

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 449 of 2014**

- Nishant Meshram S/o Shri Dr. Vinayak Rao Meshram Aged About 28 Years R/o Panch Building, A/2/11, Durg, Tah. And Distt. Durg C.G.

---Appellant**Versus**

1. Maan Singh S/o Shri Kirtan Kanbalkar Aged About 53 Years R/o Qtr. No. 7 O, Street No. 37, Sector-6, Bhilai, Distt. Durg C.G.
2. Branch Manager, United India Insurance Company, Paras Complex, Opposite S.B.I. Gurudwara, Station Road, Durg, Tah. And Distt. Durg C.G.

---- Respondents

For Appellant
For Respondent No.2

Shri Praveen Dhurandhar, Advocate.
Shri H.B. Agrawal, Senior Advocate with
Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

03/05/2019

1. This appeal is by the claimant/injured against the award 26.02.2014 passed by the 6th Additional Motor Accident Claims Tribunal, Durg, District Durg, C.G. in Claim Case No.12/2012. The Tribunal assessed total compensation of Rs.1,75,727/- and after deducting 50% towards contributory negligence on the part of the injured/claimant awarded a compensation of Rs.87,864/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the Insurance Company/non-applicant no.2.
2. As per claim petition on 09.11.2010, injured/claimant was

returning from Sector 10 Bhilai to his home on his motorcycle bearing no.CG07-K-9866, at about 10:20 pm when he reached near Mahila Mahavidhyalay, Nahar Gali, the non-applicant no.1, who is the owner-cum-driver of the offending motorcycle bearing no.CG07-LC-4061 came from opposite side, in a rash and negligent manner and dashed the motorcycle of the appellant/injured, as a result of which claimant suffered grievous injuries including permanent disability. At the relevant time, the offending vehicle was owned by non-applicant no.1 and insured with non-applicant no.2. At the time of accident, claimant Nishant was aged about 28 years, earning Rs.12,800/- per month as Assistant Teacher as well as taking tuition classes and earning Rs.8,000/- per month.

3. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.23,24,340/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
4. Learned counsel for the appellant submits that no evidence adduced by the non-applicants regarding any negligent part of the claimant and as per the evidence adduced by the parties no contributory negligence proved on the part of the claimant. Therefore, learned Tribunal only on the basis of head on collision wrongly considered 50% contributory negligence on the part of the appellant. Though, non-applicant No.1 driver was examined before the Tribunal and he stated that the accident occurred due

to negligence on the part of the claimant and he also suffered injuries in the said accident but no medical documents has been filed by non-applicant No.1 to prove that he also suffered any injury in the said accident. There is no eye witness in this accident to prove contributory negligence on the part of the claimant. He further submits that no future prospect is awarded by the Tribunal looking to the permanent disability. No compensation awarded looking to the functional disability caused to the claimant. He also submits that the amount awarded under conventional heads is also on the lower side and needs to be enhanced suitably.

5. On the other hand, learned counsel for the respondent No.2/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. He also submits that as per the evidence adduced by the claimant and driver of the offending vehicle Maan Singh, it is a case of head on collision between the two motorcycles. Looking to the evidence and FIR lodged by claimant himself this fact is proved that claimant is equally liable for contributory negligence. He also submits that in this case Doctor who gave permanent disability certificate was not examined by the claimant. Therefore, learned Tribunal rightly awarded compensation looking to the injury on the part of the claimant which needs no interference by this Court.

6. Heard learned counsel for the parties and perused the material

available on record.

7. So far as issue of contributory negligence is concerned, from the pleadings and evidence of the parties, it is apparent that the accident occurred due to head on collision between the two motorcycles, one ridden by the claimant and the another by non-applicant No.1. After the accident, the claimant lodged FIR against non-applicant No.1 and counter FIR was also lodged by non-applicant No.1 against the claimant. Maan Singh/Non-applicant No.1 has categorically stated in his deposition that he was riding the motorcycle with a moderate speed and it is the claimant who was riding the motorcycle in a rash and negligent manner and dashed his vehicle in which he (Maan Singh) also suffered grievous injuries, however, no medical documents have been filed by non-applicant No.1 to prove that he also suffered injury in the said accident. From perusal of the FIR and counter FIR, pleadings of the respective parties and the evidence adduced by them in support thereof, it is apparent that there was head on collision between the two motorcycles and as such considering the manner in which the accident occurred, this Court is of the opinion that the Tribunal was fully justified in holding the claimant equally responsible for the accident. The finding of contributory negligence on the part of the claimant recorded by the Tribunal appears to be based on just and proper appreciation of the over all material available on record and as such needs no interference by this Court.

8. As regards the permanent disability, the claimant has examined AW-3 Dr. M. Rajeshwar who treated him, but no specific evidence given by this witness regarding permanent disability. Though, the claimant has filed one disability certificate Ex.P-14 according to which he suffered 22% permanent disability, however, the said certificate has not been issued by the District Medical Board and has also not been duly proved by the claimant. As such the claimant cannot draw any benefit of the said disability certificate. Looking to the nature of accident and injuries suffered by the claimant as proved by Dr. M. Rajeshwar (AW-3) and the period of his hospitalization, this Court is of the opinion that the claimant is entitled for compensation in the following manner:-

Heads	Calculation (in rupees)
Loss of earning during treatment	Rs.1,48,000/- (as awarded by the Tribunal)
Towards Medical Bill	Rs.11,727/- (as awarded by the Tribunal)
For Future Treatment	Rs.20,000/-
Towards Attendant	Rs.5,000/-
Towards Special Diet	Rs.3,000/-
Towards mental and physical agony	Rs.10,000/-
For Conveyance	Rs.2,000/- (as awarded by the Tribunal)
Total Compensation	Rs.1,99,727/-

9. After deducting 50% from the above amount towards contributory negligence on the part of the claimant, the total compensation comes to Rs.99,864/-. Since the Tribunal has already awarded Rs.87,864/- after deducting the same from Rs.99,864/-, the claimant is entitled for additional compensation of Rs.12,000/- which shall carry interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.
10. In the result, the appeal is allowed in part with the modification in the impugned award to the above extent.

Sd/-
Gautam Chourdiya
Judge

Akhilesh