

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 270 of 2015

Vijay Kumar Sahu S/o Ramvilas Sahu, aged about 28 years, 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. **(Owners)**.
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 Appellant : 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 Additional Motor Accident Claims Tribunal, Balod, (CG) vide award dated 08.07.2014 passed in Claim Case No.54/2014, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988, awarded total compensation of **Rs.30,000/-** in an injury case.
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 leg and other parts of his body. Hem Kumar Sahu and Nirmala Bai, son and wife of appellant also suffered injuries. Ku.Neha @ Nisha, daughter of appellant scammed 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. Appellant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.12,15,000/- on different heads pleadings therein that in the said accident, he suffered permanent disability. Prior to the date of accident, he was working as 'Mason' and also doing centering work in civil construction work.
4. Non-applicants No.1, 2 and 3, did not appear before Tribunal and they were proceeded ex-parte.
5. Non-applicant No.4/Insurance Company submitted its reply to application, denying the pleadings made therein. 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. He was also contributory negligent in accident. 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. Compensation claimed is highly exaggerated.
6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that appellant suffered motor-accidental

injuries on account of rash and negligent driving of offending vehicle by Non-applicant No.1. Contributory negligence was not found to be proved. Tribunal allowed application in part, awarded total compensation of **Rs.30,000/-** alongwith interest @ 6%, fastened liability upon non-applicant No.4/Insurance Company to satisfy amount of compensation.

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 disability certificate as Ex.P38. To prove disability certificate examined Dr. Akhilesh Yadav as AW-2, who issued disability certificate. Amount awarded towards medical expenses is not proper, amount awarded on other heads are also on lower side. Hence, amount of compensation be suitably enhanced.
8. Learned counsel for respondent No.4/Insurance Company submits that Tribunal after taking into consideration nature of injuries, evidence of Doctor AW-2, bills placed on record by appellant, has awarded just and proper amount of compensation, which does not call for any interference. Disability certificate placed on record as Ex.P-38 cannot be accepted because it is not issued by Medical Board nor the Doctor who treated appellant. It was issued by single doctor and 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. So far as submission made by learned counsel for the appellant with regard to permanent disability is concerned, disability certificate Ex.A-38 placed on record is not issued by District Medical Board, but by the doctor posted at District Hospital, Durg. AW-2 Doctor Akhilesh Yadav in his cross-examination has admitted that he has not treated the appellant, percentage of disability can be increased or decreased. Disability certificate was issued in the capacity of single doctor and not by Medical Board. Further, he has not brought the register along with him to be maintained for issuance of certificate to the persons suffering with disability. In his evidence in-chief, he stated that on examination of appellant, he found 15% permanent disability on account of fracture of tibia fibula(rt), fracture of first metatarsal bone and stiffness in ankle and knee joint.
11. Perusal of MLC report placed on record as Ex.P-4 shows that appellant suffered crushed injury on his right foot and fracture injury on right leg. X-ray report of District Hospital, Rajnandgaon is placed on record as Ex.P-5 in which, it is mentioned that there is no bone injury on scalp, fracture of right foot and fracture of tibia fibula.
12. Appellant to prove pleading of his treatment has placed on record discharge tickets as Ex.P-7 issued from District Hospital, Rajnangaon mentioning date of admission from 14.01.12 to 16.1.2012, which shows that he took treatment from Government Hospital from where he was referred to higher center for better treatment. But no further discharge ticket is placed on record.

13. In view of above, in the considered opinion of this Court (Ex.P-38) disability certificate cannot be accepted because it was not issued in accordance with Rule 220 of C.G Motor Vehicles Rule 1994.

14. As disability certificate is not issued either by treating doctor or by Medical Board, 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 for grievous injuries. Considering nature of injuries, part of body in which appellant suffered grievous injuries, I find it appropriate to award Rs.25,000/- toward grievous injuries.

15. Tribunal has awarded Rs.15,000/- towards pains and suffering, Rs. 5,000/-, towards loss of amenities and joy in life, Rs.3000/- towards attendant, Rs.2000/- towards diet, which in the considered opinion of this Court has been properly awarded and it is hereby affirmed.

16. So far as award of compensation towards medical expenses is concerned, bills with regard to purchase of medicines is placed on record, total of which comes to Rs.18,438/- (Ex.P-8 to Ex.P-35) whereas Tribunal has awarded only Rs.5,000/- towards medical expenses. Appellant may not have kept all the bills of treatment or purchase of medicines, hence, I find it appropriate to award Rs.20,000/- towards medical expenses instead of Rs.5000/-

17. Tribunal has not awarded any amount towards loss of earning, looking to the nature of injuries suffered by appellant and his occupation as 'Mason',

he might not be able to work for a period of 2 months, hence, considering income of appellant on national basis as Rs.4,500/-, I find it appropriate to award Rs.9,000/- (4500 X 2), towards loss of income during the period of treatment.

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

19.Appellant is entitled for Rs.25,000/- towards grievous injuries; Rs.20,000/- towards medical expenses; Rs.9,000/- toward loss of income during period of treatment.

20.Appellant is also entitled for Rs.15,000/- towards pains and suffering, Rs. 5,000/-, towards loss of amenities and joy in life, Rs.3000/- towards attendant, Rs.2000/- towards diet as awarded by Tribunal.

21.Now, appellant/claimant is entitled for **Rs.79,000/-** (Rs.25,000 + Rs.15,000 + Rs.20,000 + Rs.9,000 + Rs.15,000 + Rs. 5,000 + Rs.3000 + Rs.2000) instead **of Rs.30,000/-** 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.

22.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/-