

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1014 of 2015**

- Ramkishun Jaiswal S/o Govind Ram Jaiswal, aged about 46 years, R/o Village Purgaon, Thana Bilaigarh, District Balodabazar, Bhatapara (C.G.)

---- Appellant/Claimant**Versus**

1. Sadhuraam S/o Ramsharan Sahu, aged about 45 years, R/o Darra, Chowki Girodhuri, Thana Bilaigarh, District Balodabazar-Bhatapara (C.G.) **(Driver)**
2. Kartik Ram Patel, S/o Sukhlal Patel, R/o Darra, Chowki Girodhuri, Thana Bilaigarh, District Balodabazar-Bhatapara (C.G.) **(Owner)**

---- Respondents

For Appellant	:	Shri Arvind Shrivastava, Advocate.
For Respondents	:	Shri S. S. Rajput, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****09.05.2019**

01. This appeal is by the injured/claimant against the award dated 12th May, 2015, passed by First Additional Motor Accident Claims Tribunal, Baloda Bazar, District- Baloda Bazar in Claim Case No.66/2013, after deducting 25% amount towards contributory negligence on the part of the deceased awarding total compensation of Rs. 46,034/- along with interest @ 7 per annum from the date of filing of claim petition, till its actual payment realization, fastening liability upon the non-applicants jointly & severally.

02. Brief case is that when on 19.1.2013 at around 9.45 a. m. the injured/claimant alongwith his nephew was going to his village Purgaon in motorcycle (C.D. Deluxe) bearing registration No. C.G. 04 CS 3121, on the way, non-applicant No. 1- Sadhuraam, while driving the motorcycle bearing registration No. C.G. 04 D.G./2914 rashly &

negligently, dashed / hit the claimant, as a result of which, he sustained grievous injuries resulting to permanent disability to the extent of 40%.

03. The Tribunal, on a close scrutiny of the evidence led by both the parties, held : the accident had occurred due to head on collision between Pletina motorcycle (offending vehicle) bearing Registration CG DG/2914 being driven by its driver – Non-applicant No. 1 and motorcycle (CD Delux) bearing registration No. C.G.04-C.S./3121 being driven by appellant/claimant - Ramkishun; driver of offending vehicle and motorcycle driver (claimant) both have contributed to the cause of accident in the ratio of 75:25 percent; owner & driver of the offending vehicle are liable for payment of compensation; awarded Rs. 61,379/- to the appellant/claimant. After deducting 25 percent of it towards contributory negligence of the appellant/claimant, awarded Rs. 46,034/- as compensation.

04. In the instant appeal, an application (IA No. 01) under Order 41 Rule 27 of CPC for taking additional document i.e. a copy of disability certificate dated 21.07.2015 (Annexure A/2) on record has been filed by the appellant/claimant stating that the aforesaid document is very much relevant and necessary for just & proper disposal of the appeal.

05. Learned counsel for the respondents, while opposing the application (I.A. No.1), would submit that since there is no specific reason was assigned by the claimant in the said application that as to why the disability certificate (Annexure A-2) was not produced before the Claims Tribunal during trial, therefore, at this stage, the said document i.e. disability certificate ought not to have been taken on record.

06. I have heard learned counsel appearing for the parties on I.A. No. 1, application for taking additional document (disability certificate) on record.

07. In this case accident occurred on 13.01.2013, the claim petition

was filed on 13.06.2013 and decided on 12.05.2015 during trial the above said document could not produce. Looking to the approximate delay of 2^{1/2} years in filing the said document (disability certificate) and the fact that the said delay was not properly and satisfactorily explained by the appellant/claimant that as to why the disability certificate was not produced before the Tribunal when the trial is going on therefore, it can not be taken on record as additional evidence. Accordingly, the IA No. 1/ 2015 filed by the appellant/claimant is liable to be and hereby rejected.

08. Learned counsel for the appellant/claimant submits no amount towards pain & suffering has been awarded by the Claims Tribunal and the amount awarded towards conveyance also appears to be on lower side, which deserve to be enhanced suitably.

09. On the other hand, learned counsel for the respondents/owner & driver of the offending vehicle supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

10. Also heard learned counsel for the parties and perused the material available on record including impugned award. .

11. Having heard learned counsel for the parties, having gone through their pleadings, the evidence oral and documentary adduced by them, this Court feels it proper to award Rs. 10,000/- towards pain & suffering and the amount of Rs. 2,000/- awarded towards conveyance is enhanced to Rs. 7,000/- meaning thereby the claimant is entitled for a total enhanced amount of Rs. 15,000/-.

12. In the result, the appeal is allowed in part. The appellant/claimant is held entitled for additional compensation of Rs. 15,000/- (Rs. 10,000/- towards pain & suffering and additional amount of Rs. 5,000/- towards conveyance) alongwith interest @ 7% pa from the date of application, till its realization. However, it is made clear that in the above enhanced amount of compensation of Rs.15,000/-, deduction of

25% towards contributory negligence on the part of the appellant/claimant would not be permitted to be deducted while execution the award amount. The award impugned stands modified to the above extent only. However, rest of the conditions of award shall remain intact.

Sd/-

(Gautam Chourdiya)
Judge

Amita