

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 250 of 2014

Raghunath Puri Goswami S/o Milanpuri Goswami Aged About 37 Years R/o. Village- Kharsola, Post- Bawli, P.S. And Tah. Patharia, Distt. Bilaspur C.G Civil & Revenue Distt. Bilaspur C.G.

---- Appellant

Versus

1. Suresh Kumar Nirmalkar S/o Late Dhannulal Aged About 42 Years R/o. Tiwari Chawl, Ware House Road, Bilaspur, Tah. And Distt. Bilaspur C.G.
2. Rajesh Gupta S/o R.K. Sao R/o Kansabel, Bagicha, Jashpur C.G.
3. Branch Manager The Oriental Insurance Company limited, In Front Of Rajeev Plaza, Bus Stand, Bilaspur C.G.

---- Respondents

For Appellant	: Smt. Renuka Digraskar, Advocate on behalf of Shri Akhtar Hussain, Advocate.
For Respondents No.1 & 2	: None
For Respondent No.3	: Smt. Prabha Sharma, Advocate on behalf of Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

07/05/2019

1. This appeal has been filed by appellant/claimant (injured) under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 01/02/2014 passed by Sixth Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.130/2013 whereby learned Claims

Tribunal allowed claim application in part and awarded a total sum of Rs.1,22,000/- as compensation to the claimant in an injury case.

2. Brief facts for disposal of this appeal are that on 01/10/2009, at about 6.30 P.M., appellant was travelling on motorcycle bearing registration No.CG04-DC-5684 (hereinafter referred to as 'motorcycle') from Bilaspur to Belha, when he reached near village Mohada Road, at that relevant time, one Bolero Jeep bearing registration No. CG14-B-2855 (hereinafter referred to as 'offending Jeep') driven by respondent No.1 dashed the motorcycle of appellant. In the aforementioned accident, appellant as well as his friend Purushottam alias Puran Pandey who was pillion rider fell down from motorcycle, due to which, both of them sustained injuries. Matter was reported to concerned Police Station and crime No.313/2009 was registered against respondent No.1.
3. On account of injuries suffered by the appellant, he could not able to perform his work for about many months and he also suffered disability to the extent of 15%, therefore, he filed claim application under Section 166 of M.V. Act before competent Claims Tribunal for grant of compensation claiming Rs.7,00,000/- on various heads from the respondents.
4. Respondent No.1 who is driver of offending Jeep submitted reply to claim application and denied all the adverse allegations pleaded in the claim application. He further pleaded that he is not having any

liability to pay the amount of compensation as on the date of accident, offending Jeep was insured with Insurance Company.

5. Respondent No.2 who is owner of offending vehicle, even after service of notice, did not choose to appear before learned Claims Tribunal and was proceeded *ex parte*.
6. Respondent No.3/Insurance Company submitted its reply to claim application and pleaded that on the date of accident, driver of offending Jeep was not possessing valid and effective driving licence and there was violation of conditions of insurance policy. It was further pleaded that it is the appellant who himself was negligent in the accident, therefore, Insurance Company is not liable for payment of any amount of compensation.
7. After appreciating pleadings, material and evidence led by respective parties, learned Claims Tribunal held that accident took place due to rash and negligent driving of driver of offending Jeep, appellant suffered 15% temporary disability, violation of conditions of insurance policy could not be proved and on the basis of aforementioned finding, awarded total sum of Rs.1,22,000/- as compensation to the appellant.
8. Learned counsel appearing for appellant submitted that learned Claims Tribunal committed an error in assessing the income of appellant to Rs.3,000/- per month while awarding the amount towards loss of future income. She further submitted that learned Claims Tribunal has not awarded any amount towards loss of income

due to disability sustained by appellant. She lastly submitted that looking to the nature of injuries sustained by appellant, learned Claims Tribunal failed to award any amount towards attendant and conveyance expenses.

- 9.** Per contra, learned counsel appearing for respondent No.3/Insurance Company supported the impugned award and submitted that in the facts and circumstances of the case, learned Claims Tribunal awarded reasonable and appropriate amount of compensation to the appellant, which do not call for any interference. She further submitted that appellant has failed to prove that in view of nature of injury, he suffered loss of income. She lastly submitted that Dr. S.S. Bhatia (AW-2) in his evidence admitted that for issuing the disability certificate, there is requirement of presence of three doctor members of the Medical Board and their signatures on the certificate, but on the disability certificate of appellant, there are signatures of only two doctor members of the Medical Board.
- 10.** I have heard learned counsel appearing for parties and perused entire record carefully.
- 11.** Appellant in support of his claim has filed medical prescription, bed-head tickets and bills of medicines. On perusal of Ex. P-7, which is discharge card issued by Orthocare Hospital of Dr. R.K. Das, wherein it has been shown that appellant was admitted in the hospital on 21/10/2009 and was discharged on 04/11/2009. In the aforementioned document, it has been shown that appellant

undergone operation on 22/10/2009 and there was fracture on condyle tibia, fracture on tibial spine compound and fracture on shaft tibia fibula.

- 12.** From the aforementioned document, it is evident that appellant suffered three fracture injuries over his right leg. The injuries mentioned in Ex. P-7 was proved by Dr. R.K. Das (AW-3). R.K. Das (AW-3) in his statement specifically stated that he found two fractures on tibia bone of right leg of appellant and also fracture on fibula bone. He further stated that he operated the tibia bone and inserted rod and on other part, it was fixed with screw. From the above evidence, appellant has proved that he suffered grievous injuries.
- 13.** From perusal of disability certificate (Ex. P-6), it reveals that disability certificate has been issued under the signatures of two doctor members of the Medical Board. The certificate did not specifically mention that what is the nature of 15% disability i.e. mild/moderate/severe/profound(total) and the certificate does not mention that whether appellant sustained permanent or temporary disability.
- 14.** To prove the disability certificate (Ex. P-6), appellant examined Dr. S.S. Bhatia (AW-2), who admitted in his statement that in the certificate it was mentioned two type of disability either temporary or permanent. He further admitted that in view of disability certificate issued to appellant, his disability would not come within the purview of disabled person as the assessment of disability in Ex. P-6 is less

than 40%. He further stated that as he has mentioned percentage of disability to the extent of 15%, therefore, he had not marked the nature of disability as mentioned in the disability certificate. He lastly admitted that as per the Rules of Medical Board, it is necessary that at the time of examination of injured for issuing disability certificate, presence and signatures of three doctor members is necessary on the disability certificate.

- 15.** In view of aforementioned specific evidence available on record of Dr. S.S. Bhatia (AW-2), disability certificate (Ex. P-6) produced by appellant cannot be taken into consideration as admissible piece of evidence to show that appellant has suffered 15% disability of permanent nature. Even the appellant has not put any question to Dr. S.S. Bhatia (AW-2) who issued the disability certificate with regard to the fact that what problem he will face in performance of his work, therefore, in the opinion of this Court, learned Claims Tribunal has not committed any error in awarding Rs.15,000/- towards future loss of income.
- 16.** Now the question arises for consideration before this Court whether learned Claims Tribunal awarded just and reasonable amount of compensation in the facts and circumstances of the case.
- 17.** The object of the M.V. Act is to compensate the family of the victim or the injured suitably by awarding just and reasonable compensation. There are two modes of awarding compensation. One is towards pecuniary loss which the injured or family members/legal

representatives of the deceased suffers and the other is towards the non-pecuniary damages. The non-pecuniary damages is to be awarded towards the mental pain and agony and loss of amenities of life etc. The assessment of loss and damages sustained by the injured as non-pecuniary damages is difficult to assess, but cannot be assessed in a mechanical manner. But for arriving at a reasonable conclusion to award 'just compensation' to the injured, several factors are to be taken into consideration i.e. the injury of injured, the organ on which the injury sustained, permanent disability by loss of limb or any organ of the body etc. and how the body of the injured is affected by the injury.

- 18.** Before the learned Claims Tribunal, appellant has pleaded that he was doing the work of Mason and thereby earning of Rs.3,000/- per month, but has not produced any evidence with respect to place of work, employer under whom he was working or any documentary evidence with respect to his salary. The appellant has failed to prove his income as pleaded in claim application, therefore, in the facts and circumstances of case, income of appellant is to be assessed on notional basis. The date of accident was 01/10/2009, therefore, looking to minimum wages rate prevailing in the Districts and State, it will be proper to hold engagement of appellant in labour work and his income to be assessed to Rs.3,500/- per month.
- 19.** Dr. R.K. Das (AW-3) in his statement has proved that appellant undergone operation, rod was inserted and other bone was fitted with

screw and there were three fractures injuries on his right leg. In view of aforementioned facts and evidence available on record, learned Claims Tribunal has rightly assessed that appellant could not be able to perform his work of Mason for a period of six months, therefore, appellant would be entitled for compensation of loss of income during period of treatment to Rs.21,000/- instead of Rs.18,000/-.

20. Learned Claims Tribunal has not awarded any amount towards attendant and conveyance expenses. Looking to the nature of injury and the period as assessed by learned Claims Tribunal that he may not be able to perform his work and further taking into consideration period of treatment in the hospital as indoor patient, in the opinion of this Court, appellant is entitled for an amount of Rs.3,500/- towards attendant. Appellant is resident of village Kharsola, Post Bawli, Tahsil Pathariya, therefore, in the opinion of this Court, appellant is also entitled for an amount of Rs.2,000/- towards conveyance expenses.
21. In view of above facts and circumstances of the case, appellant will be held entitled for a sum of Rs.21,000/- towards loss of income during period of treatment, Rs.15,000/- towards loss of future income due to nature of disability, Rs.15,000/- towards pain and suffering and special diet, Rs.74,000/- towards medical expenses, Rs.3,500/- towards attendant, Rs.2,000/- towards conveyance expenses.
22. For the foregoing reasons, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. Now, the appellant is entitled for total compensation of Rs.1,30,500/- (21,000 +

15,000 + 15,000 + 74,000 + 3,500 + 2,000) instead of Rs.1,22,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 7.5% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-

(Parth Prateem Sahu)
Judge