

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1456/2016**

1. Hiranman Dhruw S/o Chinta Ram Dhruw, aged about 28 years, R/o Village Puri, Tahsil and District Dhamtari, C.G.

---- Appellant**Versus**

1. Ramesh Kumar Desai, S/o Bachan Desai, aged about 58 years, R/o Village Puraina Basti, Bhilai-3 District Durg, C.G.
2. Mohammad Usmani, S/o Gulam Mustaffa aged about 33 years, R/o Road No.1 Kasaridih, Thana Durg, District Durg, C.G.
3. The National Insurance Company Ltd. Branch Office Bhutani Complex G.E. Road Power House Bhilai, District Durg, C.G.

---- Respondents

For Appellant

Shri A.L. Singroul, Advocate.

For Respondent No.3

Shri Anil Gulati, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****21.02.2019**

1. This is claimant's appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Dhamtari, C.G. (for short 'the Tribunal') in Claim Case No. 104 of 2016 vide award dated 1.09.2016.
2. As against the compensation of Rs.21,60,000/- claimed by the appellant/claimant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the grievous injuries sustained by him in the road accident on 17.10.2014, the Tribunal awarded a total sum of Rs.66,571/- along with interest @ 6% per annum from the date of application till its actual payment, deducting 50% contributory negligence on the part of the claimant. At the time of accident, Injured/claimant was aged about 28 years, working as Mason

and earning Rs.250-300/- per day.

3. The Tribunal, on a close scrutiny of the evidence led by both the parties, held that the accident had occurred due to rash and negligent driving of Crane bearing registration no. CG07/NA/4522 by its driver i.e., respondent No.1 herein: appellant/claimant sustained grievous multiple injuries and his right leg was fractured and he suffered 50% temporary disability, respondent No.3 / Insurance Company liable for payment of compensation as it could not establish any violation of policy conditions; assessed and awarded the aforesaid sum as compensation.
4. Learned counsel for the appellant submits that at the time of accident claimant was the pillion rider on the motorcycle, therefore, no contributory negligence can be considered on his part and it is not permissible under the law. He further submits that claimant sustained 50% temporary disability and loss of earning Rs.2,400/- is considered by the learned Tribunal. Looking to the fracture in the right leg of the injured and taking of complete rest for three to four months, loss of earning i.e. Rs.2,400/- is on lower side, therefore, it may be enhanced looking to the injury on the part of body of the claimant.
5. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.
6. No counter appeal has been filed by the respondents.
7. Heard learned counsel for the parties and perused the material available on record.
8. Definitely the medical documents are proved by the claimant and medical bills considered by the Tribunal i.e. Rs.1,17,942/- which is just

and proper. Looking to the pain and suffering only Rs.5,000/- is awarded by the Tribunal, however, considering the 50% temporary disability for the long time and the gravity of the injures, the period of hospitalization, this Court is of the opinion that the amount of Rs.5,000/- towards pain and suffering deserves to be enhanced to Rs.15,000/- and likewise, the claimant is also entitled for loss of income for four months @ of Rs.4,500/- per month. Hence, the claimant is entitled for compensation in the following manner:-

S.No.	Heads	Calculation
1.	Notional Income of the claimant @ Rs.4,500/- per month for four months	Rs. 4,500 x 4 = Rs.18,000/-
2.	Loss of pain and suffering	Rs.15,000/-
3.	For Conveyance	Rs.3,000/-
4.	For Special Diet	Rs.5,000/-
5.	For Medical Expenses	Rs.1,16,000/- + Rs.1,942/- = Rs.1,17,942/-
6.	For Attendant	Rs.2,400/-
	Total Compensation	Rs.1,61,342/-

9. So far as contributory negligence on the part of the claimant is concerned, the Tribunal while considering the said issue in para 11 of its award has observed that claimant in para 4 of his evidence has admitted that the offending vehicle dashed their motorcycle from the right side and the motorcycle was being ridden on the right side of the road. As such from the admission of the claimant it stands proved that the motorcycle was being ridden on the wrong side of the road which resulted in

unfortunate accident for which the driver of the offending vehicle cannot be hold solely responsible. However, this Court is of the opinion that the finding so recorded by the Tribunal is not in accordance with law because the claimant in this case was admittedly a pillion rider in the motorcycle and there is no evidence on record to show that he was in any manner negligent in causing the accident. In these circumstances, the Tribunal was not justified in holding the claimant negligent to the extent of 50% and in fact it appears to be a case of composite negligence on the part of the driver of the offending vehicle and the rider of the motorcycle in which the claimant was a pillion rider. Hence, the finding of the Tribunal regarding contributory negligence on the part of the claimant is liable to be set aside and is hereby set aside.

10. On the basis of aforesaid discussions, this Court is of the opinion that the claimant is entitled for a total compensation of Rs.1,61,342/-. Since, the Tribunal has already awarded Rs.66,571/-, after deducting the same the claimant is held entitled for an additional compensation of Rs.94,771/- with interest at the rate of 9% per annum from the date of application till its realization.

11. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

12. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

