

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 177 of 2015

- Mohammad Shabbir Kuraishi S/o Mohammad Kasim Kuraishi Aged About 28 Years R/o Ward No. 17, Purana Bus Stand, Machali Market, Khairagarh, Distt. Rajnangaon, Chhattisgarh

---- Appellant

Versus

1. Branch Manager Bajaj Allianz General Insurance Company Limited Shivmohan Bhavan, Vidhansabha Road, Pandari Raipur, District Raipur, Chhattisgarh
2. Khuman Singh S/o Shri Tikm Singh Rajput Aged About 45 Years R/o Tikaripara In front Of Chirbangala, Chuikhadan, District : Rajnandgaon, Chhattisgarh
3. Ruplal Dhritlahare S/o Ganesh Das Dhritlahare Aged About 40 Years R/o Amalidih Kkurd, Khairagarh, District : Rajnandgaon, Chhattisgarh

---- Respondents

For Appellant	: Shri Praveen K Durandhar, Advocate
For Respondent-1	: Shri Sangeet Kumar Kushwaha, Advocate on behalf of Shri SS Rajput, Advocate
For Respondents- 2 & 3	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

29.01.2019

1. Appellant/injured has challenged the impugned award dated 27.11.2014 passed by Additional Motor Accident Claims Tribunal, Khairagarh, Rajnandgaon in Claim Case No.64 of 2012 whereby learned Claims Tribunal partly allowed the application and awarded a total sum of Rs.1,21,767/- in an injury case.

2. Brief facts for disposal of this case are that on 02.05.2012 while appellant travelling on motorcycle reached near Jain Graveyard, offending vehicle bearing No.CG 08-L-1237 driven by respondent- 2 rashly and negligently dashed the motorcycle. In the said accident appellant

sustained injuries on his right leg. He was immediately taken to Primary Health Centre at Khairagarh from where he was referred to Appollo Hospital, Bhilai for further treatment. There he took treatment as inpatient from 02.05.2012 to 12.05.2012 and during the course of treatment, his right leg Tibia & Fibula bone was operated due to which the appellant sustained permanent disability to the extent of 40% as certified by Medical Board, Rajnandgaon.

3. On account of aforementioned disability sustained by the appellant, he filed claim application before competent Claims Tribunal claiming compensation of Rs.29,90,700/- in total on all heads.

4. Respondent- 1/Insurance Company filed reply to the claim application and pleaded that offending vehicle bearing No.CG08-L-1237 was not involved in the accident. The accident occurred due to appellant's own negligence, on the date of accident, both, appellant as well as respondent- 2, driver of offending vehicle, were not having valid and effective driving licence to drive their vehicles and therefore, there is violation of conditions of insurance policy.

5. Respondent- 2/driver of offending vehicle pleaded that on the date of accident he was possessing a valid and effective driving license to drive the vehicle and on the date of accident the vehicle in question was insured with Insurance Company. Therefore, liability if any, for payment of compensation would be on the Insurance Company. It has also been pleaded that income pleaded by the appellant was on higher side.

6. On appreciation of evidence and pleadings thereof, learned Claims Tribunal held that the appellant sustained disability of permanent nature and assessed the functional disability to the extent of 8% instead of 40% as mentioned in the disability certificate. Learned Claims Tribunal after assessing income of the appellant at Rs.36,000/- per annum and also by adding medical expenses said to be proved by the appellant, awarded a total sum of Rs.1,21,767/- as compensation.

7. Learned counsel for the appellant submits that learned Claims Tribunal committed an error in awarding compensation which is on lower side. He further argues that learned Claims Tribunal assessed income of the injured appellant on lower side. In the facts and circumstances of the case as well as looking to the year of accident ie 2012, wages for an unskilled labour was Rs.4,498/- has been notified by the competent authority under the **Minimum Wages Act, 1948**. He also submitted that no amount has been awarded for pain and suffering and also for special diet, loss of earning during laid low period etc.

8. On the other hand learned counsel for respondent- 1 supports the impugned award and argues that learned Claims Tribunal in view of no specific evidence of proof with respect to income of the injured/appellant, rightly assessed his yearly income which does not require any interference. He further submits that learned Claims Tribunal awarded reasonable compensation by applying right multiplier in the facts and circumstances of the case.

9. I have heard learned counsel for the parties, perused the records. It is undisputed that the appellant sustained permanent disability due to the injuries sustained by him in the motor accident. Medical certificate (ExP/1) indicates the disability to the extent of 40% of permanent nature and also indicates that it is non-progressive in nature. The appellant, to prove his disability, examined Dr Prakash Bhalerao (AW-1), member of Medical Board who in his evidence specifically stated that the disability of the appellant is to the extent of 40%. He also stated that the said disability is not for the whole body, but only for his right leg. Therefore, learned Claims Tribunal in view of injury sustained by the appellant, its nature, that too it being non-progressive and the disability is only to his right leg, rightly assessed functional disability of 8% to the whole body and the same cannot be said to be erroneous. Even if the disability is to be considered as to how it affected the earning capacity of the injured then it is to be taken into consideration the nature of work and whether it creates any obstruction in performing his earlier nature of work or not.

10. With regard to argument raised by the injured appellant with respect to assessing his yearly income, perused the pleadings as well as the statement of appellant in which he specifically stated that on the date of accident he was managing mutton shop and for this purpose he used to travel various places for purchase of goat and chicken. Appellant also pleaded that from the said business he was earning about Rs.10-15,000/- per month. In support of his pleadings, appellant failed to produce any documentary evidence and therefore, income as pleaded and stated by

the appellant could not be taken as admissible piece of evidence to assess his income.

11. In view of the facts and evidence available on record it will be safe to take minimum wages fixed by the State Government in the year 2012 prevailing in the state for basis of considerations of earnings of appellant and keeping in mind the price index prevailing for the State and districts. Though appellant has argued that in the year 2012 minimum wages for an unskilled labour was fixed as Rs.4,498/- per month by the State Government, but no documentary evidence has been adduced in support of his argument. Even if the argument of learned counsel for the appellant is not supported by any documentary evidence, this Court can take notice of wage rates prevailing in the urban area and semi-urban areas during the time of accident.

12. In view of above, income of the appellant is assessed as Rs.4,500/- per month which comes to Rs.54,000/- per annum. As the disability of the appellant is assessed as 8% by learned Claims Tribunal is not challenged by the respondents, therefore, future loss of income of the appellant would be Rs.4,320/- per annum (8% of Rs.54,000/-) and by multiplying this amount with multiplier 17, loss of future income of the appellant would be Rs.73,440/-. The appellant would also be entitled for medical expenses of Rs.66,927/- as proved and accepted by learned Claims Tribunal. Learned Claims Tribunal erroneously not awarded any amount towards pain and suffering. Looking to the nature of injury on leg and suffering during its operation, appellant would be entitled for total sum of Rs.10,000/- for pain and suffering and further sum of Rs.4,500/- towards loss of income during

lay off period. Now total compensation would come to Rs.1,54,867/- (Rs.73,440 + Rs.66,927/- + Rs.10,000/- + Rs.4,500/-).

13. In view of aforementioned discussion, the award passed by learned Claims Tribunal is modified to the extent as mentioned above and the appellant is entitled for a total sum of Rs.1,54,867/- as compensation instead of Rs.1,21,767/- as awarded by the Claims Tribunal. This amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Amount of compensation, if any, already received by the appellant shall be adjusted.

14. Appeal is partly allowed with the modification in the award impugned.

Sd/-
(Parth Prateem Sahu)
JUDGE