

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 58 of 2015**

- 1 Ghanshayam Towry, son of Laxmi Narayan Towry, aged about 33 years, resident of Bazar Chowk, Gurur, Tahsil Gurur, Tahsil Gurur, District Balod, C.G.

---- Appellant/Claimant**Versus**

- 1 Gitesh Kumar Son of Madan Lal Pataudi, aged about 19 years, resident of Haldi Police Station Gunderdehi, District Balod, C.G. (Driver of vehicle no.CG05-H-2852)
- 2 Ravi Kumar Pataudi Son of Chhaturam Pataudi, aged about 29 years, resident of Haldi, Police Station Gunderdehi, District Balod, C.G. (Owner of vehicle no. CG05-H-2852)
- 3 The Manager, National Insurance Company Limited, Supela, Bhilai, District Durg, C.G. (Insurer of vehicle no.CG05-H-2852)

---- Respondents

For Appellant	:	Shri Anurag Khatri, Advocate.
For Respondent Nos. 1 & 2	:	Shri Amit Kumar Sahu, Advocate.
For Respondent No.3	:	Shri P.K. Tulsyan, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Order on Board****18.02.2019**

This appeal is by the claimant against the award dated 22.11.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Balod, District Balod, C.G. in Claim Case No.70/14 awarding total compensation of Rs.21,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant nos. 1 & 2 while exonerating insurance company i.e. non-applicant no.3.

02. As per claim petition, on 24.02.2012 appellant/injured along with his wife was going to Karhibhadar for attending marriage function on motorcycle bearing no.CG07-LM-4655. However, on the way near village Chirchari Turning Balod, Dhamtari main road, they were dashed by offending motorcycle bearing registration no.CG05-H-2852, ridden by respondent no.1 in a rash and negligent manner. Due to said accident, appellant sustained grievous injuries on his right jaw, shoulder, right eye and other parts of the body.

03. On claim petition being filed by the claimant/injured under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.14,25,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant/claimant submits that he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award only on the sole ground that all the medical bills i.e. Ex.P-1 to Ex.P-55 were submitted by claimant regarding his treatment and prescriptions but major bill i.e. Ex.P-1 is not considered by learned Tribunal on the ground that the same has not been proved by the claimant as required under the law. He submits that the document i.e. discharge bill amount of Rs.1,30,720/- was duly exhibited and the injured/claimant in his cross-examination has specifically denied the suggestion that the said document is forged.

05. Learned counsel for the respondent nos. 1 & 2 submits that already the learned Tribunal as per the documents available on record and

proved by claimant awarded total Rs.21,000/- in favour of claimant which is just and proper as no any Doctor is examined before the Tribunal. Therefore, the learned Tribunal rightly assessed the compensation and discarded the document of Ex.P-1 and other bills. Therefore, the award is just and proper needs no interference by this Court.

06. Learned counsel for the respondent no.3 submits that since the driver was not having a valid and effective driving licence on the date of accident, the Tribunal has rightly exonerated the Insurance Company of its liability.

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

08. Considering the facts and circumstances of the case, the gravity of the injuries suffered by the claimant, his pleadings, the medical bills from Ex.P-1 to Ex.P-55, the fact that no evidence whatsoever in rebuttal was adduced by the non-applicants and also keeping in view the fact that while deciding claim cases, strict rule of evidence is not to be insisted upon and the case has to be decided on the basis of preponderance of probabilities, this Court is of the opinion that the Tribunal was not justified in not considering the medical bills submitted by the claimant which was duly exhibited by him. Therefore, the claimant is held entitled for an amount of Rs.1,12,970/- towards medical expenses in place of Rs.10,000/- as awarded by the Tribunal. So far as the amount awarded by the Tribunal towards pain and suffering, loss of amenities and special diet is concerned, the same being just and proper

and proportionate to the loss suffered by the claimant and also not being challenged by the claimant is hereby maintained.

09. In the result, the appeal is allowed in part with modification in the impugned award to the extent that the claimant is entitled for an additional compensation of Rs.1,02,970/- with interest as awarded Tribunal. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh