

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 59 of 2014**

- Babul Kumar Das S/o Manohari Das, Aged About 40 Years, R/o Shankar Nagar, Champa, Distt. Janjgir-Champa C.G.

---Appellant**Versus**

1. Pavitri Bai W/o Late Dilharan Kewat Aged About 24 Years R/o Salihabhata Urga, Distt. Korba C.G.
2. Naresh Kumar Agrawal S/o Late Lachhiram Agrawal, Aged About 37 Years R/o Surakachhar Bankimongra, Katghora, Distt. Korba C.G.
3. The New India Insurance Company Ltd. Thru- Divisional Manager, Divisional Office, Transport Nagar, Korba C.G.

---- Respondents

For Appellant
For Respondent No.3

Shri Amiyakant Tiwari, Advocate.
Shri A.K. Gupta, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

06/03/2019

1. This appeal is by the claimant/injured against the award 23.04.2013 passed by the Additional Motor Accident Claims Tribunal, Korba, C.G. in Claim Case No.67/2012. The Tribunal assessed total compensation of Rs.40,000/- and after deducting 50% towards contributory negligence on the part of the injured/claimant awarded a compensation of Rs.20,000/- with interest @ 7% per annum from the date of application till realization, fastening liability on the Insurance Company/non-applicant no.3 jointly and severally along with non-applicants no. 1 & 2. At the time of accident, offending vehicle was owned by

non-applicant no.2/respondent no.2 and insured with non-applicant no.3/respondent no.3.

2. As per claim petition on 12.01.2006, injured/claimant was going from Korba to Champa by motorcycle. However, near village Farashwani at around 9:30 pm Dilharan Ketwat (husband of non-applicant no.1) by driving truck bearing registration no. CG12-ZC-0541 in a rash and negligent manner without switching on back light dashed the vehicle of the claimant while reversing the truck, 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.2 and insured with non-applicant no.3. Since in the said accident, driver of the offending vehicle Dilharan Ketwat died, his wife Pavitri Bai was impleaded as non-applicant no.1. At the time of accident, claimant Babul Kumar Das was aged about 40 years, earning Rs.7,000/- per month by self-employment.
3. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.37,40,000/-, 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 the accident occurred due to entire negligence of the truck driver, who dashed claimant's motorcycle without giving any indication. He also submits that there is no contributory negligence on the part of the claimant and learned Tribunal awarded only Rs.2,000/- for pain

and suffering, Rs.2000/- for special diet, Rs.6,000/- for one month loss of earning and Rs.30,000/- towards medical bills. Therefore, the finding of the Tribunal regarding contributory negligence on the part of the claimant being based on no cogent and reliable evidence on record is liable to be set aside and the amount awarded by the Tribunal under various heads as mentioned above deserves to be enhanced suitably.

5. Counsel for the respondent no.3 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation in favor of the claimant.
6. Heard learned counsel for the parties and perused the material available on record.
7. So far as contributory negligence on the part of the claimant is concerned, as per Ex.P-3 i.e. FIR promptly lodged by the claimant it is mentioned that the offending vehicle was in stationary condition and the claimant dashed the offending vehicle as a result of which he suffered grievous injuries. After investigation, the police filed charge sheet against the driver of the offending vehicle Dilharan Kewat wherein also it has been mentioned that the offending vehicle was parked on the middle of the road without any indicator as a result of which the motorcycle of the claimant got dashed against the said vehicle and the claimant suffered grievous injuries. Thus, considering the facts and circumstances of the case, the manner in which the accident

occurred, the admission of the claimant himself that the vehicle in question was in stationary condition and his vehicle got dashed against the offending vehicle, this Court is of the opinion that the Tribunal has not committed any illegality in holding the claimant equally responsible for the unfortunate accident. As such, the finding of the Tribunal regarding 50% contributory negligence on the part of the claimant deserves to be affirmed.

8. So far as amount of compensation is concerned, looking to the nature and extent of injuries suffered by the claimant, the part of the body where the injury was caused i.e. mouth, jaw, including fracture, the period of his hospitalization, the medical treatment papers, including the bills filed and proved by the claimant, this Court is of the opinion that the claimant is entitled for compensation in the following manner:-

Heads	Calculation
Loss of earning @ Rs.6,000/- per month for three months.	Rs.18,000/-
Towards medical bills	Rs.30,000/- (as awarded by the Tribunal)
Towards pain and suffering	Rs.15,000/-
Towards special diet	Rs.2,000/- (as awarded by the Tribunal)
Total Compensation	Rs.65,000/-

9. After deducting 50% from the above amount towards contributory negligence on the part of the claimant, the total compensation

comes to **Rs.32,500/-**. Since the Tribunal has already awarded Rs.20,000/- after deducting the same from Rs.32,500/-, the claimant is entitled for additional compensation of **Rs.12,500/-** 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