

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1144 of 2018**

- The Oriental Insurance Company Limited Divisional Manager Divisional Office, Near Dr. Rajendra Park Parmanand Building Durg, District Durg, Chhattisgarh.Insurance Company Of Swift Car C. G. 19 B. C. /5900.

---- Appellant/insurer**Versus**

1. Thlendra Kumbhaj S/o Prahalaj Kumbhaj Aged About 35 Years R/o Sorar, Tehsil Gurur, District Balod, Chhattisgarh. Through Next Friend Prahalaj Kumbhaj S/o Umrao Age 60 Years. Resident Village Sorar, Tehsil Gurur, District Balod, Chhattisgarh.Claimant.
2. Tamesh Sahu S/o Sandeep Kumar Sahu Aged About 23 Years R/o Sambalpur, Thana Arjuni, District Dhamtari, Chhattisgarh.Driver Of Swift Car C. G. 19 B. C. 5900.
3. Dilip Kumar Khatwani S/o Barmalal Khatwani Resident Aadarsh Nagar Kanker District Kanker, Chhattisgarh.Owner Of Swift Car C. G. 19 B. C. 5900.....

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Shri D.N. Prajapati, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****23.01.2019**

This appeal is by the insurer under Section 173 of the Motor Vehicles Act, 1988 against the award 31.1.2018 passed by Motor Accident Claims Tribunal, Balod (CG) in Claim Case No. 33/2016 awarding total compensation of Rs.16,19,916/- with interest @ 10% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner.

02. As per claim petition, on 8.7.2015 while claimant Thalendra, aged 35 years, earning Rs.15,000/- per month as a cloth merchant, by riding motorcycle Hero Honda bearing No. CG 24/7685, in which one Vinay was sitting as a pillion rider, was going from Gurur towards

Village-Sorar, at that time near Village-Dhobanpuri, Paddy Collection Center, Dhamtari-Balod Road, non-applicant No.1 Tamesh Sahu by driving Swift Car bearing No. 19 B.C. 5900 in a rash and negligent manner came from opposite direction and dashed the said motorcycle. On account of this accident, claimant Thalendra suffered grievous injuries resulting in permanent disability.

03. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that as there was head-on collision between the motorcycle and the offending vehicle, the Tribunal should have held the claimant equally responsible for the accident. He submits that without there being any certificate by the competent doctor regarding 100% permanent disability, the Tribunal was not justified in assessing the loss of earning capacity of the claimant to the extent of 80% merely on the basis of certificate Ex.P/142, which is not in accordance with the proforma prescribed under the CG Motor Vehicle Rules, 1994. Further, the Tribunal has committed an error by not deducting the amount of Rs.1.50 lacs received by the claimant from the State Government under a social welfare scheme, from the compensation assessed by it.

05. On the other hand, learned counsel for the respondent No.3/owner supports the impugned award and submits that the Tribunal considering the unrebutted evidence of AW-5 Dr. SN Madariya, who medically treated the claimant, certificate Ex.P/142 issued and proved by him which shows that due to injuries suffered by the claimant he is rendered 100% disabled to perform his work and that the claimant would be required long time treatment in future also, the evidence of the claimant as well as his physical and mental condition when he appeared before the Tribunal for giving evidence and the nature of his job, has rightly recorded a finding that the claimant has become 100% disabled on account of injuries sustained in the accident which resulted in 80% loss of his earning capacity. He submits that considering the pleadings and evidence on record, the

manner in which the accident occurred, the Tribunal was also justified in not holding the claimant responsible for the accident to any extent and further, was justified in not deducting the amount of Rs.1.50 lacs received by the claimant under a social welfare scheme from the State. Hence the award impugned being based on proper appreciation of evidence needs no interference by this Court.

06. No counter appeal has been filed by the claimant or the owner.

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

08. As regards negligence on the part of the claimant, there is no specific pleading and evidence adduced by the insurance company to prove that the claimant was responsible for the unfortunate accident in any manner. From perusal of statement of the claimant, it is evident that no suggestion was given by the insurance company to the claimant on the point of contributory negligence. AW-3 Vinay Kumar, an eyewitness to the accident, who was pillion rider in the motorcycle being ridden by the claimant, has categorically stated that it is non-applicant No.1/driver of the offending vehicle who came from opposite side by overtaking other vehicles and dashed their motorcycle. In cross-examination he has denied all the adverse suggestions given to him by the insurance company on the point of contributory negligence. Thus, considering the pleadings of the respective parties and the nature and quality of evidence adduced in support thereof, this Court is of the opinion that the insurance company has utterly failed to prove contributory negligence on the part of the claimant and as such, the Tribunal was justified in not holding the claimant responsible for the accident in any manner.

09. So far as assessment of permanent disability and loss of earning capacity by the Tribunal is concerned, AW-5 Dr. SN Madariya, who medically treated the claimant and issue certificate Ex.P/142, has specifically stated before the Tribunal that after examination of physical and mental condition of the claimant he found that due to injuries suffered by the claimant he is rendered 100% disabled to perform his

work and he is totally dependent upon his family. In cross-examination, AW-5 has categorically denied the adverse suggestions by the insurance company and stated that the claimant would be required long time treatment in future also. Looking to the physical and mental condition of the claimant when he appeared before the Tribunal for giving evidence on 19.12.2016 i.e. about one year and five months after the accident, the Tribunal also recorded a note before his examination-in-chief regarding his physical and mental condition which lends support to the statements of the doctor (AW-5) as well as the claimant.

Since the certificate of Ex.P/142 issued by AW-5 Dr. SN Madariya, who treated the claimant/injured, has been duly proved by him and the insurance company has failed to bring on record anything contrary to the same rendering the said document forged or fabricated, considering the overall facts and circumstances of the case as well as the observation of the Tribunal as to the physical and mental condition of the claimant, merely on the ground that the certificate of Ex.P/142 is not in the prescribed proforma under the CG Motor Vehicle Rules, 1994, its authenticity cannot be doubted and the same cannot be thrown out of zone of consideration.

10. As for non-deduction of Rs.1.50 lacs received by the claimant under a social welfare scheme from the State Government, if any amount under any social welfare scheme is granted to the claimant against the injury suffered by him in the motor vehicular accident, the same cannot be deducted from the compensation awarded to the claimant under the Motor Vehicles Act.

11. On the basis of aforesaid discussions, this Court finds no substance in the appeal filed by the insurance company and accordingly, the same is dismissed as such.

Sd/

(Gautam Chourdiya)
Judge