therefore, no any evidence is available on record to find out the contributory negligence on part of claimant, hence the finding of the 50% contributory negligence by the learned Tribunal is against the evidence available on record, therefore, is **set aside**.
- 12) As regards income of the claimant, though the claimant has pleaded that he was earning Rs. 5,000/- 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. 5,000/- as per minimum wages at the relevant time of semi skilled labour. Further, considering the nature and accident of injuries suffered by the claimant, this Court is of the opinion that the amount of awarded by the Tribunal towards medical expenses, mental agony & pain, special diet, conveyance and attendance is just and proper. 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)	5,55,683
02	Towards mental agony and pain (as awarded by the Tribunal)	10,000
03	Towards special diet (as awarded by the Tribunal)	10,000

Sl. No.	Heads	Calculation (In rupees)
04	Towards conveyance (as awarded by the Tribunal)	5,000
05	Towards attendance (as awarded by the Tribunal)	5,000
06	Towards loss of earning for 3 months (Rs. 5,000/- per month) (5000x 3)	15,000
	Total compensation	Rs. 6,00,683/-

- 13) Since the Tribunal has already awarded Rs. 2,97,341/- after deducting the same from the above amount, the claimant injured is held entitled for additional compensation of Rs. 3,03,342/- with interest @6% per annum from the date of application till realization. Insurance Company is liable to deposit the amount within two months from the date of this judgment. However, rest of the conditions of the impugned award shall remain intact.
- 14) In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

-Sd/-
(Gautam Chourdiya)
Judge