

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 866 of 2019**

1. The Oriental Insurance Co. Ltd. Through Branch Manager, Branch Office Oriental Insurance Co. Shahid Park Road Jagdalpur District- Bastar, Chhattisgarh. (**Insurance Co.**).

---- Appellant**Versus**

1. Kartik Shardul S/o Late Bonku Shardul Aged About 54 Years Village Dodarepal P.S. Kodenar District- Bastar, Chhattisgarh. (**Claimant**)
2. Arvind Shivhare S/o Shri Jagannath Shivhare Aged About 28 Years R/o Chandrashekar Azad Ward No.8, Awarabhata Patel Para Dantewada District South Bastar Dantewada, Chhattisgarh (**Owner-Cum-Driver**)

---- Respondents

For Appellant	: Shri P.K. Tulsyan, Advocate.
For Respondents	: None.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****16/05/2019**

- 1) This appeal is preferred by the Insurance Company under Section 173(2) of the Motor Vehicles Act, 1988 against the award dated 31/01/2019 passed by Third Additional Motor Accident Claims Tribunal Bastar place Jagdalpur (C.G.) in Claim Case No. 28/2018 awarding total compensation of Rs. 1,57,848/- with interest @ 6% per annum from the date of application till realization, fastening liability on the appellant/non-applicant No. 2 and respondent No.2/non-applicant No.1 jointly and severally.
- 2) As per averments in the claim petition, claimant Kartik Shardul on 29/12/2016 at around 01:00 PM, aged about 54 years,

earning Rs. 15,000/- per month from his Auto Rikshaw. Lachchhindar Shardul S/o Kartik Shardul was riding Auto Rikshaw bearing No. CG17 KH 9840 at the time of accident and he was waiting for passenger at Katakanda Chowk near Bus stoppage NH-63 at that time non-applicant No. 1/Arvind Shivhare driving the Truck (offending vehicle) bearing No. CG04 E 7851 rashly and negligently dashed Auto Rikshaw and as a result of this accident the Auto Rikshaw got badly damaged. Non-applicant No. 1 was the owner-cum-driver of offending vehicle and vehicle was insured with appellant/non-applicant No. 2.

- 3) On claim petition being filed by the claimant under Section 168(9) of the Motor Vehicles Act 1998, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
- 4) Learned counsel for the appellant/Insurance Company 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 awards on the following grounds only :-
 - i. That only on the basis of the estimate as per Ex. A-5, the learned Tribunal considered the loss of property Rs. 1,42,848/- ignoring the report of Surveyor produced by the appellant which is amounting to Rs. 69,796/- (Ex. NA-2).
 - ii. That the learned Tribunal has considered the matter thoroughly in its Para-11 of the award, in which it is considered that the Surveyor has reported a few of heads like glass parts, rubber parts and metal parts deducted, which is not been accepted by the Tribunal.
 - iii. That the learned Tribunal has also awarded a sum of Rs. 10,000/- for loss of one month income as vehicle was not run for that period and awarded Rs. 5,000/- for financial loss and mental agony, is not permissible under the law.

- iv. That the learned Tribunal has wrongly considered compensation on higher side, it's reduced suitably.
- 5) Heard learned counsel for the appellant and perused the material available on record & impugned award.
- 6) It is not disputed that Auto Rikshaw was dashed by vehicle Truck bearing No. CG04 E 7851 on 29/12/2016. Looking to the estimate as per Ex. A-5 previously it is an estimated repairing cost submitted by Mahvir Automobiles and the fact is proved by Mohd. Sarif (AW-3) who is working in Mahvir Automobiles and that contention regarding the estimate is uncontroverted in cross examination and that fact is also proved by claimant/Kartik Shardul and supported by Lachchhindar Shardul (AW-2). Survey report (Ex. NA-1) is prepared by surveyor but surveyor was not examined before Tribunal and looking to the proposed estimate (Ex. A-5) is proved by the authorized person of Mahvir Automobiles, therefore, the learned Tribunal rightly appreciated estimate proved by the claimant.
- 7) Only the assessment is produced by Insurance Company but no person on behalf of that is corroborated on part of appellant. Hence, the estimated cost produced in the light of Ex. A-5 is appreciated as per findings of learned Tribunal.
- 8) Considering the facts and circumstances of the case, the nature of damages and quality of evidence adduced by the claimant as reflected from the impugned award, the said assessment appears to be just and proper, warranting no interference by this Court.
- 9) Resultantly, the appeal being without any substance is liable to be dismissed at the admission stage itself and is, accordingly, dismissed.

-Sd/-
(Gautam Chourdiya)
Judge