

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1299 of 2015**

Judgment Reserved On : 10/11/2021

Judgment Delivered On : 17/11/2021

- Manharan Sen (Bharadwaj), Wrongly Mentioned In Order Sheet Bharatdwaj, S/o Late Shri Gajadhar Sen, Aged About 40 Years, R/o Village Rakadih, Tahsil Magarlod, Revenue And Civil District Dhamtari Chhattisgarh

---- Appellant/Claimant**Versus**

1. Hemant Kumar S/o Shri Sudama Prasad Sahu, Aged About 27 Years R/o Prem Nagar, Mova, Raipur, Bhim Rao Ambedkar Ward No. 27, Raipur, District Raipur Chhattisgarh Present R/o Govt. Hospital Premises, Kurud, District Dhamtari Chhattisgarh

(Driver Of The Offending Vehicle)

2. Tarkeshwar Sahu S/o Shri Sudama Prasad Sahu, Aged About 30 Years R/o Prem Nagar Mova, Raipur, Bhim Rao Ambedkar Ward No. 27, Raipur, District Raipur Chhattisgarh

(Owner Of The Offending Vehicle)

3. Iffco Tokeyo General Insurance Co. Ltd. Branch Office 3rd Floor, Lal Ganga Shopping Mall, G. E. Road Raipur, District Raipur Chhattisgarh

(Insurer Of The Offending Vehicle)

---- Respondents

For Appellant : Shri Pawan Kashyap appears on behalf of Shri PK Patel, Advocate
 For Respondent No.3 : Shri T. Abraham appears on behalf of Shri Amrito Das, Advocate

Hon'ble Shri Deepak Kumar Tiwari, J**C A V JUDGMENT**

1. The appellant has preferred this Appeal challenging the award dated

19.8.2015 passed by the Chief Motor Accident Claims Tribunal, Dhamtari in Claim Case No.185/2014 whereby the learned Claims Tribunal has awarded a compensation of Rs.3,03,235/-.

2. Facts of the case, in brief, are that the appellant filed an application under Section 166 of the Motor Vehicles Act before the Claims Tribunal claiming compensation of Rs.16,55,000/-. On 2.10.2014, when the appellant was returning from the civil Court, Kurud after attending the Lok Adalat and reached near the Petrol Pump of Kurud, at that time, the offending vehicle being driven by respondent No.1 in a very rash and negligent manner dashed the motorcycle of the appellant, as a result of which the appellant fell on the ground and received several grievous injuries i.e. fracture on the shoulder, jaw bone was broken etc.
3. The respondents No.1 and 2 filed their reply and denied the contention of the appellant. The respondent No.3 would specifically state that the owner and driver have violated the conditions of the Insurance Policy. The learned Claims Tribunal after recording the evidence and hearing the arguments of the parties passed the impugned award granting compensation of Rs.3,03,235/- and fastening the primary liability on the Insurance Company.
4. Learned counsel for the appellant would argue that the impugned award is bad in law as well as fact. The Claims Tribunal failed to appreciate that the appellant has examined witnesses and proved his case. The respondents have neither produced any evidence nor discarded the evidence adduced by the appellant. The Claims Tribunal has not taken into account the medical expenses, loss of

future income and reduced the working capacity while passing the award. The appellant is an Advocate and as such he was not in a position to attend the Court proceedings during the period he was admitted in the hospital. The Claims Tribunal has also not taken into account the permanent disability of the appellant on account of said accident as also the loss of income. Therefore, the award may be modified and enhanced suitably.

5. Per contra, learned counsel for respondent No.3 would support the impugned award.
6. I have heard learned counsel for the parties at length and perused the material available on record.
7. On 2.10.2014, claimant Manharan Sen (AW-1) had received serious injuries and on the same day he was hospitalized at Balaji Institute of Medical Sciences, Raipur. The admission record (Ex.-P/7) specifies that the victim had received two fractures on left shoulder in humerus bone and fracture on mandible bone. For the head injury, on CT Head Examination, blood along Interhemispheric Fissure with Diffuse Edema was found. Dr. V.K. Pandey, Member of the Medical Board, District Dhamtari has proved the disability certificate issued in favour of the claimant vide Ex.-P/131 in which disability of 40% is temporary in nature and the same has to be reviewed after one year. The certificate was issued on 9.4.2015. As no other complication has been noticed and no other medical treatment has been filed, looking to the nature of injuries, disability has to be treated as temporary in nature and not permanent. The Tribunal has awarded only for the treatment supported by the medical bills an amount of Rs.3,03,235/-.

It is humanly possible that the victim may not have produced some medical bills and that the victim may need some future treatment also. Therefore, under this head for treatment, the award amount is modified to the tune of Rs.3,25,000/-.

8. For pain and suffering the Tribunal has awarded only Rs.3,000/-, as the victim was hospitalized from 2.10.2014 to 13.10.2014 i.e. for 10 days and re-admitted on 19.10.2014 to 29.10.2014. The victim had received two fractures and head injuries. Therefore, on this head, the amount is enhanced and modified at Rs.15,000/-.
9. For Attendant and Special Diet, no amount was awarded. Therefore, on these heads, Rs.15,000/- and Rs.10,000/- respectively are awarded.
10. Narendra Kumar Sahu (AW-2), the President of Tehsil Bar Association, has stated that after the said accident, the victim, who is a practicing Advocate at Tehsil Bar Association, could not attend the Court proceedings on account of injuries.
11. In the preceding paragraph, this Court has found the injuries to be of temporary nature, therefore, looking to the disability, this Court finds appropriate to hold that on account of injuries there was loss of income for 3 months. The victim namely, Manharan Sen (AW-1) has deposed that he was earning Rs.15,000/- per month from the Advocate profession. In the circumstances, loss of earning for 3 months i.e. $\text{Rs.15,000/-} \times 3 = \text{Rs.45,000/-}$ is awarded to the victim on this head.
12. Thus, the claimant would be entitled for the following compensation :-

Sr. No.	Head	Amount
1.	For treatment	Rs.3,25,000/-
2.	For Pain and Suffering	Rs.15,000/-
3.	For Attendant	Rs.15,000/-
4.	For Special Diet	Rs.10,000/-
5.	For loss of earning	Rs.45,000/-
	Total	Rs.4,10,000/-
	Amount already awarded	Rs.3,03,235/-
	Enhanced amount	Rs.1,06,765/-

13. The appellant is held to be entitled for total compensation of Rs.4,10,000/- with 6% interest per annum from the date of filing of claim petition i.e.22.12.2014 till its realization. Other conditions of the award passed by the learned Claims Tribunal shall remain in tact.

14. In the result, the Appeal filed by the Claimant is allowed in part to the extent as indicated above.

Sd/-
(Deepak Kumar Tiwari)
Judge

Barve