

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 673 of 2017

- Chola Mandlam M. S. General Insurance Company Limited Through Branch Manager, Address- Simran Tower, In Front Of L.I.C. Office, Near Chhoti Railway Line, Pandri, Raipur, Distt. Raipur, ChhattisgarhInsurer Of Truck No. C.G.04 J.C. 9405

---- Appellant

Versus

1. Leelaram Dhivar S/o Late Kunwar Singh Dhiwar, Aged About 45 Years R/o Near Dhobni Talab, Kurud, Police Station Kurud, Distt. Dhamtari, ChhattisgarhClaimant
2. Harmanprit Singh S/o Avtar Singh, R/o D.N.K. Colony, Kondagaon, Distt. Kondagaon, ChhattisgarhDriver Of Truck No. C.G.04 J.C. 9405.
3. Jitendra Golchha S/o Late Jasraj Golchha, R/o D-254, Taigore Nagar, Raipur, Thana Tikrapara, Distt. Raipur, ChhattisgarhOwner Of Truck No. C.G.04 J.C. 9405.

---- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate.
For Respondent No.1	:	Shri Shivendu Pandya, Advocate.
For Respondent Nos 2 & 3	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04/04/2019

Heard on IA No.01, application for condonation of delay of 8 days in filing the appeal.

02. For the reasons mentioned in the application, which is duly supported by affidavit, delay in filing the appeal is hereby condoned.

03. Heard on admission.

04. The appeal being arguable is admitted for hearing, and with the consent of the parties, it is heard finally.

05. This appeal has been filed by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 23.1.2017 passed by 5th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.381/15 awarding compensation of 1.10 lacs in favour of claimant Leelaram Dhiwar with interest @ 9% per annum from the date of claim petition till realization, fastening liability on non-applicant No.3/insurance company, jointly and severally, along with non-applicants No. 1 & 2/driver & owner.

06. As per claim petition, on 15.5.2015 Ravishankar Dhiwar by driving Van bearing No. CG 05 F 0346 with a moderate speed was going from Village – Kurud to Abhanpurt. However, on the way, near Sarkhi main road turning, non-applicant No.1 Harmanprit Singh by driving truck bearing No. CG 04 JC 9405 in a rash and negligent manner came from opposite direction and dashed the Van of Ravishankar, as a result of which Ravishankar suffered grievous injuries and the Van got badly damaged. The claimant incurred Rs.3 lacs for repairing of the Van and also suffered mental agony on this count. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

07. On claim petition being filed by the claimant Leelaram Dhiwar under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties vide impugned award granted compensation as mentioned in para 1 of this judgment.

08. Learned counsel for the appellant/insurance company submits that the Tribunal was not justified in awarding compensation of Rs.1.10 lacs in favour of the claimant for the damage caused to his vehicle only on the basis of estimate produced by the claimant without there being actual bills justifying the expenses allegedly incurred by the claimant. He submits that the amount awarded by the Tribunal is very much on the higher side and needs to be reduced suitably.

09. On the other hand, learned counsel for the respondent/claimant

opposing the contention of the insurance company, submits that the Tribunal has not awarded just and sufficient compensation and therefore, the claimant has also filed cross-objection under Order 41 Rule 22 of CPC seeking enhancement of the same with interest @ 18% per annum from the date of claim petition till realization.

10. The cross-objection under Order 41 Rule 22 of CPC by the claimant has been filed with a delay of 602 days and the claimant has filed an application (IA No.05) for condonation of the same.

11. For the reasons mentioned in the application, which is duly supported by affidavit and not opposed by the other side, the same is allowed and delay in filing the cross-objection is hereby condoned.

12. Heard learned counsel for the parties and perused the material available on record.

13. It has not been disputed by the parties the vehicle of the claimant i.e. Van bearing No. CG 05 F 0346 was dashed by truck bearing No. CG 04 JC 9405 which was being driven in a rash and negligent manner by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3. It is also not disputed by the parties that due to this accident, vehicle of the claimant got damaged. The only dispute between the parties is with respect to quantum of compensation awarded by the Tribunal towards the damages caused to the vehicle of the claimant.

14. The Tribunal considering the estimate of Ex.P/9 produced by the claimant, which was issued by Saifi Garage, Mohba Bazar, Raipur, and proved by AW-2 Mohd. Safiq, Motor Mechanic, showing the estimated cost of repairing of the vehicle as Rs.1,70,600/-, the fact that as per seizure memo Ex.P/3 the vehicle appears to be 7 years old, the mechanical examination report of Ex.P/7, the nature and quality of evidence adduced by the parties, granted compensation of Rs.1 lac towards repairing cost of the claimant's vehicle and Rs.10,000/- for the mental agony, thus awarded toward sum of Rs.1.10 lacs. Considering the facts and circumstances of the case and the material available on record, this Court finds no illegality in the aforesaid assessment of

compensation by the Tribunal, the same appears to be just and proper and needs no reduction or enhancement as claimed by the parties.

15. In the result, the appeal filed by the insurance company and the cross-objection filed by the claimant being without any substance are liable to be dismissed and are, accordingly, dismissed.

Sd/

(Gautam Chourdiya)

Judge