

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 769 OF 2002

Mohit S/o Dhani Ram Sahu, aged 32 years, R/o Village Murta, Tahsil and District Durg (C.G.)

... Appellant

Versus

1. Neel Charan (dead), through LRs
- 1.(i)** Gainda Bai W/o Late Neel Charan Sahu, R/o Village- Mutra, Tahsil and P.S. Nawagarh, District- Bemetara (C.G.)
- 1.(ii)** Sukhnandan Sahu S/o Late Neel Charan Sahu, R/o Village- Mutra, Tahsil and P.S. Nawagarh, District- Bemetara (C.G.)
- 1.(iii)** Puhup Ram Sahu S/o Late Neel Charan Sahu, R/o Village- Mutra, Tahsil and P.S. Nawagarh, District- Bemetara (C.G.)
- 1.(iv)** Hulas Ram Sahu S/o Late Neel Charan Sahu, R/o Village- Mutra, Tahsil and P.S. Nawagarh, District- Bemetara (C.G.)
- 1.(v)** Onkar Sahu S/o Late Neel Charan Sahu, R/o Village- Mutra, Tahsil and P.S. Nawagarh, District- Bemetara (C.G.)
- 1.(vi)** Jaykaran Sahu S/o Late Neel Charan Sahu, R/o Village- Mutra, Tahsil and P.S. Nawagarh, District- Bemetara (C.G.)
- 1.(vii)** Namend Sahu S/o Late Neel Charan Sahu, R/o Near Banjari Mata Mandir, Sofa Factory, Raipur (C.G.)
- 1.(viii)** Parvati Sahu D/o Late Neel Charan Sahu, R/o Village- Hardas, Post, Tahsil & District- Bemetara (C.G.)
2. Ramesh Paul S/o Babu Ram Gadariya, R/o Village Tilakapara Darripara, Nawagarh, Distt. Durg (C.G.)

... Respondents

For Appellant	:	Mr. Goutam Khetrapal, Advocate.
For Respondents 1(i) to 1(viii)	:	Mr. B.N. Nande and Mr. Aman Kesharwani, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/07/2017

1. The present appeal has been preferred assailing the award dated 21.8.2002 passed by the 3rd Additional Motor Accident Claims Tribunal (F.T.C.), Bemetara, District Durg (as it then was), in Claim Case No. 11 of 2002.
2. Vide the said impugned award, the Tribunal has refused to grant any compensation to the appellant-claimant, leading to the filing of the present appeal.

3. Learned Counsel for the appellant-claimant submits that it is case where the appellant-claimant while he was travelling on the Tractor belonging to the Respondents, bearing Registration No. MP23-G/7196 with a Trolley bearing Registration No. MP23-G/7197, met with an accident in which he fell from the tractor. As a result of which, he received grievous injuries all over his body. He was hospitalized for a period of about 3 months from 10.5.2001 to 3.8.2001. The accident arose on account of rash and negligent driving of the driver of the Tractor. The appellant-claimant who was sitting in the Trolley fell from the Trolley and sustained injuries. He had received fracture of femur. The condition of the appellant was very critical as a result of the accident. With great difficulty he could survive and sustained himself. The Doctors have given permanent disability certificate to the extent of 25% to him. The appellant-claimant filed a claim application under Section 166 of the Motor Vehicles Act, wherein the evidence of the appellant/claimant and respondents/non-applicants has been recorded.

4. Taking into consideration the evidence which have come on record, the Tribunal vide impugned award though held that the appellant-claimant is entitled for an amount of Rs. 21,800/- as compensation but has refused to grant him compensation, on the ground that he has not been able to prove that the accident arose because of rash and negligent driving of the driver of the Tractor-Trolley and in the absence of evidence of rash and negligent driving, the owner of the offending vehicle cannot be compelled to pay the amount of compensation. Thus, the appellant-claimant was not granted any compensation. It was also the finding of the Tribunal that there appears to have been a compromise arrived at between the owner of the Tractor-Trolley as well as the appellant-claimant, by paying Rs.2600/- as compensation to the appellant-claimant by the respondents.

It is this award which has been challenged by the appellant-claimant in the instant appeal.

5. Learned Counsel for the appellant-claimant submits that it is a case where the appellant has sustained grievous injuries on account of the accident and as a result of which, he received fracture of femur at the upper end i.e. the place much commonly known as hip joint. The appellant was hospitalized for more than three months and during this period there was a total loss of income and that he had also put in a considerable amount of money towards medical expenses and incidental expenses which were incurred during the course of his treatment. He further submits that the nature of injuries was such, where the treatment had prolonged for a considerable period of time. This aspect has also not been considered by the Tribunal and thus he prayed for setting aside the impugned award and for grant of a suitable compensation to the appellant-claimant.

6. Shri Nande, learned Counsel appearing for the Respondents, however opposes the appeal on the ground that since there was a settlement arrived at between the parties and by virtue of the said settlement, the appellant-claimant has been paid Rs.2600/-, the claim application itself should not have been entertained and it was not maintainable and therefore the appeal deserves to be rejected. It was also contended by Shri Nande that there was a duly constituted settlement arrived at between the parties and therefore the Tribunal has rightly held that there was no rash and negligent driving on the part of the driver of the Tractor-Trolley and that the appellant-claimant therefore shall not be entitled for any further relief.

7. Having considered the rival contentions put forth on behalf of either side and on perusal of the record, it clearly reflects that there was a

criminal case registered against the driver of the offending vehicle and the driver was prosecuted for the offence under Sections 279, 337, 338 of IPC. This fact of the driver having prosecuted in a criminal case itself is a sufficient material to draw an inference of there being an accident arisen out of the negligence of the driver of the offending vehicle. Further, what is also explicit from the record is the fact that it is a case where in the course of the Tractor being driven by Respondent No.2, the accident occurred and that in the accident no other vehicle was involved and it was the disbalancing of the Tractor on account of which it turned turtle resulting in the accident and the injuries caused to the appellant-claimant. In view of the fact that there was no other vehicle involved in the accident and the accident occurred because of Tractor-Trolley turning turtle which was being driven by Respondent No.2, the only inference which could be drawn is that the accident arose because of rash and negligent driving of the driver. The finding of the Tribunal that there was no rash and negligent driving of the driver, is not proved is therefore incorrect, improper and unjustified.

8. So far as the compromise/settlement arrived at between the parties is concerned, what is pertinent to take note is the gravity of the accident and the injuries sustained by the appellant-claimant. The said compromise even if it has to be accepted it would be against the interest and object of the Motor Vehicles Act itself therefore the same cannot be accepted for the purpose of disentitling the claimant of his rightful claim under the said Act.

9. Undisputedly, from the record which has come, there is a document which shows that the appellant-claimant has sustained a fracture at the upper end of the femur i.e. at the hip joint and account of which he had been plastered from the chest to his feet and which itself must have put

him to a great amount of suffering. Further, the undisputed fact is that he underwent treatment for about three months' time i.e. from 10.5.2001 to 10.8.2001. Taking into consideration the nature of injury and the treatment that he had undergone for a period of three months coupled with the fact that the Doctor has given the disability certificate of 25%, this Court is of the opinion that the overall disability which the Appellant must have sustained would be around 15%, i.e., the percentage which would have affected his earning capacity. The fact that he had to undergo treatment for three months and there was a plaster on his body from his chest to his feet is sufficient proof for assuming that he must have undergone great amount of pain and suffering. Further, in the said treatment that he had undertaken he must have also incurred a great amount of expenses for which also there does not appear to be any compensation, neither was there any compensation paid for special diet, pain and suffering and the incidental expenses that occurred in between.

10. In view of the aforesaid facts, this Court is of the opinion that it is fit case where ignoring the compromise which has been arrived between the appellant and the respondents for a paltry amount of Rs.2600/-, the appellant-claimant would definitely be entitled for a compensation also for the disability and pain and suffering suffered by him as a result of the accident. The finding of the Tribunal so far as the respondent no.1 being the owner of the offending vehicle has attained finality as it has not been assailed by the owner of the offending vehicle.

11. What is also to be seen is that the appellant-claimant at the relevant point of time was working as a labourer and his age was 32 years. In the year 2001 that is almost about 17 years back, the minimum income of a labourer would have been somewhere around Rs.2000/- per month which would be Rs.24,000 annually. It would also be relevant that considering

the age of the appellant-claimant, 50% of the said income is also to be considered towards the future prospects, which makes the annual income to Rs.36,000. If on the said amount the disability of 15% is accepted which has been certified by the Doctor, the amount from the annual income of the appellant-claimant would be Rs.5400/-. If the said amount is multiplied by applying the multiplier of 16, it would be Rs.86,400/-. Thus, it is ordered that the appellant-claimant shall be entitled for a compensation of Rs. 86,400/- for the loss of income and disability.

12. So far as the medical expenses already incurred and which he would have incurred subsequently and special diet and other incidental expenses that he must have incurred, this court feels that the ends of justice would meet if an amount of Rs. 20,000/- is granted under these heads. Likewise, for pain and suffering by the claimant for the intervening period, an amount of Rs.3600/- would be sufficient and it is ordered accordingly. Thus, the total compensation payable to the claimant would be Rs.1,10,000/-.

13. As a consequence, the appeal is allowed and the impugned award is set aside. The appellant-claimant shall be entitled for a compensation of Rs.1,10,000/-. The Respondents shall pay the said compensation of Rs.1,10,000/- to the appellant-claimant along with the interest thereon at the rate of 6 % per annum from the date of filing of the claim application till its realization.

Sd/-
(P. Sam Koshy)
Judge