

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 327 of 2013

- Ghanshyam S/o Banau Ratnakar Aged About 40 Years R/o Lavan, P.S. & Tahsil Kasdol, Distt. Raipur (Now Baloda Bazar-Bhatapara) C.G.

---- Appellant

Versus

1. Vijay Kumar Barve, S/o Dauram Barve, Aged About 30 Years R/o Main Road, Lavan, P.S. & Tahsil Kasdol, Now Distt. Baloda Bazar-Bhatapara C.G.
2. Bihari Lal Barve S/o Gangaram Barve R/o Village Main Road, Lavan, P.S. & Tahsil Kasdol, Now Distt. Baloda Bazar-Bhatapara C.G.
3. Manager, I.C.I.C.I. Lombard, 1st Floor, Lal Ganga Complex, G.E. Road, Raipur C.G.
4. Bhim Lohar S/o Dandu Lohar R/o Lavan in Market Near Peepal Tree Lavan, P.S. Kasdol, Tahsil Baloda Bazar, Distt. Baloda Bazar-Bhatapara C.G.

---- Respondents

For Appellant	:	Shri SP Sahu, Advocate
For Respondent No.3.	:	Shri Amrito Das, Advocate with Shri K. Rohan, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

15/05/2019

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act of 1988') challenging award dated 3.1.2013 passed by learned 1st Additional Motor Accident Claims Tribunal, Baloda Bazar (for short 'the Claims Tribunal') in Claim Case No.19/11 whereby the Claims Tribunal allowed claim application in part and awarded total compensation of Rs.17,455/- along with

interest @ 6% p.a. from the date of application till its realization.

2. Brief facts relevant for disposal of this appeal are that on 18.3.2010 at about 2.10 p.m. some unknown person had stolen tractor-trolley of one Ramayan Satnami and claimant along with Rakesh, Raghunath, Narsingh, Satish Kumar & others had gone towards Sirpur road in Maruti Van bearing registration No.CG04-HB-7138, owned by non-applicant No.2, in search of thief. When they reached near Temri Turn, the vehicle dashed with a standing tree as a result of which claimant sustained fracture injury on his right leg. One Narsingh also died in the said accident. Accident was reported to Police Station Kasdol based on which Crime No.112/10 for commission of offence under Section 279, 337, 338 & 304A of the Indian Penal Code was registered against non-applicant No.1-driver. Injured claimant after recovering from injuries filed claim application before Claims Tribunal claiming Rs.3,60,000/- as compensation on the ground that due to fracture injury on his thigh bone, he became permanently disabled. He also pleaded that on the date of accident, he was 39 years old and was working as Plumber and thereby earning Rs.5,000/- per month.
3. Non-applicant No.1 & 2 i.e. driver & owner of offending vehicle respectively, filed their reply to claim application and denied all adverse pleadings made in application. They have pleaded that non-applicant No.1 was driving vehicle cautiously & carefully, however, suddenly one ox came on road and to save

ox, driver left the road and dashed against a standing tree. They have also pleaded that on the date of accident offending vehicle was insured with non-applicant No.3 Insurance Company and as the offending vehicle was not plied in violation of any of the conditions of insurance policy, therefore, the insurance company is liable to indemnify owner in case any compensation is awarded by the Claims Tribunal.

4. Non-applicant No.3 Insurance Company submitted reply to claim application and denied all adverse pleadings in the claim application. It was pleaded that on the date of accident offending vehicle was plied in breach of condition of insurance policy as its driver was not possessing valid and effective driving license. It was also pleaded that offending vehicle having certificate of insurance for private purpose was given on hire at the relevant point of time, and thus, the owner of vehicle had breached condition of insurance policy.
5. The Claims Tribunal after appreciating pleadings and evidence brought on record by the respective parties has partly allowed claim application by holding that accident occurred due to rash and negligent driving by driver of offending vehicle; claimant had not suffered any permanent disablement in the said accident; there was no violation of any condition of insurance policy and accordingly awarded Rs.17,455/- as compensation including medical expenses.
6. Learned counsel for claimant-appellant submits that appellant produced disability certificate (Ex.A-19) issued by District Medical Board, Mahasamund in which it has been specifically

mentioned that claimant suffered 50% permanent disability due to fracture of M/3 Femur bone. Appellant took treatment as indoor patient in Dr. Bhimrao Ambedkar Hospital, Raipur from 18.3.2010 to 30.3.2010 but the Claims Tribunal has not awarded any amount towards attendant and loss of earning during treatment period and future loss of income. Dr. N.K. Mandwe (AW-2), Member of District Medical Board, Mahasamund, has categorically stated in his statement that appellant suffered 50% disability due to fracture injury.

7. Per contra, learned counsel appearing on behalf of respondent No.3 supported the impugned award passed by the Claims Tribunal and submitted that after taking into consideration the entire evidence available on record, Claims Tribunal awarded just compensation and the same cannot be said to be erroneous in any manner.
8. I have heard learned counsel for the parties and perused the record.
9. So far as the submission that Claims Tribunal erred in holding that appellant has not suffered permanent disability is concerned, a perusal of impugned award would show that the Claims Tribunal has assigned convincing reasons for disbelieving disability certificate, which warrant no interference at all. In the cause title of claim application, appellant has been shown to be resident of village Lawan, Police Station & Tahsil Kasdol, District Raipur, but appellant instead of appearing before the District Medical Board, Raipur for issuance of disability certificate appeared before the District

Medical Board, Mahasamund by showing himself to be resident of village Labhra, PS Mahasamund. From the above conduct of appellant it is apparent that claimant had not appeared before the District Medical Board, Mahasamund with clean hands and had fraudulently procured disability certificate dated 25.7.2012 (Ex.A-19).

10. That apart, claimant/appellant examined himself as AW-1. He admitted in Para-10 of his statement that he is not using crutches for walking and that he does not require help of crutches for walking. He further admitted that his photograph on crutches was taken for affixing it on disability certificate and that disability certificate was issued by doctor by seeing photograph only. He further admitted in Para-12 of his examination-in-chief that he is still earning amount equivalent to amount which he was earning prior to accident as daily paid employee. He further admitted that Medial College Hospital, Raipur refused to issue disability certificate to him on the ground that he has not suffered any disability.
11. In view of above specific admission on the part of appellant, I am of the considered view that the Claims Tribunal has not committed any mistake in disbelieving disability certificate (Ex.A-19) and not awarding any amount under the head of permanent disability.
12. As regards the award of amount under other heads, indisputably appellant suffered fracture in femur bone and remained admitted in hospital as indoor patient for a period of about 15 days. Looking to the nature of injury sustained by

claimant, it can be safely presumed that appellant could not have performed his work for a period of about 2 months and as such, he is definitely entitled for loss of income during treatment period i.e. for 2 months instead of 13 days as assessed by the Claims Tribunal. Though the appellant failed to adduce any documentary evidence in support of his claim with respect to income, but considering the nature of job which appellant was doing at the time of accident i.e. Plumber, and minimum wages prevailing at that point of time, the income of claimant is considered as Rs.4,500/- per month. As already held that appellant could not be able to discharge his work for a period of two months, therefore, he is entitled for a total sum of Rs.9,000/- towards loss of earning during period of treatment.

13. Appellant remained admitted in hospital for about 13 days and during this period he might have been taken care of by someone and therefore he is entitled for a sum of Rs.2,000/- towards attendant, his diet and conveyance expenses.
14. Considering the nature of injury sustained by claimant i.e. fracture in femur bone and its future effect, amount of Rs. 5,000/- awarded by Claims Tribunal for mental and physical agony is inadequate, the same is also required to be enhanced. It is, accordingly, enhanced to Rs.10,000/- from Rs.5,000/- as awarded by Claims Tribunal.
15. Claimant/appellant is now entitled for compensation in the following manner;-

Heads		Amount Awarded
For Medical Expenses	:	Rs.2,300/- (Maintained)
For travelling expenses	:	Rs.8,800/- (Maintained)
For loss of income	:	Rs.9,000/-
For physical & mental agony	:	Rs.10,000/-
For attendant, his diet & conveyance	:	Rs.2,000/-
Total	:	Rs.32,100/-

16. Since the Claims Tribunal has already awarded Rs.17,455/-, after deducting said amount, claimant/appellant is entitled for enhanced amount of Rs.14,645/- (32,100 - 17,455). This additional amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rests of conditions shall remain as it is.

17. Impugned award passed in Claim Case No.19/11 is modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-