

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 30.07.2018

Order delivered on : 17.08.2018

MAC No. 524 of 2012

- Sunder S/o Perdeshi, aged 33 years, Caste Satnami, R/o. Village Lidari, P.S. And Tahsil Takhatpur, District Bilaspur C.G.

---- Appellant

Versus

1. Manoj, S/o Rikhiram Mahadeva, aged about 27 years, R/o Village Lidari, P.S. And Tehsil Takhatpur, Distt. Bilaspur C.G. Vehicle Driver of Tractor No.CG10/3938 and Trolley No.CG 101/0293
2. Rikhiram Mahadeva S/o Babulal, aged about 30 years, R/o Village Lidari, P.S. And Tehsil Takhatpur, Distt. Bilaspur C.G. Vehicle Owner of Tractor No.CG10/3938 and Trolley No.CG 101/0293
3. United India Insurance Com. Ltd. Through Branch Manager, Branch Office Rajendra Nagar Chowk , Distt. Bilaspur C.G. Insurance Company of Tractor No.CG10/3938 and Trolley No.CG 101/0293

---- Respondents

For Appellant : Smt Minu Banerjee, Advocate
For Respondents 1 and 2 : Smt Hamida Siddiqui, Advocate
For Respondent- 3/Insurance : Shri Pankaj Agrawal, Advocate
Company

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1) By this appeal, the appellant is challenging the legality and validity of the award dated 31.01.2012 passed by the Third Additional Motor Accident Claims Tribunal (for short, 'the Tribunal') in claim case No.110 of 2011, whereby learned claims Tribunal partly allowed the claim and awarded Rs.76,500/- in total as compensation, to be recovered from respondents- 1 and 2 (driver and owner) and exonerated the Insurance Company, respondent- 3.

2) Brief facts of the case are that on 19.02.2010 the appellant was returning from vilage Kadaar to village Lidri on a tractor bearing No.CG10-D-3938 and trolley bearing No.CG10-I-0293 after loading *Chuhi* (lime) along with other persons. The appellant was sitting on trolley as labour on the date of accident. When the offending vehicle reached near village-Chatouna, it turned turtle due to rash and negligent driving of respondent -1. In the aforementioned accident, appellant suffered fracture on his left tibia fibula bone. For treatment of fracture injury, he was admitted to hospital where his left leg was operated and a rod was inserted. Even after continuous treatment, his left leg could not be cured and thereafter, appellant filed claim application before competent Claims Tribunal claiming Rs.8,50,000/- in total on all heads.

3) Respondent-1 and 2 submitted reply to the claim application and have stated that on the date of accident, respondent- 1 driver was having valid and effective driving license and respondent- 2 was registered owner of the offending vehicle. On the date of accident, the vehicle was insured with respondent- 3, Insurance Company and therefore, the liability to pay compensation if any will be on Insurance Company. Further they have stated that the injuries sustained by the appellant were not severe in nature and the claim application has been filed by assessing the compensation on higher side.

4) Respondent- 3 submitted separate reply to the claim application and has placed an objection that the tractor number mentioned in the FIR is different than the tractor number against which claim application was filed. It was further pleaded that respondent- 1 was not having valid and

effective driving license to drive the offending vehicle and further that though the tractor and trolley was insured for agricultural purpose, but on the date of accident it was being used for commercial purpose of transportation.

5) Learned Claims Tribunal on the basis of pleadings and evidence available on record, allowed the claim application filed by the appellant in part, and while exonerating the Insurance Company by holding that on the date of accident, the offending vehicle was being used for agriculture purpose, fasten the liability of payment of compensation on respondents- 1 and 2.

6) Learned counsel for the appellant submitted that learned Claims Tribunal accepted the disability sustained by him to the extent of 25%, but, only awarded Rs.50,000/- towards loss of future income which is towards lower side. She further submitted that no amount towards loss of income during lay off period and towards loss of amenities in life were awarded to him and only meagre amount was awarded towards pain and suffering. She also submitted that learned Claims Tribunal erred in exonerating Insurance Company from the liability of payment of compensation.

7) On the other hand, learned counsel appearing for respondents- 1 and 2, driver and owner of offending vehicle submitted that the injury sustained by the appellant does not appear to be of permanent disability in nature as the disability certificate has been issued only for a period of three years. She further submitted that the learned Claims Tribunal

awarded sufficient amount to the appellant in all facts and circumstances of the case.

8) Learned counsel appearing for the Insurance Company supported the impugned award and submitted that learned Claims Tribunal rightly exonerated the Insurance Company from the liability of payment of compensation as the Insurance Company had not taken or accepted any premium towards labour and other person except driver of the offending vehicle and further that on the date of accident, the offending vehicle was being used for commercial purpose.

9) I have heard learned counsel for the parties. Perused the records. The learned Claims Tribunal considering the documents annexed with the claim application with respect to the Criminal Case registered against respondent- 1 and also considering the final report (Ex.P/11) in which it has been specifically mentioned that as the report was lodged by wife of the appellant was not occupant of the tractor and not present on the spot of the accident but the name of owner of the tractor was correctly mentioned in the FIR, who was the owner of tractor and trolley as mentioned in the application.

10) Learned counsel for the appellant submitted that learned Claims Tribunal wrongly and erroneously exonerated the Insurance Company from its liability to pay compensation is not sustainable in view of the contents of insurance policy ie Exs.D/2 and 3, wherein premium of one employee is also paid towards workmen compensation. The claimant/appellant himself in memo of claim pleaded that on the date of

accident, they were returning after loading *Chuhi* (lime) on the tractor and not stated any further or proof before Claims Tribunal that the said lime loaded on the tractor was for agriculture purpose.

11) In light of aforementioned material and finding recorded, the learned Claims Tribunal not committed any illegality in exonerating the Insurance Company as it is evident that on the date of accident tractor is being used for commercial purpose and no premium for labourers and other persons was paid by the insurer which is evident from Ex.D/3.

12) Looking to the disability certificate issued by the medical board in which it has been specifically mentioned that the appellant sustained 25% permanent disability on his left leg and also looking to the evidence of doctor (AW-3-1), who in his statement categorically stated that the injuries sustained by the appellant were of permanent nature and could not be cured in future by exercise or efflux of time. The appellant proved his permanent disability to the extent of 25% and the same was also accepted by the Claims Tribunal in para-14 of the impugned award. But, learned Claims Tribunal awarded lump-sum amount of Rs.50,000/- towards loss of future income due to permanent disability which, in my opinion, is towards lower side.

13) The appellant is working as labourer and due to disability sustained by him on his left leg, he may not be able to do the labour work of loading, unloading material etc., which he was doing earlier and also was doing on the date of accident. Due to disability sustained by him, he is restricted

from engaging himself as labourer from some particular type of work from which he could have earned more.

14) For the reasons stated above, learned claims Tribunal also failed to consider the discharge ticket issued by the District Hospital, Bilaspur wherein he was shown to be admitted from 03.12.2010 to 25.12.2010. But no amount of compensation was awarded towards loss of income during the lay off period or the amount towards attendant and loss of amenities and towards special diet.

15) In view of above, the impugned award passed by learned Claims Tribunal is set aside and the amount of compensation is re-calculated as under.

16) The appellant as per material available on record, admittedly was working as labourer on the date of accident and looking to the price index and the wage prevailing on that date in the year 2010, income of appellant is assessed at Rs.3,000/- per month. Looking to the disability certificate issued by the Medical Board and evidence of treating doctor, future loss of income is assessed at 10% of wage i.e. $\text{Rs.3,000} \times \frac{10}{100} = \text{Rs.300/-}$ per month and Rs.3,600/- per year. The appellant on the date of accident was about 32 years, therefore, by applying multiplier of 16, loss of income towards disability comes to $\text{Rs.3,600} \times 16 = \text{Rs.57,600/-}$. The appellant took treatment as in door patient from Dr Shekhar Tiwari, immediately after accident. Thereafter, when the injury sustained by him did not cure, then, he took treatment again as in door patient in the District Hospital, Bilaspur, where he was admitted from 03.12.2010 to 25.12.2010. Further,

as per advice by the treating doctor, he admitted for further treatment on 25.01.2011 and 01.03.2011 which was admitted by Dr SS Bhatia (AW-3) in para-3 of his evidence.

17) Considering overall period of treatment, appellant is further entitled for loss of income during the lay off period for four months, which comes to Rs.3,000 x 4 = Rs. 12,000/-. The appellant is further entitled for expenses towards attendant as from the evidence of appellant, wherein it is specifically stated that except his wife, there was no other person to take care of him.

18) In view of above, the appellant is also entitled for Rs.6,000/- towards attendant, Rs.20,000/- towards pain and suffering. Looking to the period of treatment and injury of permanent nature sustained by him, appellant is also entitled for Rs.5,000/- towards loss of amenity, Rs.2,000/- towards special diet and the amount of Rs.21,500/- which he incurred towards medical expenses. Thus, the appellant is now entitled for total compensation of Rs.1,24,100/-, to be recoverable from respondents- 1 and 2. The amount of compensation of Rs.1,24,100/- (Rupees one lakh twenty four thousand and one hundred only) will carry interest of 6% from the date of filing of claim application till its realisation. The appeal is allowed in part. The impugned award is modified accordingly.

19) No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE