

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 887 of 2015

Mangal @ Shivmangal Sahu S/o Gautar Ram Sahu Aged About 28 Years R/o Village Nachniya, Police Station Salhewara, Tahsil Chhuikhadan, Civil & Revenue District Rajnandgaon Chhattisgarh.

---- Appellant

Versus

1. Uttam Kumar Janghel S/o Dani Ram Janghel Aged About 22 Years R/o Village Sahaspur, Salhewara, Tahsil Chhuikhadan, District Rajnandgaon Chhattisgarh.
2. Amaru Ram Lodhi S/o Bisahu Ram Lodhi Aged About 50 Years R/o Village Sahaspur, Salhewara, Tahsil Chhuikhadan, District Rajnandgaon Chhattisgarh.
3. Oriental Insurance Company Limited, G.E. Road, Supela, Bhilai, Tahsil & District Durg Chhattisgarh.

---- Respondents

For Appellant	:	Shrt Abhishek Sharma, Advocate.
For Respondent No.3	:	Shri Amit Buxy, Advocate on behalf of Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

08/05/2019

- 1 By the instant appeal, the appellant/claimant is challenging the legality and validity of the impugned award dated 21.01.2015 passed by learned Additional Motor Accident Claims Tribunal, Khairagarh, Distt -Rajnandgaon, C.G (for short 'the Tribunal') in Claim Case No.23/2013, whereby the Tribunal allowed the claim application in part and awarded a total sum of Rs.1,73,480/- under all heads in an injury case.

- 2 Brief facts necessary for disposal of this appeal are that on 05.12.2012, appellant (injured) along with his friend Ram Lal was going towards Salhewara from Chhuikhadan on his motorcycle bearing registration No.CG08/HB/9935 and when he reached near village- Raingakhar Barrier, one Tractor bearing registration No.CG04-DM-9507, (hereinafter shall be referred to as "the offending vehicle"), which was being driven by its driver i.e. respondent No.1- Uttam Kumar Janghel dashed against his motorcycle, on account of which they fell down and sustained grievous injuries on various parts of the body.
- 3 In the aforesaid accident, appellant sustained injuries on his right leg, waste and also suffered other internal injuries. He was brought to government hospital at Chhuikhadan from where he was referred to Narayana Hospital, at Raipur. Appellant remained admitted in hospital from 06.12.2012 to 21.01.2013 as indoor patient. Where his right leg was operated and road was also inserted in his leg.
- 4 Appellant/claimant on account of injury sustained by him filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V Act'), claiming Rs.43,30,000/- as compensation under all heads on the ground mentioned therein.
- 5 Respondent Nos. 1 & 2, driver and owner of offending vehicle submitted reply to claim application and pleaded that accident took place on account of negligence of appellant/claimant himself and compensation claimed by him is on higher side. They further pleaded that on the date of accident offending vehicle was driven by respondent No. 1-Uttam Kumar Janghel with valid and effective driving license and vehicle was insured with respondent No.3- Insurance Company, therefore, they prayed for dismissal of claim application against them.

- 6 Respondent No.3/Insurance Company also submitted reply to claim application stating that on the date of accident, it was deceased who drove his motorcycle rashly and negligently due to which, he met with the accident. It was further pleaded that on the date of accident, driver was not having valid and effective driving license to drive the offending vehicle and as such, there was breach of condition of insurance policy. It has been further pleaded that as the accident was occurred between two vehicles ie tractor (offending vehicle) and motorcycle therefore, owner and insurance company of motorcycle were also necessary parties, but they have not been impleaded and therefore on account of non-joinder of necessary party claim application is not maintainable. There was contributory negligence on the part of driver of the motorcycle ie appellant/claimant.
- 7 Learned Claims Tribunal after appreciating the pleadings and evidence of respective parties held that accident took-place due to rash and negligent driving of driver of offending vehicle (Tractor), appellant sustained 5% permanent disability and also held that there was no violation of condition of insurance policy.
- 8 The Tribunal allowed claim application and awarded a total sum of Rs.1,73,480/- as compensation including medical expenses of Rs.1,37,080/-.
- 9 Learned counsel for the appellant submits that the Tribunal committed error in assessing disability to the extent of 5% only, whereas Medical Board vide Ex.P-144 has assessed permanent disability to the extent of 40%. He further submits that the Tribunal has committed error in not awarding any amount towards loss of income during period of treatment. Even no amount has been awarded towards pains & suffering.

10 Per contra learned counsel for respondent No.3/Insurance Company has supported the impugned award and pleaded that the Tribunal has rightly assessed disability of the appellant and awarded suitable amount of compensation on that heads. He further submits that as the amount of compensation awarded to the claimant is just and proper therefore, it does not call for any interference.

11 I have heard learned counsel for the parties and perused the record.

12 To prove the fact of permanent disability, appellant has not only produced disability certificate (Ex.P-144) issued by the District Medical Board, Rajnangaon before the Tribunal but also examined (AW-2) Dr. Prakash Bhalerao, Orthopedic specialist, who has stated in his evidence that disability sustained by appellant is permanent in nature. Dr. Prakash Bhalerao (AW-2) admitted in his cross-examination that if proper treatment would be taken by appellant, there is possibility of recovery of injury. He further stated that there is also possibility of reduction in disability sustained by appellant. He also stated that disability certificate is only with respect to affected/injured part of appellant and not with respect to whole body.

13 The appellant examined himself as AW-1 and he in his evidence stated that he is having 10 acres of agricultural land but no documentary or oral evidence in support thereof has been submitted. Further, the appellant not made any specific statement as to how he is unable to perform work of 'Carpenter' or that he is facing problems after the accident in doing work of 'Carpenter' causing loss of income. The law in this regard is well settled that for the purpose of assessment of amount of compensation, not only the disablement sustained by injured on a particular part of body is to be taken into consideration but it is also to be seen that what is the percentage of functional disability of the injured

in performing his work for earning his livelihood and what will be the loss of income which the appellant would suffer on account of permanent disability suffered by him. In the instant case, the appellant has nowhere pleaded, stated or proved in categorical terms as to how he is unable to perform work of 'Carpenter' causing loss of income to him.

14 In case at hand, appellant submitted all the relevant medical documents which are filed as Ex.P-10 to Ex.P-28. Ex.P-10 would show that the appellant suffered compound fracture on right Tibia U/3 with fracture of lower POK Patella and injury patellar tendon. As per Ex.P-13, the appellant had also sustained fracture of upper 1/3 of shaft of Tibia & Fibula. When appellant could not get recovered fully even after lapse of sufficient time, he submitted himself before the District Medical Board, Rajnangaon for assessing percentage of disability suffered by him. After examination, the Medical Board issued disability certificate (Ex.P-144) certifying that appellant has suffered 40% permanent disability over his right leg. Dr. Prakash Bhalerao was examined as AW-2 and he has stated that nature of disability is permanent. There may be possibility of recovering after taking continuous physiotherapy and treatment from a good doctor. The doctor opined with respect to possibility and has not stated that nature of disability suffered by the appellant was temporary and that by passage of time it can be cured.

15 Assessment of loss of income is to be based on the facts and material available on record as well as nature of work which the injured was doing prior to the date of accident. Indisputably, the injured was working as 'Carpenter' for which he has to work by standing on both his legs or by sitting with folded legs. The doctor (AW-2) has not stated in his statement about the problem/difficulty which the appellant may face in future due to aforementioned disability.

- 16 In view of aforementioned evidence available on record and findings recorded by the Tribunal, I do not find any reason to interfere with findings recorded by the Tribunal assessing functional disability of appellant at 5%. Therefore, the first ground raised by the appellant is not sustainable and is hereby rejected.
- 17 So far as, the other ground raised by learned counsel for the appellant that Claims Tribunal erred in not awarding amount towards loss of income during treatment period and for pains & suffering is concerned, perusal of impugned award would show the Tribunal has awarded an amount of Rs. 2,000/- towards attendant, Rs.1,000/- towards special diet & Rs.2,000/- for conveyance expenses. The Tribunal has not awarded any amount towards pains & suffering as well as loss of income during period of treatment, whereas records would show that the appellant (injured) took treatment as indoor patient in Narayana Hospital, Raipur from 06.12.2012 to 21.01.2013 where his right leg was operated.
- 18 Looking to aforementioned facts available on record, in the considered opinion of this Court that the appellant could not have performed his usual work for a period of two months and therefore, the appellant is entitled for loss of income for two months. As the Tribunal has fixed income of appellant at Rs.3,000/- per month, therefore, appellant is entitled for Rs.6,000/- towards loss of income during the period of treatment i.e. for two months.
- 19 Further the Tribunal has not awarded any amount towards pains & sufferings. Looking to the nature of injuries sustained by appellant and the fact that his right leg suffered multiple compound fracture, which was operated, in the considered opinion of this Court, the appellant is entitled for Rs.10,000/- towards pains & sufferings.

20 In view of the above, now the appellant will be entitled for additional sum of Rs.16,000/-, apart from the amount already awarded by the Tribunal. This additional amount of compensation will carry interest @ 6% p.a., as awarded by the Tribunal, till its realization.

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

Sd /-

(Parth Prateem Sahu)
Judge