

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1106 of 2013

Lalit Narayan Mishra S/o Devmani Mishra Aged About 32 Years R/o Pachouha, Distt. Anuppur M.P., Presently R/o Devargaon, P.S. Gourela, Distt. Bilaspur C.G.

---- Appellant

Versus

1. Jiya Ul Haq S/o Nurul Hasan Aged About 25 Years.
2. Nurul Hasan S/o Mohammad Sami Aged About 45 Years.
Both R/o Barwasan, P.S. And Tah. Pendra Road, Distt. Bilaspur C.G.
3. Reliance General Insu. Co. Ltd, Shop No. 412, 413, 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant	:	Shri Yogendra Chaturvedi, Advocate.
For Respondents No.1 & 2.	:	Shri Basant kaiwartya, Advocate.
For Respondent No.3.	:	Shri S.S. Rajput, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

21/02/2019

1. By the instant appeal, the appellant/claimant is challenging legality and validity of impugned award dated 14.08.2013 passed by the Additional Motor Accident Claims Tribunal, Pendra Road, Bilaspur C.G (in short 'the Tribunal') in Claim Case No.74/2011, whereby the Tribunal has partly allowed claim application and awarded a total compensation of Rs.84,080/- under all heads, in an injury case.
2. Brief facts necessary for disposal of this appeal are that on 17.2.2010 at about 8:00 p.m appellant (injured) alongwith one Purushhottam Napit was going towards Venkat Nagar from Gourela on his motorcycle bearing registration No.CG/EA/7444 and when he reached near Village-Lalpur one tractor bearing registration No. CG10/A/4042, (hereinafter shall be referred to as "the offending vehicle"), which was being driven by its driver ie. Respondent No.1-Jiya-ul-Haq, on the wrong side of road, dashed against his motorcycle due to which, they fell down and badly

injured. They were immediately taken to hospital where pillion rider Purushottam Napit died during the course of treatment. Present appellant sustained grievous injuries on various parts of his body including right leg. The matter was reported to the concerned police station and offences under Sections 279, 337, 338 & 304(A) of the Indian Penal Code was registered against driver of offending vehicle. Initially the appellant was admitted to Senetorium Hospital, Lalpur where looking to seriousness of injuries, he has been referred to Lalchandani Hospital, Bilaspur where he took treatment for sufficient long time but he could not recovered fully. Appellant submitted himself before District Medical Board, Bilaspur and after examining the injured, District Medical Board issued a permanent disability certificate assessing 30% permanent disability on his right leg vide (Ex.P-11). A claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988) was filed by the claimant before the concerned Tribunal seeking total compensation of Rs.21,10,000/- on the grounds mentioned therein.

3. Respondent Nos. 2 & 3, who are driver and owner of the offending vehicle submitted their reply to claim application denying all facts with regard to accident except the admitted facts. They further contended that accident took place on account of negligence of appellant/claimant himself because at the time of accident he was under influence of liquor and due to which he lost control over his motorcycle and dashed against the offending vehicle.
4. Respondent No.3/Insurance Company submitted its reply to claim application and denied all the averments made therein except the admitted facts. It has been further pleaded that neither the claimant had

sustained any permanent disability in accident nor he took treatment as indoor patient in any hospital. It has been averred by the insurance company that on the date of accident, driver of offending vehicle was not having valid and effective driving license and as such, there was breach of condition of insurance policy. On the aforesaid grounds, the insurance company pleaded for its exoneration.

5. Learned Claims Tribunal after considering pleadings and evidence of the respective parties arrived at a finding that accident took place on account of rash and negligent driving of driver of offending vehicle in which claimant had sustained 30% disability of permanent nature. On the date of accident offending vehicle was insured with respondent No.3/Insurance Company and there was no violation of conditions of insurance policy as respondent No.1 driver of the offending vehicle was having valid and effective driving license. The Tribunal assessed monthly income of deceased as Rs.2,600/-, evaluated functional disability to the extent of 15% and awarded Rs.84,080/- as compensation.
6. Learned counsel appearing for the appellant argued that the Tribunal has committed an error in awarding very meager amount of Rs.84,080/-. He further argued that the Tribunal assessed monthly income of the appellant as Rs.2,600/- which is on lower side. Further the Tribunal has not awarded any amount towards medical expenses though relied upon medical documents. He further argued that the Tribunal has not considered oral and documentary evidence in its proper prospective.
7. Per contra learned counsel for respondent No.3/insurance Company supported the impugned award and argued that appellant/claimant not

suffered any loss of income due to his disability and further he failed to produce any clinching piece of evidence with respect to his business or work and therefore, Tribunal had rightly assessed income of appellant on notional basis.

8. I have heard learned counsel for the parties and perused the record.
9. From the material available on record it is apparent that appellant had sustained grievous injuries on his right leg in the accident caused by the offending vehicle on 17.02.2010. On perusal of medical documents it is clear that after giving preliminary treatment to appellant at Senetorium Hospital at Village- Lalpur, he was referred to Lalchandani, Hospital, Bilaspur for better treatment where his x-ray examination was done and it was detected that he suffered comminuted fracture of right soft femur, tibial spine & also in radius bone. As per Ex.P-37 discharge certificate issued by the Lalchandani Hospital, appellant was admitted on 18.2.2010 and on 20.02.2010 he underwent a surgery for uniting fracture injuries and thereafter discharged on 28.2.2010. He was again hospitalized on 05.03.2010 at Lalchandani Hospital vide Ex.P-36 and where on the same day his radius bone was operated and he was discharged on 06.03.2010. The disability certificate (Ex.P-11), which was issued by the District Medical Board, Bilaspur on 06.01.2011, also shows that appellant sustained permanent disability to the extent of 30% on his right leg.
10. Dr. Smt. Sumitra Paikra was examined as AW-4, who had done MLC of appellant. She has specifically stated in her statement that there was

lacerated wound and swelling in right leg of injured and bone appears to be broken.

11. I have also perused the evidence of AW-5 Dr. S.S. Bhatiya, who is one of the members of District Medical Board, Bilaspur which had issued disability certificate (Ex.P-11) to appellant. This witness has specifically admitted in his statement that after examination of injuries, on 6.1.2011 a disability certificate was issued in favour of appellant certifying that he had sustained 30% permanent disability in his right leg. He has also specifically stated that if appellant does any work by frequent movement (roaming) then there will be loss of 30% in working efficiency. He was cross-examined by respondent No.3/Insurance Company but nothing could be brought on record which goes to show that injury sustained by appellant was not grievous in nature. In other words, statement of AW-5 remained uncontroverted on the point that appellant had sustained 30% permanent disability as also loss of efficiency to the extent of 30% if he works by frequent movement (roaming work).

12. In view of the above evidence (oral and documentary evidence) available on records, admittedly the appellant had sustained grievous injuries over various parts of body including permanent disability over his right leg to the extent of 30%, which stands proved from the certificate of (Ex.P-11) issued by District Medical Board, Bilaspur and evidence of AW-5.

13. Now, the question which arises for consideration of this Court is whether in the given facts and circumstances of case, the Tribunal awarded just compensation to appellant?

14. Learned Claims Tribunal after considering medical evidence of AW-4, AW-5 & document Ex. P-11 arrived at a finding that appellant sustained 15% functional disability, which cannot be said to be an erroneous finding.
15. So far as, income of appellant as assessed by the Tribunal is concerned, appellant examined himself as AW-1 and according to him, he was earning Rs.10,000/- per month by selling clothes as a vendor but he has not submitted any document or bill showing purchase of garment/ clothes. He further stated that he was also doing agriculture work and thereby earning Rs.1 lakh per year. AW-2- Amit Kumar Misrha, brother of appellant, & AW-3 Harish Singh also stated that the appellant was engaged in the work of selling clothes in weekly market of different villages.
16. As there was no clinching piece of evidence available on record to show exact income or business of appellant, the Tribunal by treating him to be a labour has assessed his income as Rs.100/- per day and further taken into consideration 26 working days in a month assessed monthly income of appellant at Rs.2,600/-. The assessment of the income made by the Tribunal is definitely on lower side. Even if the appellant is treated as Labour, on the date of accident i.e. in the year 2010 aged about 32 years old hale and hearty person, could not have earned less than Rs.3,500/- per month. Further, if the nature of employment of appellant is to be taken as labour then he cannot be supposed to avail holidays except in some emergent circumstances or contingencies.

17. In view of the above, this Court deems fit and proper to assess monthly income of the appellant to Rs.3,500/- per month.
18. Looking to nature of injuries sustained by appellant including grievous fracture on his right leg, permanent functional disability assessed by the Tribunal i.e. 15%, cannot be said to be an erroneous one and accordingly, by taking monthly income of Rs.3,500/-, the yearly loss of earning due to permanent disability is assessed at Rs.6,300/- (15% of 3500 x 12). As on the date of accident appellant was 32 years of age, therefore, multiplier of 16 would be applicable and by applying multiplier of 16 to Rs.6,300/-, the loss of income due to accidental injury comes to Rs.1,00,800/- (6300x16). Thus, now the appellant would be entitled to Rs.1,00,800/- towards loss of earning capacity. Looking to the nature of injuries as well as medical documents & bills available on record with respect to treatment of appellant shows that the appellant was operated twice, firstly on 20.02.2010 and secondly on 05.03.2010. In considered opinion of this Court, the appellant could not have performed his regular work for a period of about three months therefore, he is entitled to Rs.10,500/- (3500x3) for loss of income during laid down period of treatment. The Tribunal has awarded a sum of Rs.1,000/- towards special diet which is also on lower side. Looking to injuries and treatment, the amount under the head of special diet is enhanced from Rs.1,000/- to Rs.3,000/-. The appellant would be further entitled to Rs.10,000/- towards pains and suffering & loss of amenities in life. The Tribunal has not considered medical documents exhibited as Ex.P-12 to P-35, out of which Ex.P-17 & P-18 are treatment charges of the appellant at Lalchandani Hospital, Bilaspur. This is in the form of cash

receipt. The medical charges shown in Ex.P-17 & P-18 are Rs.12,800/- & Rs.26,600/- respectively. The total hospital charges which the appellant incurred is Rs.39,400/- (12,800 +26,600) to which the appellant is also entitled for. The Tribunal has further awarded a sum of Rs.43,00/- towards the other examinations and X-rays expenses for which the appellant is also entitled for.

19. The appellant is now entitled for compensation to Rs.1,00,800/- towards future loss of income, Rs.10,500/- towards loss of income of three months during laid down period, Rs.39,400/- towards medical expenses, Rs.10,000/- towards pains and suffering and loss of amenities in life, Rs.3,000/- towards special diet & Rs.43,00/- towards other medical expenses on tests and X-ray's.

20. Now, appellant/claimant would be entitled for a total sum of Rs.1,68,000/- as compensation instead of Rs.84,080/- as has been awarded by the Tribunal. All the respondents are liable to pay the amount of compensation jointly and severally. This amount of compensation would carry interest @ 7.5% p.a. from the date of filing an application till its realization. Other conditions imposed by the Tribunal will remain intact.

21. In the result, the appeal is allowed in part and the impugned award stands modified to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge