

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1153 of 2013

Bhagwat Soni S/o Dhannulal Soni, Aged about 27 years, Occupation Electrician, R/o village & Post Sakarra, P.S. Hirri, Tehsil Takhatpur, Revenue & Civil District Bilaspur (C.G.).

---- Appellant

Versus

Narayan Kaushik, S/o Mahetara, R/o Village Sambalpur, Post Sakri, P.S. Hirri, Tehsil Takhatpur, Revenue & Civil District Bilaspur (C.G.)

---- Respondent

MAC No. 36 of 2014

Narayan Kaushik, S/o Mahetara, aged about 45 years, R/o Village Sambalpur, Post Sakri, Thana Hirri, Tahsil Takhatpur, District Bilaspur (C.G.)

---- Appellant

Versus

Bhagvat Soni S/o Dhannulal Soni, Aged about 27 years, R/o Village/Post Sakarra, Thana Hirri, Tahsil Takhatpur, District Bilaspur (C.G.).

--- Respondent

MAC No. 1153 of 2013

For Appellant	: Mr. Rishi Sahu, Advocate
For Respondent	: Mr. Arjun Lal Singroul, Advocate

MAC No. 36 of 2014

For Appellant	: Mr. Samir Singh, Advocate
For Respondent	: Mr. Rishi Sahu, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

14/05/2019

1. Since both the miscellaneous appeals arise out of the award dated 26/11/2013 passed by Member, Motor Accident Claims Tribunal, Bilaspur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Motor

Accident Claim Case No.07/2013, they are being disposed of by this common judgment.

2. MAC No. 1153/2013 has been filed on behalf of the claimant seeking enhancement of compensation as awarded by learned Claims Tribunal, whereas MAC No. 36/2014 has been filed by owner-cum-driver of Motorcycle bearing registration No. CG-10/EE/7507 (hereinafter referred to as 'offending vehicle') challenging the impugned award passed against him.
3. Brief facts for disposal of these appeals are that on 11/01/2010 Bhagvat Soni while travelling on his bicycle reached near village Amsena-Belmundi, at that relevant time, offending vehicle driven by Narayan Kaushik dashed bicycle of the claimant, due to which, Bhagvat Soni suffered injuries on his person. He suffered fracture injury over his left arm and he was also admitted in the hospital.
4. On account of aforementioned injuries suffered by Bhagwat Soni, he filed claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before learned Claims Tribunal mentioning therein that due to injuries suffered by him, he became permanent disabled, he could not able to perform his work for a period of three months and he incurred Rs.20,473/- towards medical expenses and further amount towards other heads.
5. Narayan Kaushik, owner-cum-driver submitted reply to claim application and pleaded that the claim made by claimant is on higher side. It has been further pleaded that claimant has lodged false

complaint against him and claimant himself was under the influence of liquor, therefore, he is not entitled for payment of any amount of compensation as claimed by him.

6. Learned Claims Tribunal while appreciating pleadings and evidence produced by respective parties held that accident took place due to rash and negligent driving of driver of offending vehicle and awarded a total sum of Rs.45,623/- including medical bills of Rs.10,623/-.
7. Learned counsel appearing for appellant submitted that claimant could not able to perform his work for a period of six months and further that he is required to undergo operation again to remove rod inserted in left hand of appellant, but learned Claims Tribunal has not awarded any amount of compensation towards it.
8. Per contra, learned counsels appearing for respondent submitted that claimant is not entitled for any further amount of compensation. He further submitted that claimant has not filed any certificate before learned Claims Tribunal nor examined any doctor to prove that he is required to undergo for operation, for which, certain amount will be expended towards treatment, therefore, his plea for award of compensation for a period of six months as lay down period, is not sustainable. It was further submitted that amount awarded to the claimant is on higher side. He lastly submitted that learned Claims Tribunal has awarded an amount of Rs.4,000/- towards future treatment, but he has not produced any certificate to that extent, which is erroneous in law.

9. I have heard learned counsel appearing for parties and perused entire record carefully.
10. So far as argument raised by learned counsel for appellant in MAC No. 1153/2013 is concerned, perusal of record would show that claimant suffered fracture injury on 1/3rd radius left. It is also mentioned that claimant undergone operation and his bone was fixed by three screws and same is segmented. The Medical Bills have been filed by claimant and awarded by Claims Tribunal is not disputed by learned counsel for respondent.
11. Claimant in his claim application has pleaded that he has failed to perform his work for a period of three months and claimed Rs.45,000/- mentioning his salary to be Rs.15,000/- per month. Learned Claims Tribunal has already considered the certificate filed by appellant in his support showing the income of deceased as Rs.10,000/- per month and has already awarded an amount of Rs.20,000/- towards loss of income for a period of two months. As claimant has failed to produce any documentary evidence to show that his injury could not be cured properly and he was unable to work for more than three months is not sustainable for want of any evidence in this regard.
12. So far as argument raised by learned counsel appearing for appellant/claimant that he would require further operation to remove rod is concerned, claimant has not produced any certificate issued by

competent authority with respect to amount of expenditure which would be required for said operation.

- 13.** In view of aforementioned facts and looking to the injury as well as treatment taken by claimant, in the opinion of this Court, learned Claims Tribunal has not committed any illegality in awarding of Rs.4,000/- towards future treatment.
- 14.** So far as appeal filed by Narayan Kaushik who is owner-cum-driver of offending vehicle is concerned, challenging the impugned award on the ground that learned Claims Tribunal has committed error in awarding amount towards permanent disability as the injury suffered by claimant in the accident could not be proved because First Information Report has been lodged after long lapse of time and no explanation has been made therein.
- 15.** First Information Report (Ex. A-1) clearly shows that delay has been occurred due to taking treatment of injury by claimant. The delay is made from the date mentioned in the First Information Report with respect to the date of accident and making complaint, it shows that within a period of one month, First Information Report has been lodged. As accident is not disputed by driver of offending vehicle and therefore, looking to the entirety of fact, it cannot be said that claimant has not suffered fracture injury in the accident, therefore, argument raised by learned counsel for owner-cum-driver of offending vehicle is repelled.

- 16.** The next argument of the appellant/owner of the offending vehicle that learned Claims Tribunal committed an error in awarding an amount towards permanent disability is also not sustainable as learned Claims Tribunal has not awarded any amount towards permanent disability, but has awarded amount of compensation towards pain and suffering, loss of income during period of treatment, medical expenditure, future treatment and special diet.
- 17.** In the cases of injury where claimant has undergone operation, he is entitled for amount on all heads, for which, learned Claims Tribunal has already awarded.
- 18.** After analyzing the facts and circumstances of the case as well as evidence and other material available on record, I do not find any error in the findings recorded by learned Claims Tribunal and award of amount of compensation.
- 19.** In view of aforementioned discussions, both the appeals (MAC No.1153/2013 and MAC No.36/2014) being devoid of merit, are liable to be and are hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge