

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 203 of 2015**

Hamidullah Khan S/o Nasir Khan, Aged About 27 Years, R/o : village -Pondi, Police Station and Tahsil -Bodla, Civil and Revenue District-Kabirdham, C.G.

---- Appellant/applicant.

**Versus**

1. Mohammad Javed Memon S/o Farukh Habib Memon, Aged About 19 Years, Occupation -Student, R/o : village -Durg Road, Infront of Ganjpara Mandi, Bemetara, Police Station and Tahsil -Bemetara, Civil and Revenue District -Durg (Now Bemetara) C.G. (Driver).

---Non-applicant No.1.

2. (Deleted) Farukh Habib Memon, As Per The Hon'ble Court Order Dated 28-01-2021.

---Non-applicant No.2.

3. The Oriental Insurance Company Ltd, Through Branch Manager, Branch Office, 16 RSS Market, Power House Supela, Bhilai, Civil and Revenue Distt - Durg C.G.

---Non-applicant No.3.

-----Respondents.

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For Appellant : Mr. Govind Dewangan, Advocate.

For Respondent No.1 & 2 : Mr. Soumitra Kesharwani, Advocate.

For Respondent No.3 : Mr. H.S. Patel & Mr. Deepak Gupta, Advocate.

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**Hon'ble Shri P. R. Ramachandra Menon, CJ**

**Hon'ble Shri Parth Prateem Sahu, J**

**Order on Board**

**Per Parth Prateem Sahu, J**

**28/01/2021**

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of amount of compensation awarded by learned Motor Accident Claims Tribunal, Kabirdham (Kawardha), C.G. (for short, 'Tribunal) vide award dated 11.12.2014 passed in Claim Case No.87/11, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded compensation of Rs.38,575/- in an injury case.

2. Facts relevant for disposal of this appeal are that on 25.07.2011, Hamidullah Khan was returning to his village -Pondi from Raipur on his Jeep. On the way near village -Umariya Basti, he stopped to answer the call of nature. In the meantime, one Tata Indica Vista Car bearing registration No.CG07-MA-4172, (for short, 'offending vehicle') driven by Non-appellant No.1 rashly and negligently, came to its wrong side and dashed the Jeep. In the said accident, Jeep turned turtle, Hamidullah Khan suffered injury on his right thigh whereas other occupant of jeep namely Rajendra Das died. After accident, Hamidullah Khan was taken to Hospital at Kawardha.

3. Appellant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.3,10,000/- pleading therein that on account of motor-accidental injuries suffered by him, he incurred huge expenses towards his treatment and also suffered loss of income during the period of treatment. Due to grievous injuries on his leg, he is unable to do his work of driving which he was doing prior to the date of accident.

4., Non -applicant Nos.1 & 2, driver & owner of offending vehicle, submitted reply to application. While denying pleadings made therein further pleaded that accident was a result of rash and negligent driving of Jeep by applicant. Accident was reported to Police Station -Bemetara by Non -applicant No.1, based upon which crime was registered against applicant. Negligent driving was admitted and fine was also imposed upon applicant. Owner and insurer of Jeep have not been arrayed as party to claim application. On the date of accident, applicant was not possessed with valid and effective driving license and even there was no valid permit.

5. Non-applicant no.3/Insurance Company submitted its reply to application, denying the pleadings made in claim application. It was further pleaded that Insurance Company is liable to pay the amount of compensation under the

terms and conditions only. If there is breach of any of policy conditions, insurance policy becomes void. As nothing has been placed on record by non-applicant Nos.1 & 2 showing that non-applicant No.1 was having valid and effective driving license and as such, there was breach of policy condition.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal arrived at a finding that accident was result of contributory negligence of driver of both vehicles ie (non-applicant No.1 and applicant). Permanent disability and absence of license of non-applicant No.1 were not found to be proved. Tribunal allowed application in part and calculated total compensation at Rs.77,150/-, after deducting 50% towards contributory negligence, awarded Rs.38,575/- alongwith interest @ 7% p.a and fastened liability upon non-applicants to pay the amount of compensation, jointly and severally.

7. Learned counsel for the appellant/claimant submits that Tribunal overlooking the nature of injuries suffered by claimant recorded erroneous finding that claimant has not suffered any permanent disability and awarded very meager amount of compensation. He further submits that in absence of any cogent and clinching piece of evidence, finding of Tribunal that claimant was also contributory negligent to the extent of 50% is erroneous and liable to be set aside.

8. Learned counsel for the respondent No.3/Insurance Company submits that Tribunal after considering documentary and oral evidence brought on record has rightly arrived at a conclusion that there was contributory negligence on the part of appellant/claimant and awarded just amount of compensation, which does not call for any interference.

9. We have heard learned counsel for the respective parties and perused the record of claim case.

10. So far as submission made by learned counsel for the appellant/claimant that Tribunal erred in holding the appellant to be contributory negligent to the extent of 50% is concerned, perusal of record shows that both the parties have lodged report at Police Station -Bemetara. As per Ex.NA-3 and Ex.A-2, complaint against the present appellant was lodged on the date of accident ie 25.07.2011 at about 11 P.M, whereas FIR against Non-appellant No.1 was lodged on 27.07.2011 at about 04: 50 P.M. Copies of proceedings of Additional Chief Judicial Magistrate are available on record as Ex. NA-4, wherein upon admission of guilt by appellant, he has been convicted under Sections 279 and 337 of the Indian Penal Code and sentenced with fine of Rs.2,000/-. In view of aforementioned evidence, we do not find any infirmity or illegality in the finding recorded by Tribunal with regard to contributory negligence of appellant in the accident to the extent of 50%. Hence, submission made by learned counsel for the appellant that finding of contributory negligence to be erroneous is not sustainable and it is hereby repelled.

11. So far as submission with regard to award of meager amount of compensation, appellant has placed on record medical bills of Roop Jeevan Hospital, Kawardha as Ex.A/5 showing payment of Rs.7,000/- towards his treatment. Appellant has not placed on record disability certificate, any other medical bills, cash receipt with regard to medical expenses or purchase of medicines. Tribunal has awarded an amount of Rs.7,000/-, as mentioned in Ex.A/5, further awarded Rs.60,150/- for repairing charges of his Jeep, which has been proved and Rs.10,000/- towards pain and sufferings.

12. Tribunal failed to consider that on account of injuries suffered by appellant, he has to undergo 'surgery' in future, as appearing in Ex.A/5, and further failed to see that appellant took treatment for period of 3 days, therefore, he might have suffered loss of income during the period of treatment as well as recovery.

Besides, this Tribunal has not awarded any amount towards special diet, attendant and transportation.

13. Taking into consideration the entire facts and circumstances of the case, documentary and oral evidence available on record, we find it appropriate to award a lump sum amount of Rs.15,000/- towards loss of income, special diet, attendant and transportation. This amount is to be added in total compensation computed by Tribunal as Rs.77,150/- which will make the total calculated amount of compensation as Rs.92,150/- (Rs.77,150 + Rs.15,000). As appellant has been found to be contributory negligent to the extent of 50%. After deducting 50% towards contributory negligence, appellant will be entitled total sum of Rs.46,075/- instead of Rs.38,575/- as awarded by Tribunal. This amount of compensation shall carry interest @ 7% p.a. from the date of filing of claim application till its realization. Rest of the conditions of impugned award shall remain intact.

14. In the result, appeal is allowed in part and impugned award stands modified to the extent as indicated herein-above.

**Sd/-**

**(P. R. Ramamchandra Menon)**  
Chief Justice

**Sd/-**

**(Parth Prateem Sahu)**  
Judge

Jamal/-