

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 270 of 2014**

IFFCO Tokio General Insurance Co. Ltd., 3rd Floor, Shop No.345-347,
Ganga Shopping, G.E. Road, Raipur, Tehsil & District Raipur,
Chhattisgarh

--- Appellant

Versus

1. Shobharam Kanwar, son of late Genduram Kanwar, Caste – Thakur, aged about 24 years, resident of Sarekha, Tehsil, Gunderdehi, District Durg, Chhattisgarh (***Claimant***)
2. Hemant Kumar Sahu, son of Khamhania Sahu, aged about 41 years, resident of village Tando, P.S. Khadgaon, District Rajnandgaon, Chhattisgarh (***Driver***)
3. Hariram Tekam, son of Sher Singh Tekam, age not known to the appellant, resident of village Sambalpur, Tehsil Manpur, District Rajnandgaon, Chhattisgarh (***Owner***).

---- Respondents

For Appellant	: Mr. Amrito Das with Mr. P. Acharya, Advocate
For Respondent No. 1	: Mr. Narattamlal Vishwakarma, Advocate
For Respondent No. 2 & 3	: Mr. Dashrath Goyal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Judgement on Board**

01.10.2015

1. This is an appeal against the award dated 26th Sept. 2013 passed in claim case No.112 of 2013 by Sixth Additional Motor Accident Claims Tribunal, Durg, Distt. Durg, Chhattisgarh. The appeal is by the Insurance Company challenging the quantum of the award.
2. Briefly stated facts of the case are that a claim case was filed by Shobha Ram Kanwar stating that on 24.4.2011, the claimant was going to his village on his motorcycle bearing registration No. C.G.07F/3649 along-with a pillion rider Laxman Sahu. On the way at about 6.30 – 07.00 p.m., one Mahendra Bolero bearing No.C.G.08K

0798 driven by non-applicant No.1 in rash and negligent manner, coming from opposite direction dashed the motorcycle whereby the claimant and the pillion rider sustained severe injuries. Looking to the condition of the injured/claimant, he was further admitted to District Hospital, Durg where the doctors found a fracture below the knee, injuries in nose and injuries on right hand fingers and the claimant also sustained injuries on other parts of the body. Because of the injuries, 6-7 stitches were made over the nose and 3-4 stitches on right hand finger whereas due to fracture, plaster was implanted on the right leg. It was stated that the claimant was employed as driver of Truck 1109 bearing No. C.G.07-C/9917 owned by Kishore Golchha and used to get monthly wages of Rs.5000/- per month with daily allowance of Rs.50/-. Consequently, an amount of Rs.4,50,000/- was claimed on various heads.

3. The non-applicants owner and driver jointly filed written statement and refuted the averments of the claim petition and stated that no accident has actually happened. It was further stated that at the time of accident, the driver of the offending vehicle was having valid and effective driving licence, therefore, the insurance Company would be liable to pay the compensation.
4. The insurance Company contended that at the time of accident, there has been breach of conditions of policy and consequently the Insurance Company cannot be held liable to make good the payment of compensation.
5. The Tribunal, after evaluating the evidence and documents on record, passed an award of Rs.3 lakhs in favour of the claimant which is under challenge before this Court.
6. Mr. Amrito Das along with Mr. P. Acharya, learned counsel appearing on behalf of the appellant insurance Company would submit that the amount of compensation i.e., Rs.3 lakhs granted by the Tribunal is

without any evidence on record. It is submitted that according to the Doctor, the permanent disability was caused to the extent of 11%, therefore, the compensation to the extent of Rs.3 lakhs is not justified. He therefore, submits that the compensation should be reduced proportionately.

7. Learned Counsel appearing on behalf of the claimant Shobha Ram Kavar submits that the Insurance Company cannot question the quantum of compensation as no permission was sought from the Tribunal. He, therefore, submits that the appeal is liable to be dismissed at the threshold. He also submits that the award is well merited which do not call for any interference. Counsel for respondents 2 & 3 also supported the award.
8. I have heard learned counsel for the parties and have also perused the evidence and documents on record.
9. A perusal of the order sheets show that permission was granted to the insurance Company by order dated 07.08.2012 passed by the learned Tribunal wherein they were allowed to raise all the defences with respect to the claim and thus the application filed u/s 170 of MV Act was allowed. Consequently, the argument of the counsel for the claimant/appellant is based on misstatement of facts and therefore, the same cannot be sustained.
10. Since the insurance company confined itself the argument to the extent of permanent disability and quantum of compensation as such the relevant evidence was seen to that extent. The claimant had examined himself and has also proved the disability certificate which is marked as Ex.P-17 issued by the Medical Board. In the examination-in-chief, the claimant has stated that he was subjected to medical examination by the Medical Board wherein the permanent disability was certified as 11%. It is stated that after the accident, he is not able to drive the vehicles since the pain uses to continue in the

right knee. The doctor in this case is examined as P.W.3 namely P.C. Deshmukh has stated that he had examined the claimant along-with other experts of the medical board. On examination, he found that because of the accident, the bone of tibia spine was fractured and on the date of examination, the same was recorded. It is further stated that however the right knee movement was little bit less and the pain used to persist in the right knee and on examination, 11% permanent disability was found which was certified vide Ex.P-17. He further stated in the cross examination that the said document was issued for a period of 5 years. Ex.P13 is the disablement certificate. It shows the permanent disability to the extent of 11%. Further more, Ex.P-17 the certificate issued by the Board purports that the claimant was examined by the doctors of the medical board and it was found that he was admitted in the hospital from 24.4.2011 to 28.4.2011 and had sustained fracture of tibia spine and at the time of examination, the fracture was found to be completely healed but the movement of right knee was little bit less. Therefore, the pain uses to persist on the knee. Consequently, it was found that the claimant had sustained disability to the extent of 11%.

11. The claimant has also examined his employer Kishore Kumar Golchha as P.W.3 . He stated that the claimant was driver of the mini truck owned by this witness and he used to pay to the claimant Rs.5000/- as monthly salary per and Rs.50/- as daily allowance. He further stated that after the claimant met with accident in 2011, he did not continue as driver. Therefore, in view of the above evidence, which has come on record the claimant has proved that because of the accident the tibia bone of right leg was fractured and the movement of right knee was reduced. The claimant had stated that he was working as driver but after the accident, he could not perform job. However, this fact cannot be accepted that because of the

fracture of the right leg, the claimant has completely become idle and could not do any other job.

12. The Tribunal, as a whole, has granted an amount of Rs.3 lakhs by holding that when the disability is to the extent of 10% - 30% to the whole body and Rs.3 lakhs was awarded. If the evidence is perused, it would show that the extent of permanent disability was certified to be 11% was not in respect of whole body but was only confined to limb. At the same time, the claimant has stated that he is not able to discharge the job of driver any more because of the persistence of pain in the knee. Therefore, the functional disability of the claimant in the given facts and circumstances of the case may amount to 100% but that part of evidence is not clear as to whether still on the date, the claimant is not able to discharge any job.
13. Taking into nature of injury and the percentage of permanent disability certified by the Medical Board as the evidence which is available on record, in the opinion of this Court, it would be just and proper to hold that the functional disability of the claimant is to the extent of 25%. The claimant has stated that at the time of accident, he was getting a salary of Rs.5000/- per month and daily allowance of Rs.50/- which is also supported by the evidence of the employer and taking into fact that at the relevant time, he was discharging the job of driver, the amount of salary which is stated do not appear to be exorbitant. The age of the complainant at the time of accident was 23 years as per the disability certificate Ex.P-13. Therefore, the multiplier of 18 would be applicable. Thus the total compensation is worked out to Rs.10,80,000/- (Rs.5000 x 12 x 18) and taking 25% of it towards loss of functional disability, it would amount to Rs.2,70,000/-. Therefore, the compensation towards functional disability is reassessed as Rs.2,70,000/-.

14. Under the other heads, the Tribunal has also granted Rs.5000/- for future treatment and Rs.5000/- for attendant charges which in the opinion of this Court do not require any interference. However, the Tribunal has not granted any sum towards pain and suffering being sustained by the injured, therefore, it would be appropriate to further award Rs.10,000/- on this head. Therefore, the total compensation to be reassessed as follows:

Loss of functional disability	Rs.2,70,000/-
Future treatment expenses	Rs. 5,000/-
Attendant charges	Rs. 5,000/-
Pain and suffering/trauma	Rs. 10,000/-

Total	Rs.2,90,000/-

15. Thus the total compensation will be Rs.2,90,000/-. The claimant will be entitled to receive Rs.2,90,000/- instead of Rs.3,10,000/- awarded by the Tribunal. The said amount shall carry interest @ 6% per annum from the date of filing of the claim petition till the date of realization.
16. In the result, the appeal is party allowed. In the facts and circumstances, there shall be no order as to costs.

Sd/-
GOUTAM BHADURI
JUDGE