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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 747 of 2014

- Sunil Kumar Ratre S/o Shankerdas Ratre Aged About 30 Years R/o Silyari, P.O. And P.S. Dharsiwa, District Raipur C.G.

----Appellant

Versus

1. Janakram Nishad S/o Ramchandra Nishad Aged About 25 Years R/o Subhash Chowk, Acholee, P.S. And P.O. Urla, Raipur, Tah. And Distt. Raipur C.G.

2. The United India Insurance Company Ltd Through Branch Manager/branch Office, Krishna Complex, Kutchery Chowk, Raipur, P.S. Golbazar, P.O. Raipur, Tah. And Distt. Raipur C.G.

---- Respondents

For Appellant	Shri Shivendu Pandya, Advocate.
For Respondent No.1	None.
For Respondent No.2	Shri H.B. Agrawal, Senior Advocate with Ms Itu Rani Mukherjee, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

16/01/2019

This appeal is by the claimant/injured against the award dated 08.01.2014 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur, C.G. in Claim Case No.125/2013 awarding total compensation of Rs.1,84,973/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant no.1.

02. As per claim petition, on 11.11.2011 claimant/injured Sunil Ratre aged about 30 years, earning Rs.8,000/- per month as Clerk by riding motorcycle bearing no. CG04-DR-8005 with a moderate speed was going on his work place to Bank of India, Rajbandha Maidan, Raipur.

However, on the way at around 2:30 pm non-applicant no.1 by riding motorcycle bearing CG04-DY-0393 in a rash and negligent manner dashed the motorcycle of the claimant, as a result of which the claimant suffered grievous injures on his face, head and other parts of the body. At the time of accident, the offending vehicle was duly insured with non-applicant no.2/respondent no.2.

03. On claim petition being filed by the claimant/injured under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.13,50,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant/claimant submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds:-

> (i) that the income of the claimant has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas the claimant was earning Rs.8,000/- per month as a clerk.
>
> (ii) that the Tribunal has not considered the permanent disability of the claimant and not determined the compensation by not applying multiplying factor.
>
> (iii) that the simple interest awarded by the Tribunal is on lower side.
>
> (iv) that till date the claimant has not received any amount as compensation from non-applicant no.1 and, therefore, considering the fact that the claimant is a third party and the offending vehicle was duly insured with non-applicant no.2, this Court may order for pay and recover in this case in the interest of

justice.

05. On the other hand, learned counsel for the respondent no.2 supporting the impugned award and submits that there was specific breach of policy conditions as non-applicant no.1 was not having a valid and effective driving licence at the time of accident and, therefore, the insurance company has rightly been exonerated of its liability and it would not be justifiable to pass an order of pay and recover in this case.

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

07. From perusal of the entire evidence available on record, it is seen that there is nothing on record to prove permanent disability of the claimant, no Doctor has been examined by the claimant in this regard and, therefore, the Tribunal has rightly recorded a finding that no permanent disability has been caused to the claimant in the accident. Since, there is no permanent disability resulting into functional disability, the Tribunal was justified in not applying multiplying factor for assessing the compensation to the claimant. Likewise, interest @ of 6% awarded by the Tribunal cannot be said to be on the lower side as the same is awarded according to the prevailing rate of interest at the relevant time of the Nationalized Bank. In this case, the accident occurred on 11.11.2011, the claim petition was filed on 30.01.2013 and the impugned award has been passed on 08.01.2014. Thus, considering the over all facts and circumstance of the case, the interest awarded by the Tribunal @ 6% per annum on the compensation needs no interference by this Court. As regards the amount awarded by the

Tribunal under the other heads i.e. medical expenses, loss of income, attendant, special diet, conveyance, pain and suffering, this court is of the opinion that awarding of the said amount being passed on proper appreciation of the oral and documentary evidence available on record needs no interference by this Court.

08. However, considering the facts and circumstance of the case, the fact that the offending vehicle was duly insured with non-applicant no.2 at the relevant time vide Ex.D-3 (Package Policy) and that the claimant was the third party, keeping in view the benevolent provisions of the act in the light of the decisions of Hon'ble Supreme court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others (2017) 4 SCC 796 & Manager, National Insurance Company Limited Vs. Saju P. Paul and another (2013) 2 SCC 41,*** this Court is of the opinion that the ends of justice would be served if the Insurance Company is directed to pay the entire amount of compensation to the claimant and then recover the same from the rider-owner of the offending vehicle in question in accordance with law. Ordered accordingly.

09. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh