

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 963 of 2014***(Arising out of Award dated 20.06.2014 passed by the Motor Accident Claims Tribunal, Kabirdham (Kawardha) in Claim Case No.71/2013)*

- Genduram S/o Omkar Sahu Aged About 20 Years R/o Basinjhor, P.S. And Tah. Sahaspur Lohara, Distt. Kabirdham Chhattisgarh

---- Appellant**Versus**

1. Dagesh Kumar S/o Manharan Sahu Aged About 5 Years Minor, Thru-Father Manharan Sahu, S/o Hattu Sahu, Age- 30 Yrs, R/o Botesur, P.S. And Tah. Sahaspur Lohara, Distt. Kabirdham Chhattisgarh
2. Rakesh S/o Seukram Aged About 25 Years R/o Marpa, P.S. and Tah. Kawardha, District : Kawardha (Kabirdham), Chhattisgarh

---- Respondents

For Appellant	:	Shri Devesh Chandra Verma, Advocate
For Respondent No.1	:	Shri C.K.Sahu, Advocate
For Respondent No.2	:	None present

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per, P. R. Ramachandra Menon, Chief Justice****17.08.2020**

1. The injuries sustained by a minor boy aged 5 years causing fracture to his left leg in a road traffic accident involving the motorcycle ridden by the Appellant were ordered to be compensated with an extent of Rs.59,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization, if deposited within two months, or else to pay interest at the rate of '9%' per annum; correctness of which is put to challenge in this appeal preferred by the Rider of the motorcycle.
2. The factual matrix reveals that on 21.04.2013, the Appellant was riding a motorcycle bearing registration No.CG 04 ZN 3979 and at about 6.00 p.m. when he reached the place of occurrence, the vehicle knocked

down the minor boy by name Dagesh Kumar, causing fracture to his left tibia and such other injuries; which led to the Claim Petition preferred before the Tribunal.

3. In fact, the vehicle ridden by the Appellant was at the registered ownership of the 2nd Respondent and admittedly there was no insurance coverage in respect of the said vehicle on the date of accident. After discharge from the hospital, a Claim Petition was filed before the Tribunal, seeking compensation under various heads; which was sought to be resisted from the part of the Respondents rider and owner of the motorcycle. The dispute was only with regard to the negligence and also the quantum of compensation claimed. According to the Appellant, there was no rashness or negligence on his part in riding the vehicle and the accident occurred only when the minor boy, standing on the side of the road, suddenly tried to cross the road without paying any heed to the horn allegedly blown by the Appellant/Rider. A criminal case was also registered against the Appellant as accused at Police Station – Sahaspur Lohara by way of Crime No.117/2013 in respect of the offences under Sections 279, 337 and 338 of the IPC. Based on the pleadings and evidences, the Tribunal came to a conclusion that the accident had occurred because of the negligence on the part of the Rider of the motorcycle. After considering the facts and figures, a sum of Rs. 20,000/- was awarded towards pain and suffering; a lump-sum of Rs.25,000/- towards the grievous injuries sustained; Rs.9,000/- towards medical expenses and

a sum of Rs.5,000/- towards special diet, thus awarding a total compensation of Rs.59,000/-. Since, there was no valid insurance coverage, the liability was required to be satisfied with interest as mentioned already, by both the Rider and the Owner of the motorcycle. The challenge is against the finding and reasoning in respect of negligence and also as to the quantum of compensation awarded.

4. The learned counsel for the Appellant submits that no disability certificate was produced and no Doctor was examined to establish the gravity of the injury and as such, the compensation awarded by the Tribunal is much on the higher side.
5. We find it difficult to accept the version of the Appellant, obviously since, no evidence was adduced from the part of the Appellant to substantiate the contentions. On the other hand, the pleadings and evidence brought on record from the part of the Claimant, supported by the police records clearly reveal that the injured was a pedestrian, who came to be knocked down by the vehicle ridden by the Appellant. As held by the Apex Court in ***Sudhir Kumar Rana v. Surinder Singh & Ors.***, reported in ***AIR 2008 SC 2405***, even the concept of contributory negligence varies when it comes to the case involving a 'minor'; unlike the case of an adult. It is on the basis of the specific pleadings and evidence brought on record that, the Tribunal has chosen to fix the liability solely on the Appellant / Rider of the motorcycle and in the absence of any evidence to the contrary, the finding rendered by the Tribunal is not liable to be held as erratic in any manner.

6. With regard to the quantum of compensation payable, it is relevant to note from the medical records produced that the injury caused was a serious one so long as it broke the tibia of the left leg of the Claimant. As mentioned already, in respect of serious injury involving fracture to the left leg, the Tribunal has Awarded only a lump-sum of Rs.20,000/- apart from a sum of Rs.25,000/- towards pain and suffering and a sum of Rs. 9,000/- towards the medical expenses besides the sum of Rs.5,000/- towards the special diet. The ordeal undergone by the minor child aged 5 years during the period of hospitalization and the subsequent period of taking rest at his residence to have the wound healed completely, facilitating rejoining of the broken shaft of the left tibia can be easily visualized. He would have suffered pain and agony, besides the loss of amenities and enjoyment as a child. No amount has been awarded by the Tribunal towards such loss of amenities and enjoyment; no compensation has been awarded towards transportation expenses and no amount has been awarded towards the attendant charges. It can be presumed that either the father or the mother of the child was sitting by his side for a minimum of 'three months' to get the bones re-united and as such, there is chance for loss of employment atleast to one of the parents, which is not compensated.
7. Considering the totality of the facts and circumstances of the case, we are of the view that the compensation awarded by the Tribunal can never be termed as on the higher side. By virtue of the mandate under Section 146(1) of the Motor Vehicles Act, 1988 (for short, 'the Act,

1988') no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the statutory requirements of Chapter XI; the extent of which is specifically mentioned under Section 147 of the MV Act, 1988. Since the offending motorcycle involved herein was being used by the Appellant / Rider and was permitted to be used so by the 2nd Respondent / registered owner, without taking a valid insurance policy, the liability arising out of the accident has been correctly fixed upon the owner and rider of the vehicle; which is perfectly within the four walls of law and requires no interference.

8. In the above circumstances, we hold that the appeal is devoid of any merit as none of the grounds raised in support of the same could be tenable. However, since there is no provision to award any 'penal interest' the direction at Sl.No. '3' of 'paragraph 18' of the Award to pay interest at the rate of 9% of the compensation awarded was not deposited within two months, it stands set aside and the liability to pay interest will be @ 7.5 per annum as given in the 'direction No.2' of the same paragraph.

With the above modification, the Appeal stands dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge