

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 751 of 2014**

- Fitaram Sahu, S/o Late Ramlal Sahu, aged about 38 years, Caste-Sahu, Occupation-Agriculturist & Stamp Vendor, R/o village & Post-Sakrelipara, Kesla, PS Baradwar, Tehsil-Sakti, Revenue & Civil District- Janjgir-Champa (CG)

---- Appellant**Versus**

1. Murli Prasad, S/o Ramsakal Vind, Aged about 25 years, R/o Vill & Post Vihsada, PS Vidhyanchal, Revenue & Civil District – Mirzapur UP (Driver of the offending vehicle)
2. Rajnarayan Singh, S/o Late Parmeshwar Singh, R/o Zone Sector-3, Qtr No.48, Street No.MU Singh, Khursipar, Bhilai, Revenue & Civil District – Durg CG (Owner of the offending vehicle)
3. Branch Manager, Reliance General Insurance Company Limited, Transport Nagar, Main Road Korba, Tehsil-Korba, Revenue & Civil District Korba (CG) (Insurer of the offending vehicle)

---- Respondents

For Appellant	:	Shri Surfaraj Khan, Advocate
For Respondents-1 and 2	:	None appears
For Respondent-3	:	Shri SS Rajput, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
17.07.2020

1. This is claimant's appeal challenging the impugned award dated 01.05.2014 passed in claim case – 37/2013 by Additional Motor Accident Claims Tribunal, Sakti (for short 'Claims Tribunal') wherein learned Claims Tribunal allowed the claim application towards damage of property in part and awarded Rs.2,56,930/- as compensation.
2. Facts relevant for disposal of this appeal are that on 27.06.2013 Truck bearing No.CG04-JB-5565 (for short, 'offending truck') driven by respondent-1 dashed the house of appellant at Village Sakrelipara, Kosla wherein his personal temple was also situated. In the said accident, boundary wall, entry gate, iron swing, Hanuman Temple and some portion of his house got damaged along with temple.

The accident was reported to concerned police station and during the course of investigation, loss Panchnama was also prepared assessing the damages of appellant's property to the tune of Rs.5,70,000/-.

3. Appellant filed application under Section 166 of the Motor Vehicle Act, 1988 seeking compensation of Rs.5,70,000/- as assessed by the police while preparing loss Panchnama.
4. Respondents-1 & 2 who are driver and owner of the offending truck submitted reply to claim application and denied rash and negligent driving of the offending truck by its driver/NA1, stated that false FIR was registered against the truck and further pleaded that if any amount of compensation is to be awarded, then it is against NA3/respondent-3 Insurance Company. On the date of accident driver of the offending truck was possessing valid and effective driving license.
5. Respondent-3, Insurance Company submitted reply to claim application, pleaded that appellant in collusion with respondents-1 & 2, has lodged false report, the documents of house have not been filed along with claim application and the driver of offending truck was not possessing valid and effective driving license on the date of accident and also not having valid permit and fitness of the offending truck, there was breach of conditions of insurance policy.
6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, held that due to rash and negligent driving of offending truck by respondent-1, accident occurred and dashed the house, personal Hanuman Temple, boundary wall, entry gate and iron swing were damaged which was reconstructed and repaired and awarded Rs.2,56,930/- towards damages of the property.
7. Shri Surfaraj Khan, learned Counsel for the appellant submitted that learned Claims Tribunal has not considered the loss Panchnama prepared by the police

during the course of investigation in presence of local residents and assessed the loss of the appellant to the tune of Rs.5,70,000/-, but ignoring that document, learned Claims Tribunal has awarded a scanty amount of Rs.2,56,930/-. He further submitted that learned Claims Tribunal has also not considered the final report submitted by the investigating agency along with the documents which were placed by the appellant for assessing value of damages suffered by him for awarding just and proper amount of compensation. Apart from this, no other ground is raised by the learned counsel for the appellant.

8. Per contra, Shri SS Rajput, learned counsel appearing for respondent-3/ Insurance Company submits that learned Claims Tribunal has awarded amount of compensation after considering all the documentary evidence placed on record by the appellant towards expenditure incurred by him for repairing / reconstruction / renovation of damaged portion of his property. He further submits that impugned award passed by learned claims tribunal is just and proper and does not call for any interference.
9. We have heard learned counsel for the respective parties and perused the record of the claim case.
10. The appellant in support of his claim has filed Ex.P10 to 15 and P17 towards the purchase of material, Ex.P18 towards welding expenditure incurred for entry gate, iron swing and iron ventilation grill of the house. Apart from the above, claimant has also placed on record labour charges paid by him for repairing / reconstruction / renovation of the damaged portion of his property to the tune of Rs.44,000/-. Learned Claims Tribunal allowed all the bills placed on record by the appellant which were amounting to Rs.2,56,930/-. It is not the case of the appellant that he incurred more expenditure for repairing / reconstruction / renovation of the damaged portion of the property and some damaged property is left as it is for repair and therefore he is entitled for some more amount of

compensation towards the damaged property. His claim in this appeal is only relying upon the loss Panchnama prepared by the police assessing the loss suffered by the appellant vide Ex.P5.

11.The loss Panchnama prepared by the police during the course of investigation cannot be accepted as evidence of proof for damages/loss. It is only a *prima-facie* visual assessment prepared, assessing the damages on the basis of presumption. This can be used as evidence for the purpose of consideration that which portion of the property got damaged in the accident but not for assessing the value of the damages. The claimant has not submitted any report prepared by some technical expert or Engineer before the learned Claims Tribunal to prove the value of loss suffered by him. Admittedly, in this case, there is no such document or evidence placed on record by the appellant. The claimant submitted bills of expenditure incurred by him towards, reconstruction preparing of his damaged property and all the bills submitted by him was awarded.

12.For the foregoing reasons, the submissions made by the learned counsel for the appellant that learned Claims Tribunal has not considered the value of the damages suffered by the appellant to his property as assessed by the police in its Panchnama is not sustainable and it is hereby repelled.

13.Appellant has further claimed Rs.50,000/- towards mental pain and Rs.20,000/- towards loss of income during the period of repairing / reconstruction / renovation of his house for supervision of the same.

14.Appellant, in accidental damage of his residential house and his personal temple, he must have suffered the inconvenience and also mental shock but learned Claims Tribunal has not awarded any amount towards it.

15.In the facts and circumstances of the case, we find it appropriate to award Rs.5,000/- towards inconvenience caused to the appellant as well as mental

shock suffered by him. So far as the amount claimed towards loss of income is concerned, appellant has not placed any documentary evidence but for his oral statement in this regard, in the facts and circumstances of the case and looking to the dates as appearing in bills, we find it appropriate to award Rs.2,000/- towards loss of income of the appellant as he has to spent his time for supervising the work.

16.The appellant will be entitled for an additional sum of Rs. 7,000/- towards the inconvenience and mental shock as well as loss of income for supervision of the work during the period of repairing / reconstruction / renovation of damaged portion of his house.

17.Now, the appellant/ claimant will be entitled for an amount of Rs.7,000/-, apart from the amount already awarded by the learned claims tribunal i.e. Rs.2,56,930/-.

18.The additional amount of compensation will carry interest @ 6% per annum from the date of filing of claim application till its realization.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge