

HIGH COURT OF CHHATTISGARH, BILASPURM.A(C) No.774 of 2014

Sukhdev S/o Thakur Ram Sahu Aged About 36 Years R/o Parkhanda, Tah. Kurud, P.S. Kurud, Distt. Dhamtari C.G.

---- Appellant

Versus

1. Pawan Kumar, S/o Chandrabhushan Soni Aged About 23 Years R/o Motimpur, Tah. Kurud, Distt. Dhamtari C.G., Present R/o Vishvanagar Puraina, Telibandha, P.S. Telibandha, Distt. Raipur C.G.
2. The Manager Icici Lombard, General Insu.Co.Ltd. 414, Veer Savarkar Marg, Near Siddhi Vinayak Mandir, Prabha Devi Mumbai Maharashtra, Branch Office- Shriram Auto Mobile, Near Suman Colony, Aarang, Distt. Raipur C.G.

---- Respondents

Ms. Laxmin Kashyap, Counsel for the Appellant.
 Shri SP Sahu, Counsel for Respondent No.1.
 Shri Sourabh Sharma, Counsel for Respondent No.2.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
Award On Board

26.02.2020

1. This Miscellaneous Appeal has been preferred by the Claimant under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 18.06.2014 passed by the Chief Motor Accidents Claims Tribunal, District Dhamtari (CG) (for short 'the Claims Tribunal') in Claim Case No.19/2013 by which, the Claims Tribunal, while allowing the claim in part, awarded a total sum of Rs.35,680/- with 6% interest per annum from the date of filing of the claim Petition till its realization while fastening the liability upon the Insurance Company. The parties to this

Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 15.11.2012, the Applicant was returning to his village Parkhanda on his motorcycle along with his friend Govind Sahu. At the relevant time, he was dashed from his opposite side by the offending vehicle i.e. another motorcycle bearing its Registration No.CG 04 9362, which was owned and driven by Non-Applicant No.1-Pawan Kumar, insured with Non-Applicant No.2-ICICI-Lombard General Insurance Company Limited.

3. On account of the aforesaid accident, the Applicant, who was a driver by profession and used to earn Rs.4,000/- per month, suffered permanent disability to the extent of 40% and therefore, a claim under Section 166 of the Act of 1988 has been made by him claiming total amount of compensation to the tune of Rs.7,20,000/-.

4. The aforesaid claim has been contested by Non-Applicants and after considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 15.11.2012 due to rash and negligent driving of the driver of the offending vehicle by which, the Claimant has suffered temporary disability and held further that the alleged vehicle was not being used in violation of the insurance policy and that by considering the medical expenses of Rs.32,680/- incurred by the Claimant towards his treatment, Rs.3,000/- towards his mental and physical agony, awarded a total amount of compensation as mentioned hereinabove.

5. Being aggrieved, the Claimant has preferred this Appeal. Ms. Kashyap, learned Counsel for the Appellant submits that while awarding the amount of compensation, the Claims Tribunal has erred in awarding a meagre amount of

compensation payable to the Claimant. It is contended further that the Applicant was admitted into the hospital for over more than 15-16 days and the femur bone of his right leg got fractured, therefore, proper amount of compensation towards mental and physical agony ought to have been awarded instead of just Rs.3,000/-. The award under Appeal is, therefore, liable to be enhanced accordingly.

6. On the other hand, learned Counsel for the Respondents have supported the award impugned.

7. I have heard learned Counsel for the parties and perused the entire record carefully.

8. From perusal of the record, it appears that owing to the alleged accident, occurred on 15.11.2012, the Applicant was injured badly as evidenced by the disability certificate (Ex.P-13) which shows that the femur bone of his right leg had got fractured. Ex.A-10 is the cash memo issued from Rameshwaram Hospital, Dhamtari on 30.11.2013 revealing the fact that while taking treatment in the said hospital for the period of 15-16 days, the Applicant has incurred a sum of Rs.32,600/- and Rs.80/- as evidenced by the certificate (Ex.A-11) issued by the "Jeevan Deep Samiti", Dhamtari. While considering these documentary evidence, the Tribunal has thus, rightly granted a sum of Rs.32,680/- incurred by him towards his treatment and findings of the Tribunal in this regard do not suffer from any infirmity. However, looking to the injury sustained by him and the period of his treatment, it appears that a meagre amount of Rs.3,000/- has been awarded towards mental and physical agony. Considering the injuries sustained by the Appellant and the period of his treatment as evidenced by the said certificate (Ex.A-10), vis-a-vis, the statement of Dr. Vinod Pandey (AW-2), I deem it proper to award him lump

sum of Rs.25,000/- in this regard.

9. The Applicant would thus be entitled to a total sum of Rs.57,680/- instead of Rs.35,680/-, with 6% interest per annum as awarded by the Tribunal from the date of filing of the claim Petition till its realization.

10. Consequently, the Appeal is allowed in part to the extent indicated hereinabove. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge