

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 648 of 2015

- Basant Kumar S/o Shri Balaram Sahu Aged About 25 Years R/o Village Dhardei, Thana- Sheorinarayan, Civil And Revenue District- Janjgir-Champa, Chhattisgarh
---- **Appellant/claimant**

Versus

1. Rahul Kesharwani S/o Shri Chainal Prasad Aged About 26 Years R/o Village Beladula, P.S. - Sarsinwa, Civil And Revenue District- Balouda Bajar, Chhattisgarh (Driver of vehicle No.CG-04-DT-0320)
2. Gyaneshwar Kesharwani S/o Heeralal Aged About 29 Years R/o Village Kharoud, Thana- Sheorinarayan, Civil And Revenue District- Janjgir-Champa, Chhattisgarh (Owner of vehicle No.CG-04-DT-0320)

---- **Respondents/Non-Applicants**

For Appellant	: Shri Sunil Sahu, Advocate
For Respondents	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

02.11.2020

1. Claimant has preferred this appeal under section 173 of Motor Vehicle Act, 1988 seeking enhancement of amount of compensation awarded to him vide impugned award dated 01.04.2015 passed by the Additional Motor Accident Claims Tribunal, Janjgir-Champa (FTC) (For short, 'Claims Tribunal') in Claim Case No.24 of 2013 whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 and awarded lump-sum amount of Rs.30,000/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 19.05.2013, appellant was travelling on Motorcycle bearing No.JH 02 W 4687 along with Lukesh Bareth (pillion rider). When they reached near Pamgarh Petrol Pump, Tractor bearing No.CG 04DT 0320 (for short, 'offending vehicle') dashed the Motorcycle from its rear side and caused accident.

In the said accident, appellant and Lukesh fell down from the Motorcycle and suffered injuries. Accident was reported to concerned Police Station, based upon which offence was registered against NA1, driver of offending vehicle.

3. Appellant filed an application under Section 166 and 140 of the Act of 1988 pleading therein the offending vehicle dashed his motorcycle, he suffered grievous injuries for which he incurred expenditure more than Rs.1,00,000/- for treatment. He suffered loss of income and claimed Rs.3,95,000/- as compensation on different heads.

4. NA1 and 2, driver and owner of offending vehicle submitted reply to the claim application, denying the pleadings made therein. It was pleaded that the appellant on the date of accident, was under influence of liquor and on account of his own negligence fell down from his Motorcycle. There was no accident from the offending vehicle. Appellant/claimant is not entitled for any amount of compensation.

5. Claims Tribunal upon appreciation of pleadings and evidence placed on record, held that NA1 while driving the offending vehicle rashly and negligently, caused accident; though claimant not suffered any permanent disability, but suffered grievous injuries; and awarded Rs.30,000/- as compensation.

6. Shri Sunil Sahu, learned counsel for the appellant /claimant submits that learned Claims Tribunal has not considered the documents and bills placed on record, not awarded any amount towards medical expenditure separately. He submits that appellant has expended about more than one

lakh for which, copies of payments, receipts of Hospital bills and also bills for purchase of medicines have been placed on record. But the Tribunal has not awarded any amount as mentioned in those documents. He further submits that medical documents are placed on record but the claimant failed to mark them as exhibits. The medical bills with regard to the payment of hospital bills and purchase of medicines if considered in light of Ex.P7 Discharge Ticket, it is apparent that the bills placed on record by the appellant/claimant are with regard to the treatment of appellant himself, which was required to be considered and awarded. He further contended that the amount awarded by the Tribunal is very meagre amount, Tribunal has not taken note of the documents placed on record as the proceeding under the Act is an enquiry and could have awarded amount expended by the appellant towards his medical treatment. He submits that the amount of compensation be suitably enhanced.

7. None appeared for the respondents. The office note shows that respondent-1 refused to accept notice, whereas, respondent-2 has been shown to be served, but no one appeared to represent him.

8. I have heard learned counsel for the respective parties and also perused the record of claim case.

9. Perusal of record of claim case would show the date of accident to be 19.05.2013 as mentioned in Ex.P1, copy of FIR. MLC Report dated 29.05.2013 would show fracture of Tibia and Fibula, copy of Discharge Ticket of Care-N-Cure Hospital is placed on record as Ex.P7, in which it is mentioned that appellant got himself admitted on 19.05.2013 and was

discharged on 25.05.2013. It has also been mentioned that on diagnosis, it was found that compound fracture of Tibia and Fibula right side.

10. Appellant was examined before the Claims Tribunal as AW1. In his evidence, he stated the date of accident as 19.05.2013. He also stated that after accident, he was taken to Community Health Centre, Pamgarh, and thereafter, he took treatment at Care-N-cure Hospital, Bilaspur as inpatient from 19.05.2013 to 25.05.2013. Claimant has placed on record list of documents dated 02.09.2014 in which the receipts of payments made to Care-N-cure Hospital and further, cash receipts of purchase of medicines have also been placed on record. The IPD bill of Care-N-cure hospital showing amount of Rs.42,934/- is also placed on record.

11. Upon considering above documents and also looking to the Discharge Ticket which has been proved as Ex.P7, in the considered opinion of this Court, even if for any technical reason, could not mark the bills as Exhibits, Claims Tribunal should have considered and awarded the amount of actual expenditure made towards his treatment when it arrived at a finding that appellant suffered motor accidental injuries.

12. In view of above, I find it appropriate to award Rs.42,934/-, bill of Care-N-cure hospital for treatment as inpatient and further, the cash receipts which run to the tune of Rs.13,541.72 ps issued by the Chemist, with regard to purchase of medicines placed on record. The Tribunal while awarding Rs.30,000/- in lump-sum, has awarded towards medical expenditure, pain and suffering. But not awarded any amount towards loss of income for the period of treatment, special diet, transportation and attendant.

13. In view of the fact that the appellant was resident of village Dhardeyi, PS Shiverinarayan, District Janjgir-Champa, whereas he took treatment in hospital at Bilaspur; taking into consideration overall facts and circumstances of the case, it is held that amount of Rs.30,000/- to be considered towards transportation expenses from Dhardeyi to Bilaspur and return from Bilapsur to his village, loss of income for a period of two months during the period of treatment, special diet, pain and suffering, and attendant etc. Apart from aforementioned amount of Rs.30,000/-, claimant is further entitled for entire medical expenses of Rs.42,934/- which is evident from the documents placed on record as Hospital and treatment bills. The bills of Chemist showing purchase of medicines showing amount Rs.13,541.72 ps rounded of amount of Rs.13,542/-, which are cash receipts for purchase of medicines, placed on record.

14. Now, appellant /claimant is entitled for a total sum of Rs.86,476/- (30,000 + 42,934 + 13542).

15. Aforementioned compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal shall remain intact.

16. Appeal is allowed in part and the impugned award is modified to the extent as indicated above

Sd/-
(Parth Prateem Sahu)
JUDGE