

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 29th OF SEPTEMBER, 2023

MISC. APPEAL No. 4936 of 2011

BETWEEN:-

MOHAMMAD ALFAIZ S/O ABDUL RASHID, AGED ABOUT 8 YEARS, MINOR, THROUGH LEGAL GUARDIAN, FATHER ABDUL RASHID S/O ABDUL RAJJAK, AGED 36 YEARS, R/O THAKKAR GRAM BEHIND NURANI MOSQUE, GALI NO.2, JABALPUR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI VINEET MISHRA - ADVOCATE)

AND

- 1. AYAZ AHMAD S/O HAMID AHMED, AGED ABOUT 42 YEARS, R/O H.NO. 354, SOUTH MILONIGANJ, BEHIND SANTOSH GUPTA STUDIO, P.S. GOHALPUR, JABALPUR (M.P.)**
- 2. ISTIYAQUE AHMED ANSARI S/O NOT KNOWN R/O H.NO. 354, SOUTH MILONIGANJ, DISTT. JABALPUR (M.P.)**
- 3. ORIENTAL INSURANCE COMPANY LTD., BRANCH OFFICE, JABALPUR (M.P.)**

.....RESPONDENTS

(BY SHRI N.S. RUPRAH – ADVOCATE FOR RESPONDENT NO.3)

Reserved on : 13.09.2023

Pronounced on : 29.09.2023

This appeal having been heard and reserved for orders, coming on for pronouncement this day, the Court passed the following:

ORDER

- 1) This miscellaneous appeal has been filed under Section 173 of the Motor Vehicles Act for enhancement of compensation award in Motor**

Vehicle Case No. 265/2009 (Mohammed Alfaiz Vs. Ayaz Mohammed and others) by the XVIIIth Additional Motor Vehicles Claims Tribunal, Jabalpur vide judgment dated 27.08.2011 by which the learned Tribunal has awarded Rs. 24,609/- for injury caused to the claimant although the claimants have claimed a compensation of Rs.2,76,000/-.

2) As per the claimant, on the date of the accident i.e. 24.04.2009, while he was walking towards Gaushiya Colony from his residence then near Noorani Masjid Road, non-applicant No.1 Ayaz Ahmed Ansari came driving Hero Honda motorcycle bearing No. M.P.-20-M.F.-4651 in a rash and negligent manner and hit him by motorcycle due to which he fell down and injury was caused.

3) It is further submitted by the claimants that an F.I.R. bearing Crime No. 230/2009 under Sections 279, 337 of the I.P.C. was registered. He sustained serious injuries, therefore, filed claim petition for the compensation.

4) Non-applicants No. 1 and 2 i.e. driver and owner of the offending vehicle bearing No. M.P.-20-M.F.-4651 replied that there was no accident due to their vehicle. The vehicle was insured by the Oriental Insurance Company Limited. They had a valid driving licence.

5) The Insurance Company, in their reply, stated that the motorcycle was being driven without a valid driving licence. There was breach of insurance policy, therefore, Insurance Company is not liable.

6) Against the award, the grounds stated are that it has not been properly appreciated that the appellant was a minor child of six years at the relevant time of accident. He is unable to walk properly. He has suffered and is still suffering mental and physical agony. There was injury in his head for which he has take treatment continuously. His career has been spoiled, therefore, he seeks further enhancement of the claim amount.

7) Learned counsel for the non-applicant No.3 Insurance Company Shri N.S. Ruprah opposed the enhancement of the compensation.

8) Respondents No.1 and 2 do not appear before this Court inspite of service of notice.

9) The question is whether the amount of compensation can be enhanced or not ? If the answer is in affirmative, then by what amount ?

10) During the pendency of this miscellaneous appeal, the appellant had filed **I.A. No. 1201/2023**, which is an application under Order 41, Rule 27 of C.P.C. for taking on record additional documents regarding treatment.

11) Both the learned counsel were heard on this application and documents were perused. The documents filed are treatment papers of the claimant after the award dated 27.08.2011.

12) In the considered view of this Court, for proper adjudication of claim, **I.A. No. 1201/2023** is allowed. The relevant documents be taken on record.

13) The learned trial Court has awarded a compensation of Rs. 24,609/- on the basis of treatment papers for Rs. 2,609/- and other allied heads of compensation on presumption whereas on the basis of subsequent treatment papers for the same injury, it is evident that claimant is still undergoing treatment, therefore, the amount awarded for future treatment is enhanced by Rs. 26,749/-, out of which Rs. 6,749/- is for actual bills after passing of award and rest amount is for other allied heads for pain and suffering, special diet and attendant expenses at the rate of Rs.5000/- each and Rs.10,000/- for future expenses on treatment.

11) Accordingly, this appeal is **partly allowed** and amount of compensation is enhanced by **Rs. 26,749/-** , which shall be payable to

the claimant by the Insurance Company subject to appellant paying Court fees on the enhanced amount.

(AVANINDRA KUMAR SINGH)

JUDGE

Vikram