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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 5 of 2021

- Branch Manager, The Oriental Insurance Company Ltd., Sunil Video World, Mahavir Swami Chowk, Main Market Kawardha, District - Kabirdham (C.G.), Through In - Charge, T. P. Hub, T.P. Hub Office, Rama Trade Centre, 1st Floor, Opp. Rajeev Plaza, New Old Bus Stand, Bilaspur Chhattisgarh, Pin - 495001. (Appellant) (Respondent No. 3)

--- **Appellant**

versus

1. Vijay Kumar Sahu, S/o Bhagat Ram Sahu, Aged About 24 Years At - Manikchouri, Police Station - Pipariya, Tahsil - Kawardha, District - Kabirdham Chhattisgarh. (Claimant), District : Kawardha (Kabirdham), Chhattisgarh
2. Pawan Kumar, S/o Rajelal Patel, Aged About 32 Years At Village Bhagutola, Police Station And Tahsil - Kawardha, District - Kabirdham, Chhattisgarh. (Driver - Cum - Owner) (Respondents), District : Kawardha (Kabirdham), Chhattisgarh

--- **Respondent(s)**

MAC No. 70 of 2021

- Vijay Kumar Sahu S/o Bhagatram Sahu Aged About 24 Years R/o Manikchouri, Police Station- Pipariya, Tahsil- Kawardha, District- Kabirdham, Chhattisgarh

---**Appellant**

Versus

1. Pawan Kumar S/o Rajelal Patel Aged About 32 Years R/o Village- Bhagutola, Police Station And Tahsil- Kawardha, District- Kabirdham, Chhattisgarh
2. Branch Manager The Oriental Insurance Company Limited, Sunil Video World, Mahavir Swami Chowk, Main Market, Kawardha, District Kabirdham, Chhattisgarh

--- Respondent(s)

MAC No. 5 of 2021

For Appellant/Insurance Company	:	Mr. R.N. Pusty, Advocate along with Mr. Akash Shrivastava, Advocate

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For Respondent No. 1/ Claimant	:	Mr. Chandrikaditya Pandey, Advocate
For Respondent No. 2	:	None, though served.

MAC No. 70 of 2021

For Appellant/ Claimant	:	Mr. Chandrikaditya Pandey, Advocate holding the brief of Mr. Dharmesh Shrivastava, Advocate
For Respondent No. 2	:	Mr. R.N. Pusty, Advocate
For Respondent No. 1	:	None, though served.

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

24.02.2026

1. Above mentioned two appeals have been preferred against judgment and award passed by the learned Motor Accident Claims Tribunal, Kabirdham passed in Claim Case No. 16/2015 dated 21.01.2020, wherein the learned Tribunal has granted compensation to the tune of Rs. 3,35,000/- with interest at the rate of 6% per annum on account of injuries sustained by the claimant.

2. MAC No. 5 of 2021 has been preferred by the Insurance Company challenging liability as well as quantum, whereas, MAC No. 70 of 2021 has been preferred by the claimant for enhancement.

3. The facts in brief are that on 05.02.2014, while construction of returning wall was under progress, the claimant was hit by rider of motorcycle bearing registration No. CG 09 A 1040. In said accident, on account of forceful and sudden hit, the claimant lost his balance and his right hand got plucked in the mixture machine and it was crushed. His right hand had to be amputated below elbow. The Medical Board issued permanent disability certificate to the extent of 55%. The claimant filed a claim case under Section 166 of Motor Vehicle Act, wherein, he pleaded that on the date of accident his age was 24 years and earning Rs. 350/- per day as he was Mason. The Insurance Company filed reply and took a plea that the

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offending bike was not involved in the accident at all. Further plea was taken that rider of the bike had no valid driving licence.

4. The learned Tribunal dismissed the claim petition vide judgment and award dated 4th March, 2016. The claimant preferred MAC No. 584 of 2016, which was allowed and the judgment and award dated 4th March, 2016 was set-aside and matter was remitted back to the learned Tribunal to decide it afresh.

5. The learned Tribunal framed issues and came to conclusion that the rider of the bike while driving it rashly and negligently dashed the claimant on 05.02.2014, resultantly, he sustained injuries. It is further held that the claimant failed to prove the fact that he suffered permanent disability on account of injuries sustained by him. The learned Tribunal decided issue No. 3 not proved as the Insurance Company failed to prove contravention of any of the conditions of Insurance policy and finally the learned Tribunal granted a sum of Rs. 3,35,000/- with interest at the rate of 6% per annum.

6. Mr. R.N. Pusty, Advocate appearing for Insurance Company would submit that the offending motorbike was not involved in the accident at all and the claimant failed to prove this fact. He would contend that though incident took place on 05.02.2014, but FIR was registered on 26.06.2014. It is also argued that the claimant failed to examine any witness to prove involvement of offending bike in accident. It is contended by Mr. Pusty that according to discharge summary(Ex. A/6) the right hand of the claimant was plucked into mixture machine, and resultantly, he sustained crush injury. It is argued that the injury sustained by the claimant was not result of motor accident.

7. Mr. Pusty would further submit that the claimant failed to examine treating Doctor or a member of Medical Board to prove authenticity of permanent

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disability certificate (Ex. A/47), therefore, the learned Tribunal rightly held that the claimant failed to prove the fact that he suffered permanent disability on account of injury sustained in accident. Mr. Pusty would submit that though the disability certificate (Ex. A/47) was not considered by the learned Tribunal, but the learned Tribunal committed error while granting compensation based on said certificate. He would contend that the award passed by the learned Tribunal may be set-aside.

8. On the other hand, learned counsel appearing for the claimant would oppose the submissions made by Mr. Pusty. He would contend that the claimant could not lodge prompt FIR as he remained hospitalized for considerable period. It is further contended that the claimant was dashed by the motorbike and due to sudden hit, his right hand got plucked into mixture machine and it got crushed. Mr. Chandrikaditya Pandey would submit that the claimant remained hospitalized for considerable period and he narrated true facts before the police authorities as well as the treating Doctor. It is argued that Santosh(AW/2) has supported the case of claimant and he was the person, who took the claimant to the hospital.

9. Mr. Pandey would submit that the learned Tribunal considered disability certificate and granted compensation accordingly, but in concluding para granted only sum of Rs. 2,50,000/- for loss of earning and such finding is perverse. He would submit that on other heads, the learned Tribunal failed to grant compensation. It is also submitted that the learned Tribunal assessed the income of the claimant Rs. 4,500/-, which is at lower side as minimum wage admissible to an unskilled labourer in the month of February, 2014 was Rs. 5,200/- and learned Tribunal should have taken that figure into account. He would pray to enhance the compensation.

10. I have heard learned counsel for the parties and perused the record.

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11. In first round of litigation i.e. MAC No. 584 of 2016, the matter was remitted back to the concerned Tribunal to decide the claim petition afresh on its own merits, as on all the issues findings were not recorded by the learned Tribunal. In the judgment passed in MAC No. 584 of 2016, there is no whisper with regard to non-involvement of offending motorbike. The claimant met with an accident on 05.02.2014 and FIR was registered on 26.06.2014. With regard to delay, it is stated that there was assurance on the part of owner of the vehicle that he would provide treatment to the claimant. An FIR was lodged against rider of the motorbike bearing registration No. CG 09 A 1040. The learned Tribunal held that the motorbike was insured with the Insurance Company and rider had valid and effective driving licence. The Insurance Company failed to prove breach of any of the conditions of Insurance policy.

12. The crime detail form(Ex. A/3) would show that the claimant was working with mixture machine, which was placed at the side of the road. The rider of motorbike by driving it rashly and negligently dashed the claimant, resultantly, his right hand got plucked into mixture machine. He suffered crush injury. The medical documents (Ex. A/7 to A/46) would show that the claimant remained hospitalized for considerable period and his right hand had to be amputated below elbow.

13. Permanent disability certificate (Ex. A/47) issued by the Medical Board contains photograph of the claimant. The photograph of claimant reveals that his right hand was amputated below elbow, and therefore, permanent disability was assessed to the extent of 55%.

14. The claimant examined himself and categorically deposed that he was dashed by the rider of the offending motorbike. It is also stated that he was assured by driver-cum-owner of the offending bike to provide necessary

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treatment, but later on, he broke his promise, and thereafter, FIR was lodged. Santosh Sahu (AW/2) on affidavit stated that he was present at the place of incident on 05.02.2014. He further stated that the rider of motorbike dashed claimant, resultantly, his right hand got plucked into mixture machine. In cross-examination, this witness remain consistent. The evidence led by the claimant, Santosh Sahu and other documentary evidence clearly establish that the claimant suffered injuries in a motor accident and the learned Tribunal rightly decided issue No. 1 in favour of the claimant.

15. Insurance Company examined Chhagan Lal Sahu, Investigator, who stated on affidavit that as per discharge summary, claimant sustained injury as his right hand got plucked into mixture machine. In cross-examination, this witness admitted that he did not collect documents from Radiance Hospital, Kawardha or Police Station Pandri.

16. Pawan Kumar Patel/owner of the offending vehicle admitted the fact that due to rash and negligent riding of offending bike, the claimant sustained injury.

17. The above-discussed facts and evidence make it clear that the claimant sustained injury in motor accident and offending motorbike was involved; therefore, contention made by Mr. Pusty with regard to non-involvement of motorbike is rejected.

18. Now coming to next submission made by Mr. Pusty and Mr. Pandey with regard to assessment of income and grant of compensation. Admittedly, the claimant failed to examine treating Doctor or member of Medical Board to prove seriousness of injury. The Medical Board issued permanent disability certificate to the extent of 55%. The authenticity of said document has not been disputed by the Insurance Company before the learned Tribunal. It is

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well settled principle of law that the medical documents or disability certificate cannot be considered if medical officer has not proved it before the learned Tribunal. In permanent disability certificate (Ex. A/47) photograph of the claimant is affixed, which clearly shows that his right hand was amputated below elbow. As the disability suffered by the claimant is visible with naked eyes; therefore, non-examination of a member of Medical Board would not be fatal for the case of the claimant and such certificate can be considered while assessing compensation, thus, the finding recorded by the learned Tribunal that the claimant failed to prove permanent disability is hereby set-aside.

19. In the present case, the learned Tribunal has assessed income of the claimant Rs. 4,500/- per month and computed loss of earing taking into consideration the permanent disability 55%. The minimum wage admissible to an unskilled labourer in the month of February, 2014 was Rs. 5,200/- and the learned Tribunal should have taken that figure while computing compensation. On the other heads, the learned Tribunal has not granted proper compensation. Rs. 10,000/- has been granted for pain and suffering. The learned Tribunal has not granted compensation for special diet, transportation and attendant, whereas, the claimant remained hospitalized for period of 6 days and he underwent surgery too. Thus, the compensation requires reconsideration and same is being revisited herein-below :-

Sr. No.	Heads	Compensation awarded by Tribunal	Compensation awarded by this Court
1.	Income	Rs. 4,500 x12 = Rs. 54,000/- (55% disability) = Rs. 29,700/-	Rs. 5,200 x12 = Rs. 62,400/- (55% disability) = Rs. 34,320/-
2.	Future Prospect	**NIL**	(40%) = Rs. 13,728/-

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3.	Multiplier	(x) 18 = Rs. 5,34,600/-	(x) 18 = Rs. 8,64,864/-
4.	Deduction	Rs. 5,34,600 – 2,74,000 = 2,60,000/- (including pain and suffering)	-
5.	Pain and suffering	-	Rs. 25,000/-
6.	Medical expenses	Rs. 75,000/-	Rs. 75000/-
7.	Special diet	**NIL**	Rs. 5,000/-
8.	Attendant	**NIL**	Rs. 15,000/-
9.	Transportation	**NIL**	Rs. 10,000/-
	TOTAL	**Rs. 3,35,000/-**	**Rs. 9,94,864/-**

20. For the forgoing reasons, the appeal is allowed in part. The amount of compensation of Rs. 3,35,000/- awarded by the tribunal is enhanced to **Rs. 9,94,864/-**. Hence, after deducting the amount of Rs. 3,35,000/-, the appellant/claimant is held entitled for an additional amount of Rs. **6,59,864**/- with interest at the rate of 6% per annum. The Insurance Company is directed to deposit the amount of compensation as enhanced by this Court within a period of 60 days from the date of receipt of copy of this order. Rest of the conditions of impugned award shall remain intact.

21. Accordingly, appeal preferred by the Insurance Company is **dismissed** and appeal preferred by the claimant is **partly allowed.**

Sd/-
(Rakesh Mohan Pandey)
Judge

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