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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 501 of 2014

- IFFCO Tokio General Insurance Co. Limited, 3rd Floor, Shop No. 345-347 Ganga Shopping, G.E. Road, Raipur, Tehsil & District Raipur, Chhattisgarh

---- Appellant/Insurer/non-applicant No.3

Versus

1. Laxman Sahu, son of Gendlal Sahu, aged about 25 years, resident of Sarekha, Tehsil- Gundardehi, District- Durg, Chhattisgarh

   (Claimant)

2. Hemant Kumar Sahu, son of Khamhanlal Sahu, aged about 43 years, resident of Village- Tando, P.S.- Khadgaon, District- Rajnandgaon, Chhattisgarh

   (Driver/non-applicant No.1)

3. Hariram Tekam, son of Sher Singh Tekam, age not known to the appellant, resident of Village- Sambalpur, Tehsil- Mainpur, District- Rajnandgaon, Chhattisgarh

   (Owner/non-applicant No.2)

---- Respondents

For Appellant	:	Shri Abhyoday Singh, Advocate
For Respondent No. 1	:	Shri Shobhit Koshta, Advocate
For Respondents No. 2 & 3	:	Shri Rajat Agrawal, Advocate appears on behalf of Shri S.C. Verma, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.05.2019

1. Being aggrieved with the award dated 26.09.2013 passed in Claim Case No. 113 of 2013 by the Sixth Additional Motor Accident Claims Tribunal, Durg, District Durg (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the quantum of compensation.

2. The Claimant/injured claimed compensation of Rs.14,72,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act for injury sustained in the motor accident.

3. Facts of the case, in brief, are that on 24.04.2011 Claimant- Laxman Sahu was going to his village by motorcycle bearing No. CG-07/F/3649 which was being ridden by one Shobharam and the Claimant was pillion rider of the said motorcycle. When they reached near Sikosa Beloudi Road Biretara, the offending vehicle Mahindra Bolero bearing registration No. CG-08/K/0798 which was being driven rashly and negligently by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3, was coming from opposite side and dashed the motorcycle of Shobharam. As a result thereof, Claimant- Laxman Sahu sustained grievous injuries on right leg, nose and right thumb and his leg got fractured and also suffered 48% permanent disability.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.4,98,933/- in favour of the Claimant/Respondent 1 with interest @ 7% per annum from the date of filing of the application till realization and has fastened the liability upon the Appellant/Insurance Company along with driver and owner/Respondents 2 & 3 jointly and severally to pay compensation.

5. As submitted by learned counsel for the Appellant/Insurance Company, no counter appeal has been filed by the Claimant, driver and owner.

6. Learned counsel for the Appellant/Insurance Company submits that looking to the injury and fracture, the Tribunal has assessed 48% permanent disability of the Claimant and has awarded a total compensation of Rs.4,98,933/- which is on the higher side and deserves to be reduced suitably. He further submits that the Claimant had suffered 48% permanent disability in relation to the particular limb of the body and not in relation to the whole body, therefore, the Tribunal committed a serious error by not assessing the functional disability of the Claimant.

7. On the other hand, learned counsel for Respondent No.1 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation and there is no scope for reduction of compensation amount.

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

9. It is not disputed that the injuries were caused to the Claimant due to rash and negligent driving of the offending vehicle- Bolero by its driver/non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3. Due to the said accident, the femur bone of right leg of the Claimant got fractured and was operated and an iron rod was fitted. Looking to the certificate (Ex.-P/24), the Claimant suffered 48% permanent disability and as per medical bills i.e. Ex.-P/13 to Ex.-P/17, Ex.-P/19, Ex.-P/20 and Ex.-P/25 to Ex.-P/30, the Tribunal has awarded Rs.4,00,000/- lump-sum towards pain & suffering already undergone and likely to suffer in future as well as towards shock and loss of reasonable enjoyment in life; Rs.58,933/- towards medicals bills; Rs.25,000/- for future treatment; Rs.15,000/- for inconvenience to the parents of the Claimant. Thus, it cannot be said that the Tribunal awarded compensation to the Claimant by assessing his functional disability as 48%. The amount awarded by the Tribunal under the aforesaid heads appears to be based on proper appreciation of overall evidence available on record and therefore, it cannot be said to be higher side. Further, there is no breach of policy conditions, therefore, the Tribunal has rightly fastened liability on the non-applicants jointly and severally. Being so, this Court is of the opinion that there is no scope for reduction of the compensation awarded by the Tribunal.

10. In the result, the appeal, filed by the Appellant/Insurance Company, being without any substance is liable to be dismissed and is accordingly dismissed.

11. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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