

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 762 of 2007**

Raghunath Pradhan (died) through LR's

1(a) Gomti Pradhan W/o Late Shri Raghunath Pradhan, aged 65 years

1(b) Vinod Kumar Pradhan S/o late Raghunath Pradhan, aged 34 years

1(c) Virendra Kumar Pradhan S/o late Raghunath Pradhan, aged 30 years

1(d) Kunjlata Pradhan W/o Digamber Pradhan, aged 40 years

All are R/o Village Charbhata, Thana Pithora, Distt. Mahasamund (CG).

---- Appellants

Versus

1. Ram Das S/ Hadram, aged about 22 years, R/o vill. Chaindeedpa, Thana Basna, Distt. Mahasamund (CG).
2. Dr. S.P. Kashyap S/o shri R.R Kashyap, aged about 58 years, R/o Main Road Basna, Distt. Mahasamund.
3. United India Insurance Co.Ltd. through, Branch Manager, Krishna Complex, Mahasamund.
4. Sudhir Shrivastava, S/o Ramsharan, aged about 32 years, R/o Main Road, Basna, Distt. Mahasamund (CG).

---- Respondent

For Appellant	:	Shri Anand Shukla, Advocate.
For respondent No.3	:	Shri HB Agrawal, Sr. Advocate with Smt. Prabha Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

14/07/2017

1. Present is an appeal under Section 173 of the Motor Vehicles Act filed by the claimants seeking for enhancement of compensation against the award dated 26.03.2007 passed by the 1st Additional Motor Accident Claims Tribunal, Mahasamund (for short, the Tribunal), in Claim Case No.26/2004.
2. Though, the appeal was filed about 10 years back i.e. in the year,

2007, in between the original claimant Raghunath died on 16.10.2010, thereafter, vide appropriate application, the legal heirs of the deceased Raghunath i.e. his widow and daughter have been brought on record.

3. Brief facts of the case is that, the claimant Raghunath met with an accident on 22.02.2004 when he was traveling on his motorcycle and was hit by Tata Sumo bearing registration No.CG-04-ZD-5342 which was being driven by respondent No.1. The accident arose on account of rash and negligent driving of driver of Tata Sumo. As a result of said accident, the claimant received multiple injuries and that his right leg got fractured at three places. His motorcycle was also badly damaged. The respondent No.1 was proceeded in Criminal Case for the offence under Sections 279,337 and 338 of IPC. The claimant was hospitalized at Khemka Hospital, Raipur, where with two intervals he was hospitalized for two months and subjected to couple of surgeries.
4. The original claimant was a Patwari under the State Govt. and his monthly wages as per service record were Rs.8,374/-. At the relevant point of time, the owner of the vehicle was respondent No.2 and insured with the respondent No.3. The injured/claimant filed the claim application under Section 166 of the Motor Vehicles Act for the disability caused in the said accident as also for loss of income.
5. The Tribunal, taking into consideration the evidence which have come on record allowed the claim application to the extent of awarding Rs.27,500/- as compensation to the claimant. Of the said

amount of Rs. 27,500/-, Rs.17,000/- was towards medical expenses incurred during the treatment and also for mental and physical agony and pain and suffering. Rs. 7000/- was given towards miscellaneous expenses for special diet and another. Further, Rs.3500/- was awarded towards repairing of motorcycle which got damaged. It is this award which is under challenge in this appeal.

6. Learned counsel for the appellant submits that the appellant in the course of trial has submitted huge amount of bills incurred during treatment and surgery, but the same were not accepted by the Tribunal and were rejected on the ground that the no evidence was adduced to prove by medical prescriptions/purchase of medicines, neither was the owner of the medical shop from whom the medicines were purchased were examined. The bills were also rejected on the ground that the doctor who had treated the claimant was also not examined. According to appellant, this finding of Tribunal is bad in law for the reason when the accident is admitted and the vehicle involved in the accident and the same being fully insured are also not in dispute. In addition, there being a criminal case lodged against the driver of said vehicle and the appellant claimant having undergone hospitalization for about two months at Raipur and had also been subjected to surgery are not in dispute, then non granting of compensation under the medical expenses is bad in law, particularly when the doctor who had given disability certificate assessing the permanent disability of the claimant to be 55 percent. The finding so arrived is bad in law for the simple reason that on an application

being moved by the claimant, summons were issued from the court calling upon the doctor who had treated the appellant. Since it was a private hospital, the doctor was beyond the control of appellant for being produced as witness. Even after summons being issued, the doctor failed to appear before the court. That the court below inspite of application for issuance of bailable warrant, rejected the said prayer, and thus, the medical evidence could not be brought on record. He submits that the Tribunal ought to have got the doctor examined even on issuance of commission. Having not done so, the version of appellant ought to have been accepted.

7. In addition, the Tribunal has also not granted any compensation under the head for disability that has been suffered by the claimant. The compensation for disability was denied only on the ground that since the claimant was a government employee, he has not lost his income as he was getting regular salary even during the period he was hospitalized and in the subsequent period also there was no loss of income. This finding again is bad in law for the reason that in between the appellant would have retired from service and his disability would have further come in his way for any further engagement he could have undertaken post retirement. Loss of income alone is not a criteria for denying the compensation, inasmuch as, the appellant's permanent disability was more than 50 percent which will have had an adverse bearing on the physical condition of the appellant all through his life. Thus, the amount awarded deserves to be interfered with in this regard.

8. Learned counsel for the insurance company, however, opposing the appeal at the outset submits that the appellant, pending the appeal before this court having died, the appeal abates in view of Section 306 of India Succession Act. Secondly, it was contended by the respondent that since there was no evidence which has been adduced by the claimant on the medical front, the claimant would not be entitled for any compensation as it was necessary for the appellant to have proved his medical condition as also the expenditure that he had incurred during the course of his treatment by a doctor who had treated him. Thus, the award does not warrant any interference and prays for dismissal of appeal.
9. Having considered the rival contentions put forth on either side and on perusal of record, so far as first objection as regards the appeal having been abated is concerned, the same is not sustainable for the simple reason that present is an appeal seeking for enhancement of compensation. The Tribunal on the basis of evidence of original claimant himself has reached to the conclusion that the accident arose because of rash and negligent driving of respondent No.1. The Tribunal also reached to the conclusion that the appellant was entitled for compensation and had fastened the liability of payment of compensation on the respondent No.3-insurance company which had insured the offending vehicle.
10. Even if for argument the claimants are held to be not entitled for compensation for loss of income or disability, but they would definitely be entitled for the claim towards the medical expenses

incurred and also for compensation under other heads. The only issue which is left to be decided in the present case is whether the Tribunal was justified in denying the medical expenses incurred during the course of treatment of the appellant and whether the disability that he had sustained made him eligible for disability compensation.

11. True it is that the Tribunal has already granted compensation to the claimant, now all that is to be assessed is that whether quantified award was proper, legal and justified or not?
12. If we peruse the records, what reflects is the fact that the claimant had promptly at the time of evidence moved an application calling for issuance of summons to the doctor who had treated him. The said doctor was from a private Hospital and was not otherwise willing to come to the court at the request of claimant. What is also pertinent to take note of the fact is that, the Tribunal has also issued summons to the doctor which was duly served and yet he did not come to lead evidence. The claimant had also moved an application for issuance of bailable warrant to said doctor which was rejected by the Tribunal. Therefore, if the doctor deliberately did not appear before the court inspite of summons being served, the claimant cannot be said to be at fault for not producing any medical expenses to support his contents.
13. The Tribunal should have made all endeavors to either take appropriate steps to ensure the presence of doctor to adduce evidence before the court or should have alternatively made an

arrangement for getting the doctor examined on commission. The Tribunal, thus was not justified in denying the claim towards medical expenses which was incurred in the course of his treatment and which could not have been proved before the Tribunal by a doctor though the documents have been duly exhibited before it. In addition, the Tribunal also ought to have appreciated the fact that the doctor had given the opinion of disability of the claimant to be 55 percent and that this certificate also could not be proved by a doctor because of his non cooperation in spite of service of summons, therefore also the version of appellant so far as his disability of 55 percent is concerned, ought to have been believed by the Tribunal and not doing so, it amounts to denial of his claim which he was otherwise entitled for or he would have got it if the doctor had entered into the witness box on the service of summons.

14. In view of the same, denial of compensation on both these heads i.e. not accepting the medical expenses incurred and also the denial of compensation for the disability is not proper and justified. Therefore, the award warrants interference. The appeal is allowed to the aforesaid extent. It is ordered that the appellants shall be entitled for the compensation towards medical expenses against the bills which have been produced before the Tribunal i.e. from Ex. P/10 to Ex.P/185. The total of which comes to Rs.1,62,750/-. If an amount of Rs.17,000/- is reduced from the said entire amount of Rs.1,62,750/-, the total amount towards medical expenses would come to Rs.1,45,750/-. Thus, the claimant is now entitled for Rs.1,45,750/- on

the head of medical expenses in addition to Rs.17,000/- awarded under the same head.

15. Likewise, for the disability of more than 55 percent suffered by the claimant and the fact that he had undergone surgical intervention for the multiple fracture that he had suffered on his right leg, which also has gone un-rebutted and undisputed, in the opinion of this court, a lump sum amount of Rs. 1,05,000/- would be just and proper compensation. It is ordered accordingly. Thus, now the claimant shall be entitled for total compensation of Rs.2,50,750/- (1,45,750/- +1,05,000/-) over and above Rs.27,500/- as awarded by the Tribunal.
16. The above enhanced amount of compensation of Rs.2,50,750/- shall also carry interest at the rate as quantified in the award. Rest of the conditions mentioned in the award shall remain intact.
17. The respondent No.3-Insurance Company is granted two months time to deposit the enhanced amount of compensation of Rs. 2,50,750/- before the concerned claims Tribunal.

Sd/-
(P. Sam Koshy)
Judge

inder