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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1251 of 2018

- Santosh Nishad S/o Shri Mangtu Nishad, 36 years, R/o Village Pithampur (Dhangaon Gosai), P.S. Jarhagaon, District Mungeli (C.G.)

---- Appellant/Claimant

Versus

1. Krishna Kumar Khunte, S/o Hemraj Khunte (Owner of the offending vehicle bearing registration No. CG 04/B/1512)
2. Ajit Khunte, S/o Krishna Kumar Khunte (Driver of the offending vehicle bearing registration No. CG 04/B/1512)
Both R/o Village Chandeli, P.S. Lalpur, District Mungeli, Chhattisgarh
3. The New India Insurance Company Limited, Through Branch Manager, Rama Trade Center, 2nd Floor, In front of Rajiv Plaza, Near old bus stand, Bilaspur, Civil and Revenue District Bilaspur (C.G.)
(Insurer of the offending vehicle bearing registration No. CG 04/B/1512)

---- Respondents

For Appellant	: Shri Keshav Dewangan, Advocate
For Respondents 1 to 2	: None
For Respondent No.3/ Insurance Company	: Shri Qamrul Aziz, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

18.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant/Appellant, seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Mungeli (C.G.). vide award dated 13.04.2018 passed in Claim Case No. H 32 of 2017.
2. The Claimant/Appellant- injured aged about 36 years claimed compensation of Rs.16,10,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for grievous injuries sustained by him in the motor accident.

3. Facts of the case, in brief, are that the Appellant was coming on his motorcycle along with his friend namely Dilharan Nishad from village Noniyakachhar to his village, when they reached near the Collectorate Office and saw that the one Jeep bearing registration No. CG 04/B/1512 was coming in a rash and negligent manner, he stopped his motorcycle on left side and was waiting for passing of the Jeep. However, Respondent No.2/driver of the offending vehicle Jeep driving the said vehicle in a rash and negligent manner dashed the motorcycle of Santosh Nishad. Appellant- Santosh Nishad sustained grievous injuries on his head, right side of his waist, right leg and knee. Due to the said accident, Appellant's friend also sustained grievous injuries.

4. Respondent No.1 is owner and Respondent No.3 is insurer of the offending vehicle.

5. The learned Tribunal, in the impugned award, has assessed total compensation of Rs.3,60,850/-, However, holding the deceased contributory negligent to the extent of 30%, the Tribunal has awarded a total compensation of Rs.2,52,595/- in favour of the Claimant/Appellant with interest @ 9% per annum from the date of application till its realization. The Tribunal has also directed that the Respondents are jointly and severally liable for payment of compensation to the Claimant/Appellant.

6. Contention of the learned counsel for the Claimant/Appellant is that the Tribunal has illegally deducted 30% on account of contributory negligence on the part of the Appellant whereas the Insurance Company has failed to prove the contributory negligence of the Appellant by producing any document or adducing oral evidence. He also submits that the low amount of Rs.80,000/- awarded by the Tribunal for temporary disability of the Appellant deserves to be enhanced suitably.

7. Learned counsel for Respondent No.3/Insurance Company, however, opposes the appeal and submits that the amount awarded by the Tribunal for temporary disability of the Appellant is not on the lower side. About 30%

contributory negligence on the part of the Appellant, he submits that the accident occurred due to rash and negligent driving of the Appellant. Therefore, the compensation awarded by the Tribunal is just and reasonable and 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 relating to contributory negligence is concerned, the Tribunal after hearing the parties and recording the evidence held that the accident was caused due to rash and negligent driving of the Jeep driver/Respondent No.2. However, the Tribunal considering the pleading of the Claimant/Appellant as to the manner in which the accident occurred being concocted and not trustworthy and further considering the fact that the Claimant did not submit any document, i.e. insurance policy, licence etc in respect of his motorcycle, has recorded the finding that the Claimant was also responsible for the accident and thus held him contributory negligence to the extent of 30%.

10. It is not in dispute that the accident occurred on 17.08.2017, the Appellant was on his motorcycle near Collectorate Office, Mungeli and Respondent No.2 was driving the offending vehicle in a rash and negligent manner. As per Ex.-P/5-FIR and other documents as well as charge-sheet, it is seen that offence under Section 279, 337 and 338 of IPC was registered against Respondent No.2 by the police. FIR goes to show that it is Respondent No.2 who was driving the offending vehicle in a rash and negligent manner which resulted in unfortunate accident. The Appellant/Claimant examined himself as AW-1 and categorically stated that he suffered injuries in the said accident caused due to rash and negligent driving of the offending vehicle by Respondent No.2. AW-3- Neelkanth Kashyap has also supported the evidence of the Claimant. No contrary evidence has been adduced by the Insurance Company to substantiate its plea that the Claimant was responsible for accident in any manner. Only on the basis of head-on collision

between the motorcycle and the Jeep, it would not be justifiable to hold the Claimant responsible for the accident to any extent. The finding of the Tribunal regarding contributory negligence of the Claimant appears to be based on mere presumption and surmises. Therefore, considering overall facts and circumstances of the case and nature in quality of evidence adduced by the parties, this Court is of the view that the Tribunal has not justified in holding the Claimant contributory negligence to the extent of 30% and accordingly it is held that the accident occurred due to negligence on the part of Respondent No.2 only.

11. So far argument relating to low amount of Rs.80,000/- awarded by the Tribunal for temporary disability to the Appellant is concerned, considering the facts and circumstances of the case, the evidence available on record, looking to the MLC report- Ex.-A/6, MLC X-ray report- Ex.-A/7, CR-scan report-Ex.-A/10, hospital bills and prescriptions (Ex.-A/19 to Ex.-A/43) and Ex.-A/44 – temporary disability certificate of the Appellant, it deserves to be enhanced to Rs.1,00,000/-. As regards the amount awarded by the Tribunal towards physical and mental agony, special diet, attendant and medical treatment, the same appears to just and proper and based on correct appreciation of the evidence available on record. Therefore, there is no need to interfere with the same. In view of the above, the Claimant/Appellant is entitled for compensation in the following manner :-

Sl.No.	Head	Calculation
1	For temporary disability	Rs.1,00,000/-
2	For physical and mental agony	Rs.20,000/-
3	For special diet	Rs.8,000/-
4	For attendant	Rs.5,000/-
5	For medical treatment	Rs.2,47,850/-
	Total Compensation	Rs.3,80,850/-

Since the Tribunal has already awarded Rs.2,52,595/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.1,28,255/-.

12. 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.1,28,255/- with further direction of payment of interest on the enhanced amount of compensation @ 9% per annum from the date of filing of the claim petition till the date of actual payment. However, rest of the conditions of the impugned award shall remain intact.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge