





IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. (C) NO.- 430 /2013

Single Bench

APPELLANTS
CLAIMANT/APPLICANT

Malikram Son of Shri Abhayram aged about 62 years, R/o- Village & Post- Gunjiyabod, Police Station & Tahsil- Jaijaipur, Revenue District & District- Janjgeer-Champa (C.G.)

VERSUS

RESPONDENTS
NON-APPLICANTS

1.

Badriprasad Banjare @ Nanki Son of Shri Dukhuram Banjare, aged about 32 years, Occupation- Driver, R/o- Village & Post- Mudpar, Malkharauda, Police Station & Tahsil-Malkharauda, Revenue District & District-Janjgeer-Champa (C.G.)

Presented by Shri. and Rock Land Adversary and Adversary and the state of the state

(Driver of the offending vehicle, La.K.B./2142/ J.C./06)

Pawan Kumar Son of Shri S.L. Agrawal, aged about 47 years, Occupation- Vehicle Owner, R/o- Bus Stand, Baradwar, Post & Police Station & Tahsil- Baradwar, Revenue District & District-Janigeer-Champa (C.G.).

(Owner of the offending vehicle, 'Pawan Bus Service' Vehicle No. C.G. 11 A 8660)

3. The New India Assurance Company Limited, Regional Office, Bilaspur, Revenue District & District- Bilaspur (C.G.)

(Insurer of the offending vehicle, Policy No. 193300 /31/ 2011/9605)

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLE ACT, 1988 FOR

ENHANCEMENT OF COMPENSATION AMOUNT



HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B.: HON'BLE MR. JUSTICE N.K. AGARWAL

M.A. (C) No.430 of 2013

APPELLANT

Malikram

Versus

RESPONDENTS

Badriprasad Banjare @

Nanki and others

M.A. (C) No.431 of 2013

APPELLANT

Daulal

Versus

RESPONDENTS

Badriprasad Banjare @

Nanki and others

M.A. (C) No.432 of 2013

APPELLANT

Yashoda

Versus

RESPONDENTS

Badriprasad Banjare @

Nanki and others

M.A. (C) No.433 of 2013

APPELLANT

Minor Gopilal

Versus

RESPONDENTS

Badriprasad Banjare @

Nanki and others



APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT

Appearance:

Mr. Roop Naik, Counsel for the appellants in all the appeals.

ORAL AWARD (30.04.2013)

Heard on admission.

- (2) M.A. (C) Nos.430/2013, 431/2013, 432/2013 & 433/2013 filed by the claimants are being disposed of by this common award since these appeals arose out of the same accident.
- (3) These are claimants' appeals seeking enhancement of compensation awarded by II Additional Motor Accident Claims Tribunal, Sakti District Janjgir-Champa (for short "the Tribunal") in Claim Case Nos, 34/12, 35/12, 36/12 & 37/2012 vide award dated 26.02.2013.
- (4) As against the compensation of Rs.65,000/- claimed by the claimant in M.A. (C) No.430/2013, Rs.60,000/- claimed by the claimant in M.A. (C) No.431/2013, Rs.60,000/- claimed by the claimant in M.A. (C) No.432/2013 and Rs.70,000/- claimed by the claimant in M.A. (C) No.433/2013, by filing applications under Section



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166 of the Motor Vehicles Act (for short "the Act") for the injuries sustained by them in the motor accident on 07.09.2011, the Tribunal awarded a total sum of Rs.3000, 4500/-, Rs. 3000/- and Rs.2250/- respectively as compensation along with interest @ 9% per annum from the date of application till its actual payment.

- (5) Learned counsel for the appellants would submit that though the appellants had not sustained any grievous injury or permanent disability and had also not examined the Doctor to prove the number and nature of injuries, but the aforesaid amount of compensation awarded by the Tribunal is some what on lower side, which deserves to be suitably enhanced.
- (6) I have heard learned counsel for the appellants and have perused the record of the Tribunal including the award impugned.
- (7) True, the appellants sustained injuries in the motor accident on 07.09.2011 but for the reasons best known to the appellants /claimants, no doctor was examined before the Tribunal to establish the number and nature of injuries said to have been sustained by the appellants/ claimants in the motor accident. Moreover, as per submission of learned counsel for the appellants itself, the appellants/claimants did not suffer any grievous injury or permanent disability in the said accident.



(8) The Supreme Court in case of A.P. SRTC v. P.

Thirupal Reddy, reported in (2005) 12 SCC-189,

observed in para 6 as under:

"6.After hearing learned counsel for the respondent-claimant who made an attempt to support the order of the High Court. We find that there was no justification for the High Court to rely on the disability certificate issued by Dr. Sudhakar Reddy and enhance the compensation by treating the injury as permanent disability to be 45 per cent. The High Court committed gross error in overlooking the fact that *Reddy's Dr. Sudhakar certificate was rejected by the Tribunal for non-examination of that doctor. The Tribunal has determined the physical disability at 15 per cent on the basis of the deposition of Dr. K.M. Mitra and awarded a just and fair compensation. The High Court erred in disturbing the same and enhancing the compensation. Consequently, we allow this appeal; set aside the impugned order and restore the award of the Claims Tribunal. The respondent-claimant is allowed withdraw the amount of compensation awarded by the Tribunal, if it has not already been withdrawn."

(9) The Supreme Court in a recent dictum in case of Rajesh Kumar alias Raju v. Yudhvir Singh and another, reported in (2008) 7 SCC 305, reiterated the same view with the following observations in para 11:

"11.The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the



On what basis, such a appellant. certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence. Whether the disability at 60% was calculated on the basis of the provisions of the Workmen's Compensation Act or otherwise is not known. It is also not known as to whether he was competent to issue such a certificate. It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of Workmen's Compensation Act which, in our opinion, ex facie has no application, the same, in our opinion, cannot be permitted to be raised for the first time."

(10) Division Bench of this High Court in case of Pradeep Kumar Sahu vs. Sarupa Sahu & another vide order dated 31 March, 2009, placing its reliance upon the dicta

dated 31 March, 2009, placing its reliance upon the dicta of Supreme Court in the cases referred above held in para 8 as under:

"8. In view of the above quoted dicta of the Apex Court in the cases of A.P. SRTC v. P. Thirupal Reddy (supra) and Rajesh Kumar alias Raju v. Yudhvir Singh and another (supra), the certificate produced before the Tribunal in the absence of examination of the Doctor issuing the certificate is neither admissible in evidence nor can be taken into consideration as substantive evidence for assessment of the compensation in the case."

(11) In view of the dicta of the above referred cases, the

injury reports, certificates produced, in the absence of examination of the Doctor issuing the injury reports, the certificates are neither admissible in evidence nor can be taken into consideration as substantive evidence for enhancement of compensation in the case.

- (12) The amount of compensation awarded by the Tribunal for the injuries sustained by the appellants, in the light of the fact that no doctor was examined by the appellants to prove the number and nature of injuries and the resultant loss and that the appellants have not suffered any grievous injury, in my opinion, there is no scope for enhancement in the amount of compensation awarded by the Tribunal.
- (13) For the foregoing, the appeals, being devoid of merit, are liable to be and is hereby dismissed.
- (14) No order as to cost(s).

Sd/-N.K. Agrawal Judge

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