

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 997 of 2016**

1. Dhupshagar Ram Chauhan, S/o Late Sonsai Ram, Aged About 35 Years, Caste Cheek, R/o Village Khumhar Bahar, P. S. Fharshabahr, District Jashpur, Chhattisgarh,
2. Smt. Sharda Chauhan, W/o Shri Dhupshagar Ram Chauhan, aged about 30 years, Caste Cheek, R/o Village Khumhar Bahar, P. S. Fharshabahr, District Jashpur, Chhattisgarh,

---- Appellants

Versus

1. Lal Babu Chaudhri, S/o Ramroop Choudhari, Aged About 38 Years Occupation Driver, R/o Namna Kala Near Karmal School Ambikapur, District Sarguja, Chhattisgarh....Driver Truck No. C G 15 A C 0208,
2. Rajvider Singh Sainee, S/o Late Manjeet Singh Sainee, Aged About 45 Years Caste Shikh, R/o Bhatti Road Kadaarpur Ambikapur, District Sarguja, Chhattisgarh....Owner Truck No. C G 15 A C 0208,
3. Branch Manager, The Oriental Insurance Company Limited, Atwari Bazar Naya Ganj Raigarh, District Raigarh, Chhattisgarh.....Insurer,

---- Respondents

For Appellants	:	Shri Sanjeev Kumar Sahu, Advocate.
For Respondents No. 1 & 3	:	None., though served.
For Respondent No.2	:	Ms. Parwati Suryawanshi on behalf of Shri Bhupendra Singh, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal**Order / Award on Board****24.01.2020**

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 28.04.2016 passed by the Additional Claims Tribunal to the Court of Additional Motor Accident Claims Tribunal, Kunkuri, Dist. Jashpur (for short, the Claims Tribunal) in Motor Accidents Claim Case No.13/2011, by which, the Claims

Tribunal, while allowing the claim in part, has awarded total amount of compensation to the tune of Rs.44,327/- with interest @ 6% per annum from the date of filing of Claim Petition till its realisation. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 29.09.2010, Applicant No.1 Dhupsagar was coming by his motorcycle along with his wife from village Kumharbahar to village Kadelkachhar and at the relevant time, he was dashed vehemently from its opposite side by the offending vehicle "Truck" bearing its registration No.CG-15-AC-0208, which was owned by Non-Applicant No.2 – Rajvinder Singh Sainee and insured with Non-Applicant No.3/the Oriental Insurance Company Limited. At the time of accident, the vehicle in question was being driven rashly and negligently by its driver, namely Lalbabu Chaudhri. As a result of which, Applicant No.1 was injured badly and was admitted into the Hospital as his right leg tibia and fibula bone got fractured and suffered permanent disability to the extent of 70%. Based upon the alleged accident, a Claim enumerated under Section 166 of the Act of 1988 has been made claiming total amount of compensation to the tune of Rs.8,50,000/- under various heads.

3. Non-Applicants No.1 & 2 were proceeded ex parte, while Non-Applicant No.3/insurance company has contested the Claim on the ground that the vehicle in question was being driven in violation of the insurance policy, therefore, no liability as such could be fastened upon it.

4. In support, Applicant No.1 Dhupsagar alone has entered into the witness box, while none was examined by the Non-Applicants in order to disprove the Claim.

5. After considering the evidence led by the Claimants, it has been held

by the Claims Tribunal that the accident occurred on 29.09.2010 due to rash and negligent driving by the driver of the offending vehicle 'Truck', as a result which, Applicant No.1 sustained grievous injuries. It held further that the vehicle in question was not being used in violation of the insurance policy and that by considering the notional monthly income of Applicant No.1 as Rs.3,000/-, awarded total amount of compensation, as mentioned herein above.

6. Being aggrieved, the Claimants have preferred this appeal. Shri Sanjeev Sahu, learned counsel appearing for the Appellants submits that the award impugned as passed by the Claims Tribunal is apparently on lower side. While inviting attention to disability certificate, marked as Ex.P.21, it is contended that Applicant No.1 sustained serious injuries and has suffered permanent disability to the extent of 40%. However, the Tribunal has erred in disbelieving the same by holding that he has not suffered permanent disability as such. It is contended further that a very meagre amount of compensation has been awarded towards physical and mental agony, travelling charges and also towards attendant and diet which he incurred during the course of his treatment. The award impugned is, therefore, liable to be enhanced.

7. On the other hand, Ms. Parwati Suryawanshi appearing on behalf of Respondent No.2 supported the award impugned.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that the alleged accident occurred on 29.09.2010 due to rash and negligent driving by the driver of the offending vehicle, which caused serious injuries to Applicant No.1 Dhupsagar. Ex.P.21 is the disability certificate showing that Applicant No.1 has suffered

permanent disability to the extent of 40%, which was likely to be improved, as evidenced by the endorsement made therein. In order to establish the fact that Applicant No.1 (Dhupsagar) has suffered a permanent disability as such, examination of a Doctor and/or a cogent evidence ought to have been led by the Claimants. However, the Claimants have failed to examine any of the witnesses in this regard. Having failed so, the Claims Tribunal has rightly arrived at a conclusion that Applicant No.1 has not suffered permanent disability.

10. It appears further that the Tribunal, after considering the notional income of Applicant No.1 as Rs.3,000/- per month, loss of income for the period of six months has been assessed to the tune of Rs.18,000/- and considering the medical expenses to the tune of Rs.13,327/- and that by awarding Rs.3,000/- towards travelling charges, Rs.5,000/- towards physical and mental agony and Rs.5,000/- towards attendant and diet, awarded total amount of compensation, as mentioned herein above. As far as medical expenses as awarded by the Tribunal to the tune of Rs.13,327/- by placing its reliance upon the medical bill, and Rs.3,000/- towards travelling charges, are concerned, I do not find any infirmity in the same. However, it appears that a very meagre amount of compensation has been awarded towards other heads, like physical and mental agony as well as towards attendant and diet incurred by the Claimants during the course of treatment.

11. Considering the nature of injuries sustained by Applicant No.1 and considering further the X-ray report (Ex.P.20) of Applicant No.1, who was hospitalised for a considerable period of 24 days, I am inclined to award a lumpsum amount of Rs.30,000/- towards his physical and mental agony, while Rs.15,000/- towards attendant and diet, as incurred by Applicant No.1 during the course of his treatment in the Hospital.

12. The Applicants are thus entitled to total amount of compensation to the tune of Rs.79,327/- instead of Rs.44,327/-, as under:

Mode of Compensation	Amount
(i) Loss of income, as assessed by the Tribunal	Rs. 18,000.00
(ii) Towards medical expenses, as assessed by the Tribunal	Rs. 13,327.00
(iii) Towards travelling charges, as assessed by the Tribunal.	Rs. 03,000.00
(iv) Towards physical and mental agony	Rs. 30,000.00
(v) Towards attendant and diet incurred during the course of treatment by Applicant No.1	Rs. 15,000.00 =====
Total	Rs.79,327.00 -----

13. The aforesaid amount of compensation shall carry interest @ 6% per annum from the date of filing of the Claim Petition till its realisation. Rest of the observations as made by the Claims Tribunal shall remain intact.

14. The appeal is accordingly allowed in part to the extent indicated herein above. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge