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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 10 of 2014

- Keshav Kumar Sahu, S/o Mohit Ram Sahu, aged about 12 years (Minor), Appellant being minor on behalf of through his legal guardian father Mohit Ram Sahu S/o Late Samaru Ram Sahu, aged about 39 years, R/o- Doctor Rajendra Prasad Nagar, Telhanala, Near Kanhaiya Kirana Store, Sector-11, Bhilai, Post Office & Police Station- Bhilai, District- Durg (C.G.)

---- Appellant/Claimant

Versus

1. Sanjay Chhatri, S/o Kalamani Chhatri, aged about 27, R/o- Tarun Nagar, Kalimata Ward, Post Office- Raipur, Police Station- Civil Line, Pandri, Raipur, Tahsil & District- Raipur (C.G.)

   (Driver of Vehicle Bolero bearing registration No. C.G.-04-DJ-1534)
2. Ramgopal Sahu, S/o Not Mentioned, R/o- Amlidih, Kasdol, Post Office & Police Station- Kasdol, District- Raipur (C.G.)

   (Registered owner of Vehicle Bolero bearing registration No. C.G.-04-DJ-1534)
3. The Branch Manager & Office, The Chola-Mandlam M.S. General Insurance Company Limited, through Branch Manager, Branch Office, 501, 502, Industries House, A.B. Road, Indore (M.P.), Through The Branch Manager & Office, The Chola-Mandlam M.S. General Insurance Company Limited, Validity Date From 06/05/2010 To 05/05/2011, Towards Khemka Hospital, Post Office- Raipur, Police Station- Devendra Nagar, Raipur, Tahsil and District Raipur (C.G.)

   (Insurer of Vehicle Bolero bearing registration No. C.G.-04-DJ-1534)

---- Respondents/Non-applicants

For Appellant	:	Shri Shivendu Pandya, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Rohitashava Singh, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

09.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant/Appellant, who is minor aged about 12 year, through his father, seeking enhancement of the compensation awarded by the Sixth Additional Motor Accident Claims Tribunal, Durg, District Durg (C.G.) vide award dated 31.07.2013 passed in Motor Accident Claim Case No.94 of 2013.

2. The Appellant/Claimant claimed compensation of Rs.10,41,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injuries sustained by him in the motor accident.

3. Respondent No.1 is a driver, Respondent No. 2 is an owner and Respondent No.3 is an insurer of the offending vehicle Bolero bearing registration No. C.G.-04-DJ-1534.

4. The facts of the case, in brief, are that on 19.05.2010, the Appellant was going towards railway crossing of Khursipar gate from his side on foot, when he reached near Kutti Hotel, at that time the railway gate was opened, Respondent No.1, driver of the offending vehicle Bolero bearing registration No. CG-04/DJ/1534, driving the said vehicle in a rash and negligent manner dashed Keshav Kumar Sahu- Appellant/injured. As a result of which Keshav Kumar Sahu sustained grievous injuries on various parts of the body and his joint of knee also got fractured.

5. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.45,798/- in favour of the Appellant with simple interest @ 6% per annum from the date of application till realization. The Tribunal has also directed that Respondents 1 and 2 are jointly and severally liable for payment of compensation to the Claimant.

6. Learned counsel for the Appellant/Claimant submits that the Tribunal has wrongly exonerated the Insurance Company to pay compensation. He further submits that as per seizure memo Ex.-P/6, the police seized registration certificate (Ex.-P/57), Insurance policy (Ex.-P/58) of the offending vehicle and licence (Ex.-P/59) of the driver has duly been produced by the Appellant. But no any evidence adduced by the Insurance Company to rebut the above documents (Ex.-P/57, Ex.-P/58 and Ex.P/59), therefore, the Insurance Company is liable for payment of compensation to the Appellant/Claimant. He also submits that looking to the injuries and treatment papers, i.e. Ex.-P/8, Ex.-P/9 to Ex.-P/56, of the Claimant, the amount awarded by the Tribunal is very much on the lower side and needs to be enhanced suitably.

7. Learned counsel for the Respondent No. 3/Insurance Company, however, opposes the contention made by the learned counsel for the Appellant and submits that the documents- Ex.-P/57, Ex.-P/58 and Ex.P/59 i.e. registration certificate, insurance policy of the offending vehicle and driving licence of driver produced before the Tribunal do not clearly show the name, number etc., therefore, the Tribunal rightly exonerated the Insurance Company on the ground of breach of policy on the part of the owner. He also submits that as per Section 134 (c) of the Motor Vehicles Act, 1988, it is the duty of driver including the owner of the vehicle to give information in writing to the insurer, in case of accident and injury to a person. But, in this appeal, there is no information in writing given by the driver and owner, therefore, the Insurance Company is not liable for payment of compensation to the Appellant. He further submits that the learned Tribunal has rightly awarded the amount of compensation, therefore, it is just and reasonable, which does not call for any interference in the instant appeal.

8. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

9. So far as argument regarding exoneration of Insurance Company to pay compensation is concerned, as per seizure memo (Ex.-P/6), the documents seized by the police during investigation are Ex.-P/57, Ex.-P/58 and Ex.-P/59. Registration certificate-Ex.-57 clearly show the name of owner/Respondent No.2 and number of the vehicle. Likewise, insurance policy- Ex.-P/58 also show the name of owner and the vehicle number. Ex.-P/59 i.e. the driving licence of the driver/Respondent No.1 bears the driving licence number, name of Respondent No.1 and his father's name and it was valid till 06.01.2030. From perusal of the records, it is seen that no any evidence has been adduced by the Insurance Company/Respondent No.3 to rebut these documents as well as the evidence adduced by the Claimant. Therefore, learned counsel for the Appellant has rightly pointed out that the Tribunal has erred in exonerating the Insurance Company to pay compensation to the Appellant/Claimant. Considering the facts and circumstances of the case, this Court is of the view that there is no breach of policy on the part of the owner/Respondent No.2 and the Tribunal has certainly erred in exonerating the Insurance Company from its liability and holding Respondents 1 and 2 liable for payment of compensation. The above finding is not sustainable in law and is hereby set aside.

10. So far as argument regarding grant of low compensation is concerned, as per Ex.-P/10 medical bills Rs.10,796/- and as per Ex.-P/11, Ex.-P/12, Ex.-P/15 and Ex.-P/18 to Ex.-P/54, Rs.31,002/- were spent on medical treatment of the Claimant. The Tribunal has rightly considered the amount of medical bills. Apart from this, the Tribunal has rightly awarded amount of Rs.1,000/- for conveyance, Rs.1,000/- for special diet and Rs.1,000/- for attendant.

11. Towards pain and suffering Rs.1,000/- has been awarded by the Tribunal which is on the lower side. According to AW-2 Dr. Manoj Kumar Mohanti, he stated that grievous injuries were caused to the Appellant, he was hospitalized from 15.06.2010 to 24.06.2010 and prior to the said period, he was hospitalized from 19.05.2010 to 28.05.2010 and during his treatment in JLN Hospital & Research Centre, Sail, Bhilai Steel Plant, a surgery was done and cutting the skin of the Appellant from other part of his body, a grafting has been done. AW-2 also stated that on account of injury caused to the Appellant, he will suffer in whole life for movement of his leg. Therefore, looking to the age of Appellant/Claimant i.e. 12 years and also considering the nature and extent of injury, the period of hospitalization and a crafting of skin done through surgery, this Court is of the opinion that the amount of Rs.1,000/- awarded towards pain and suffering deserves to be enhanced to Rs.10,000/-

12. When the matter is examined in the above broad features of the case, in the considered opinion of this Court, the Claimant/Appellant is entitled for compensation in the following manner:-

Sl.No.	**Heads**	**Calculation**
1	For medical expenses (Rs.31,002/- and Rs.10,798/-)	Rs.41798/- (as awarded by the Tribunal)
2	For conveyance (as awarded by the Tribunal)	Rs.1,000/-
3	For special diet (as awarded by the Tribunal)	Rs.1,000/-
4	For attendant (as awarded by the Tribunal)	Rs.1,000/-
5	For pain and suffering	Rs.10,000/-
	Total	**Rs.54,798/-**

Since the Tribunal has already awarded Rs.45,798/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.9,000/-.

13. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimant/Appellant shall be entitled to a total enhanced amount of compensation of Rs.9,000/- with further direction of payment of interest on the said amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

14. The liability of payment of compensation shall be of Respondent No.3/Insurance Company jointly and severally alongwith Respondents 1 and 2/driver and owner of the offending vehicle. The Insurance Company is granted 45 days' time from today for depositing the compensation amount along with interest before the concerned Tribunal. The amount, if any, already paid by Respondents 1 and 2 shall be adjusted accordingly.

15. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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