

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 821 of 2014

Jagdish Patel S/o Garib Das Patel Aged About 27 Years R/o Domanhil,
P.S. Chirmiri, Distt. Korea C.G.

---- Appellant

Versus

1. Wahid Ali S/o Ramjan Ali R/o Tina Dafai, Charcha, P.S. Charcha,
Distt. Korea C.G.
2. Subhash Kumar S/o Tara Prasad R/o Mansukh, P.S. Baikunthpur,
Distt. Korea C.G.
3. Branch Manager Iffco Tokyo General Insu. Co .Ltd., 84, Narmada
Road, Near Mittal Gas Agency, District : Jabalpur, Madhya Pradesh.

---- Respondents

For Appellant	:	Shrt Anil Gulati, Advocate.
For Respondent Nos. 1 & 2	:	None.
For Respondent No.3	:	Shri Amrito Das, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

26/06/2019

- 1 Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the legality and validity of impugned award dated 08.05.2014 passed by learned Motor Accident Claims Tribunal, Baikunthpur, Distt -Korea, C.G (for short 'the Tribunal') in Claim Case No.89/2011, whereby the Tribunal allowed claim application in part and awarded a total sum of Rs.5,03,341/-, which includes Rs.3,90,460.57 /- towards medical expenses.
- 2 Brief facts relevant for disposal of this appeal are that on 28.2.2010 at about 2.45 pm, Jagdish Patel (injured) was traveling as 'pillion rider' on motorcycle bearing registration No.CG16/F/0415, which was driven by Md. Akram and going towards Baikunthpur from Dubchola. On the way near village- Mansukh Kosa Badi, one Commander Jeep bearing registration No.MP27-B-4664, (hereinafter shall be referred to as "the

offending vehicle”), driven by non-applicant no.2/respondent No.2 - herein dashed against their motorcycle. In the aforesaid accident, Mohd Akram (driver of motorcycle) died on spot and appellant Jagdish Patel suffered injuries on his left hand, stomach & other internal injuries. He was brought to regional hospital at Chirmiri and looking to grievousness of injuries he was referred to Apollo Hospital, Bilaspur, where he remained admitted from 28.02.2010 to 17.03.2010, 02.06.210 to 07.06.2010, 04.10.2010 to 19.10.2010 as indoor patient.

- 3 Appellant/claimant on account of injuries sustained by him filed a claim application under Section 166 of the 1988 claiming Rs.15,56,000/- as compensation on the ground mentioned therein.
- 4 Non-applicants no.1 & 2/respondent nos. 1 & 2, owner & driver of offending vehicle submitted reply to claim application and denied all the pleadings made therein except admitted facts. They pleaded that on the date of accident non-applicant no.2- Subhash Kumar was not driving offending vehicle. They also denied involvement of their vehicle in alleged accident. They further pleaded that on the date of accident their vehicle was insured with non-applicant no.3/insurance company, therefore, liability if any for payment of compensation would be on insurance company and prayed for dismissal of claim registered against them.
- 5 Non-applicant no.3-Insurance Company submitted reply to claim application and stated that accident took place due to negligence of driver of motorcycle himself, therefore, there was contributory negligence to the extent of 50%. It was further pleaded on the date of accident

offending vehicle was carrying 10-12 passengers and neither driver of motorcycle nor driver of offending vehicle was possessing valid and effective driving license. As the offending vehicle was plied in breach of conditions of insurance policy, therefore, non-applicant No.3- Insurance Company is not liable to pay any amount of compensation to claimant.

- 6 Learned Claims Tribunal after appreciating pleadings and evidence placed on record by respective parties held that accident took place due to rash and negligent driving of driver of offending vehicle (Commander Jeep) in which claimant suffered injuries. The Tribunal arrived at a finding that accident did not take place due to negligent driving of driver of motorcycle and accordingly, allowed claim application in part and awarded a total sum of Rs.5,03,341/- as compensation alongwith interest @ 6% p.a. from the date of application till its realization.
- 7 Learned counsel for the appellant submits that though the Tribunal awarded amount of compensation towards medical expenses incurred by appellant but committed mistake in not awarding any amount towards loss of income during period of treatment i.e. 28.02.2010 to 17.03.2010, 02.06.210 to 07.06.2010, 04.10.2010 to 19.10.2010 (total 40 days) and assessing monthly income on lower side. He further submits that even after discharge from hospital, the claimant could not be able to perform his work to earn livelihood for a further period of three- four months.
- 8 Per contra learned counsel for respondent No.3/Insurance Company supported the impugned award and argued that the Tribunal has already awarded suitable amount of compensation to claimant after considering all pecuniary and non-pecuniary damages suffered by him.

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

10 In support of claim application, appellant submitted medical bills, discharge summary and also examined Dr. Sunil Kumar Kedia, Surgeon, Apollo Hospital, Bilaspur as NAW-2. In the discharge summary (Ex.P-102) issued by Apollo Hospital, Bilaspur it is mentioned that claimant underwent surgery of stomach and left humeral shaft. Ex.P-103 is another discharge summary in which also it has been mentioned that claimant had to undergo surgeries. Though discharge tickets of treatment from 04.10.2010 to 19.10.2010 have not been filed but appellant has filed receipt/bills i.e. Ex.P-65 to 70, which show that he was not only treated between 4.10.2010 & 19.10.2010 but he also made payments during this period.

11 On the basis of material available on record, the Tribunal arrived at a finding that appellant failed to prove his income as pleaded in claim application. Before this Court also learned counsel for the appellant has not been able to bring on record any document showing income of appellant as pleaded by him in claim application. In absence of any documentary evidence with respect to income of appellant, income is to be calculated on notional basis. Date of accident is 28.02.2010. Therefore, looking to minimum wage rate prevailing in the concerned District and State, it would be just and proper to assess monthly income of claimant/appellant at Rs.4,000/-.

12 So far as, ground raised by learned counsel for the appellant that Claims Tribunal erred in not awarding any amount towards loss of income during treatment period is concerned, perusal of impugned award would

show that the Tribunal has not awarded any amount towards loss of income during period of treatment, whereas records would show that appellant took treatment as indoor patient in Apollo Hospital, Bilaspur from 28.02.2010 to 17.03.2010, 02.06.210 to 07.06.2010, 04.10.2010 to 19.10.2010 (total 40 days).

13 In view of above fact, this Court is of the view that appellant must not have performed his work from March till June i.e. about four months, and in the month of October also he may not be able to perform his work. Thus, looking to the period of treatment of injured claimant as indoor patient i.e. 40 days, this Court feels that appellant/claimant is further entitled for an amount towards loss of income during the period of treatment including period of rest i.e. for five months, which comes to Rs.20,000/- (4000 X 5).

14 In view of above, appellant/claimant will be entitled for additional sum of Rs.20,000/-, apart from the amount already awarded by the Tribunal. In other words, claimant is now entitled for an amount of Rs. Rs.5,23,341/- instead of Rs.5,03,341/- as awarded by the Tribunal. This additional amount of compensation will carry interest @ 6% p.a. from the date of filing of application till its realization.

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

Sd /-

(Parth Prateem Sahu)
Judge