

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 194 of 2015

Hem Kumar Sahu S/o Vijay Kumar Sahu, Aged About 8 Years, Minor Through Father Vijay Kumar Sahu, R/o : village -Maharajpur, PS & Tehsil -Dondilohara, District -Balod, C.G.

----Appellant

Versus

1. Harpal Singh @ Haripal Singh, S/o Karan Singh, Aged About 38 Years, R/o -Shyampur, P.S. -Faizganj, District -Badayu, Uttar Pradesh. **(Driver)**.
2. Kusum Jaiswal D/o Rajendra Jaiswal.
3. Sachin Jaiswal S/o Rajendra Jaiswal, Aged About 28 Years.
Both are R/o -Dayakunj Shubhash Road Chandaushi, Tehsil and District -Muradabad, New District -Bheem Nagar, Uttar Pradesh. **(Owner)**.
4. Iffco Tokyo General Insurance Company Ltd. Corporate Office 4th and 5th Floor Iffco Tower Plot No.3 Sector 29, Gudgaon Haryana Branch Lucknow, Haryana 122001. Through Branch Manager Branch Office Third Manjil Shop No.345-347 Ialganga Shopping Mall GE Road, Raipur, District -Raipur, C.G.

-- Non-applicant Nos.1 to 4/Respondents.

For Appellants	: Shri Gautam Khetrapal, Advocate with Shi Avinash Chand Sahu, Advocate.
For Respondent No.1 to 3	: None.
For Respondent No.4	: Shri Tessy Abraham, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Parth Prateem Sahu, Judge
Order on Board

06.08.2021

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned First Additional Motor Accident Claims Tribunal, Balod, District Balod, (CG) vide award dated 08.07.2014 passed in Claim Case No.55/2014, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988, awarded total compensation of **Rs.27,000/-** in an injury case, fastened liability upon non-applicant No.4/Insurance Company to satisfy amount of compensation.
2. Facts relevant for disposal of this appeal are that on 14.01.2012 at about 5:30 pm, appellant alongwith his family was going to Bhilai from

Maharajpur on motorcycle bearing registration No. CG-07-ZS-7135. On the way near village -Khuteri, one Car bearing registration No.UP-21-X-7700, (for short, 'offending vehicle') driven by Non-applicant No.1 rashly and negligently, dashed the motorcycle and caused accident. In the said accident, appellant suffered grievous injuries on his left leg. Vijay Kumar & Nirmala Bai parents of appellant also suffered injuries. Ku.Neha @ Nisha, sister of appellant, scummed to injuries on the way to hospital. Accident was reported to concerned Police Station based upon which crime bearing No.28/12 was registered against non-applicant No.1.

3. On account of aforementioned injuries, appellant has filed application under Section 166 of the Act of 1988 seeking total compensation of Rs.6,89,000/- on different heads pleadings therein that he suffered permanent disability due to shortening of leg.
4. Non-applicants No.1, 2 and 3, did not appear before the Tribunal and were proceeded ex-parte.
5. Non-applicant No.4/Insurance Company submitted its reply denying the facts pleaded in claim application. Fact of insurance of offending vehicle was also denied for want of verification. Accident was a result of negligence on the part of driver of motorcycle. Owner and insurer of motorcycle have not been arrayed as party to claim proceeding. At the time of accident, four persons were traveling on motorcycle. Amount of compensation claimed is highly exaggerated.
6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that appellant aged about 5 years suffered fractured injury on his right leg. In Para No.15 of impugned award, Tribunal held that appellant failed to prove permanent disability

as claimed and stated in the evidence. Tribunal allowed claim application in part, awarded Rs.15,000/- towards pain and suffering, Rs.5,000/- towards loss of amenities and joy in life, Rs.2,000/- towards diet, and Rs.5,000/- towards medical expenses.

7. Learned counsel for the appellant submits that Tribunal has not considered the entire medical evidence brought on record by appellant and arrived at erroneous finding that appellant failed to prove permanent disability. In support of claim application, appellant has placed on record X-ray report which was conducted on 19.07.2013 just before examination of appellant by Dr. Akhilesh Yadav who issued disability certificate Ex.P-6. Appellant suffered 11% permanent disability on his right leg and Dr. Akhilesh Yadav in his evidence has denied the suggestion that disability certificate is only with respect to particular part of body, which means that disability of 11% is for the whole body. Tribunal has not awarded any amount towards grievous injuries, permanent disability, attendant and conveyance. The compensation awarded on other heads are also on lower side.
8. Learned counsel for respondent No.4/Insurance Company submits that Tribunal after taking into consideration nature of injuries, age of appellant to be 5 years, evidence of Doctor AW-2 has awarded just and proper amount of compensation, which does not call for any interference. Disability certificate placed on record as Ex.P-6 cannot be accepted because it is not issued by Medical Board nor the Doctor who treated the appellant. It is also pointed out that there is no mention in evidence of Doctor that disability suffered by appellant can be increased or

decreased. Further, he has not brought the register maintained for issuance of certificate to the persons suffering disability.

9. Heard learned counsel for the parties and perused the record of claim case.
10. On the date of accident, appellant was aged about 5 years only. MLC report placed on record Ex.P-1 mentions that appellant suffered fracture injury on his thigh ie femur bone and fracture of clavicle bone. Appellant to prove his injuries and treatment has placed on record discharge ticket of District Hospital, Rajnangoan mentioning date of admission from 14.1.2012 to 30.1.2012 which shows that he took treatment from Government Hospital. There are no bills of doctor for treatment but for the bills with regard to purchase of medicine amount of Rs.1,056/- from Vijay Medical Store placed on record as Ex.P-2 and further Rs.45/- of Jevan Deep Samithi, Government Hospital, Durg.
11. In view of bills available on record, submission made by learned counsel for the appellant that entire medical bills have not been awarded cannot be accepted because except two aforementioned cash receipts no other documents is placed on record. Tribunal has awarded Rs.5,000/- towards medical expenses, which in view of above evidence available on record cannot be said to be on lower side. Award of amount of Rs.5,000/- towards medical expenses is affirmed to be just and proper.
12. So far as submission made by learned counsel for the appellant with regard to permanent disability is concerned, disability certificate Ex.A-6 placed on record is not issued by District Medical Board, but by the doctor posted at District Hospital, Durg. Appellant is resident of village -Maharajpur, District -Balod and took treatment Government Hospital,

Rajnangaon. He neither approached District Medical Board of Rajnangaon nor treating doctor of Rajnangaon for obtaining disability certificate. Appellant, visited to Durg District Hospital, but not approached the District Medical Board, at Durg for disability certificate.

13. Doctor Akhilesh Yadav in his cross-examination has admitted that he is working as Medical Officer, he has not treated the appellant. Disability certificate was issued in the capacity of single doctor and not by Medical Board.

14. As disability certificate is not issued either by treating doctor or by Medical Board, considering the entire facts and evidence available on record, nature of disability shown in certificate, in the considered opinion of this Court it cannot be accepted to be admissible piece of evidence. Even if appellant failed to prove disability suffered by him in accordance with law than also looking to the nature of injuries as mentioned in MLC report and treatment taken as 'in-patient', tribunal ought to have awarded amount of compensation towards grievous injuries. Appellant suffered injuries on clavicle bone and fracture of thigh. In view of above, I find it appropriate to award Rs.20,000/- towards grievous injuries.

15. So far as submission with regard to award of conveyance expenses, looking to the place of resident of appellant ie Distt -Balod and treatment taken by him at Rajnangoan, I find it proper to award Rs.3,000/- towards conveyance expenses. Discharge ticket Ex.A-3 shows that appellant took treatment as in patient from 14.1.12 to 30.1.12, hence, I find it appropriate to award Rs.3,000/- towards attendant and his diet.

16. For the foregoing reasons, I propose to recompute the amount of compensation awarded by Tribunal.

17. Appellant/claimant will be entitled for Rs.20,000/- towards grievous injuries, Rs.3,000/- towards conveyance expenses, Rs.3,000/- towards attendants and his diet.
18. Appellant is also entitled for Rs.15,000/- towards pain and sufferings, Rs.5,000/- towards loss of amenities and joy in life, Rs.2,000/- towards diet, and Rs.5,000/- towards medical expenses as awarded by the Tribunal.
19. Now, appellant/claimant is entitled for **Rs.53,000/-** (Rs.20,000/- + Rs.15,000/- + Rs.5,000/- + Rs.2,000/- + Rs.5,000/- + Rs.3,000/- + Rs.3,000/-) instead of **Rs.27,000/-** as awarded by Tribunal. The liability to satisfy the amount of compensation would be upon respondent No.4/Insurance Company. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.
20. In result appeal is allowed in part and the impugned award stands modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-