

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 1078 of 2013**

Punit Ram Sinha (Kalar), S/o Bisahu @ Bisauha, Aged About 35 Years, R/o Bhatagaon, Post Office Raipur, Police Station Tikrapara, Raipur, District Raipur (C.G.).

---- Appellant

Versus

1. Munshi Yadav S/o Samal Yadav, Aged About 38 Years, R/o Village Germachhall, Post Office & Police Station Jainagar, District Kotarama (Jharkhand).
{Driver of vehicle truck bearing registration No.WB/23/B/9655}
2. Gurubaksh Singh, S/o Not mentioned, R/o Near Chhokranala, Telibandha, Post Office Raipur, Police Station Telibandha, Raipur, Tahsil & District Raipur (C.G.).
{Registered owner of vehicle truck bearing registration No.WB/23/B/9655}
3. The Reliance General Insurance Company Limited, through Branch Manager, Branch Office, 4th Floor, Ravi Bhawan, Near Jaistambh Chowk, Raipur, Post Office Raipur, Police Station Gol Bazar, Raipur, Tahsil & District Raipur (C.G.).
{Insurer of vehicle truck bearing registration No.WB/23/B/9655}

---- Respondents

For Appellant	: Mr. Shivendu Pandya, Advocate
For Respondents No.1 and 2	: None
For Respondent No.3	: Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

29/11/2019

1. This appeal has been filed by appellant/claimant under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 06/08/2013 passed by 7th Additional Motor Accident Claims Tribunal, Raipur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.101/12, whereby learned Claims Tribunal allowed the

claim application in part and awarded a total sum of Rs.2,42,760/- as compensation along with interest @ 6% per annum from the date of filing of claim application till its realization in an injury case.

2. Brief facts relevant for disposal of this appeal are that on 14/07/2010, appellant was travelling on a Tata Scorpio Jeep bearing registration No.CG/04/B/5551 and going to Mahasamund from village Khairjhiti. When he reached near village Bhoring Chowk at about 1.30 AM (mid night) at that relevant time, one truck bearing registration No.WB/23/B/9655 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1, dashed Tata Scorpio Jeep, in which, appellant was travelling. In the aforementioned accident, appellant suffered injuries over his head, both legs and right hand. Appellant was taken to the Primary Health Centre, Mahasamund for treatment, from where, he was shifted to Balaji Hospital, Raipur. The matter was reported to concerned Police Station, based upon which, crime No.175/2010 was registered against non-applicant No.1.
3. On account of aforementioned injuries, appellant/claimant filed a claim application before concerned Claims Tribunal mentioning therein that he suffered 50% permanent disability due to injury suffered by him, particularly, on head as well as right thigh. The claim was also preferred on account of medical expenditure incurred by him as well as loss of income during the period of treatment.

4. Non-applicants No.1 and 2, who are driver and owner of the offending vehicle, even after service of notice, did not choose to appear before learned Claims Tribunal and were proceeded *ex parte*.
5. Non-applicant No.3/Insurance Company submitted reply to claim application and denied all the adverse pleadings made in the claim application. It was pleaded that there was contributory negligence on the part of driver of the Scorpio Jeep. It was further pleaded that driver, owner and insurer of Scorpio Jeep have not been impleaded as one of the party respondents, therefore, claim application is not maintainable on account of non-joinder of necessary party. It was lastly pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence and there was violation of conditions of insurance policy. Insurance Company is not liable for payment of any amount of compensation.
6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.2,42,760/- as compensation, but the plea of permanent disability raised by appellant/claimant has been rejected.
7. Learned counsel appearing for appellant/claimant submitted that the appellant suffered grievous injury over his head, both legs and right hand, particularly, fracture over his right thigh, for which, he took treatment as indoor patient from 14/07/2010 to 28/07/2010 and thereafter, from 29/07/2010 to 08/08/2010 at Balaji Hospital, Raipur.

He further submitted that permanent disability certificate (Ex.P-152) was issued by District Medical Board, Mahasamund and President of District Medical Board has been examined by the appellant in his behalf to prove the disability certificate, but learned Claims Tribunal has not considered the documentary as well as oral evidence placed on record by the appellant before the learned Claims Tribunal to prove the fact of permanent disability suffered by him, which is required to be interdicted. He further submitted that learned Claims Tribunal committed an error in assessing the income of appellant as Rs.3,000/- per month ignoring the date of accident, place of residence of appellant as well as his nature of work at that place. He lastly submitted that in view of material and evidence available on record, the amount of compensation awarded by learned Claims Tribunal requires to be enhanced suitably.

8. Per contra, learned counsel appearing for respondent No.3/Insurance Company submitted that appellant has failed to prove permanent disability by placing cogent and reliable piece of evidence. He further submitted that Dr. N.K. Mandape (AW-2), President of District Medical Board was examined before learned Claims Tribunal to prove disability suffered by the appellant, who admitted in his evidence that the percentage of disability shown in the certificate as 50% with respect to whole body but not mentioned anything in disability certificate, therefore, learned Claims Tribunal has rightly arrived at a finding that the appellant has failed to prove disability

suffered by him. He further submitted that learned Claims Tribunal has awarded the amount towards all the bills placed by appellant with regard to the treatment/medical expenditure and further awarded an amount of Rs.30,000/- towards loss of income, Rs.20,000/- towards pain and suffering and Rs.5,000/- towards special diet and conveyance, which is on the higher side. He lastly submitted that learned Claims Tribunal has awarded sufficient amount of compensation, which do not call for any interference.

9. I have heard learned counsel appearing for the parties and perused the record carefully.
10. The pleadings made in the claim application would show that before the date of accident, appellant was earning his livelihood from carrying luggage on hand cart. To prove the permanent disability suffered by appellant, he has produced disability certificate (Ex.P-152) issued by District Medical Board, Mahasamund, Chhattisgarh. The disability certificate (Ex.P-152) bears that Punitram Sinha suffered 50% permanent disability due to old fracture (right) L/3 femur.
11. It is apparent that to prove disability, appellant got examined himself before the District Medical Board, Mahasamund for assessing percentage of disability suffered by him. Dr. N.K. Mandape (AW-2) has also been examined to prove the disability certificate (Ex.P-152), who in his evidence has very categorically stated that the injuries suffered by the appellant over right femur could not be cured fully and

due to which, he is unable to walk and do any kind of heavy work. In the query put by learned Claims Tribunal to Dr. N.K. Mandape (AW-2) for arriving at a finding that the appellant suffered 50% permanent disability on any particular region or whole body, the witness admitted that in disability certificate, he has mentioned the percentage of disability for whole body and not any particular region i.e. leg.

12. In view of material and evidence available on record, particularly, disability certificate (Ex.P-152), which has been partly proved by the appellant as well as Dr. N.K. Mandape (AW-2) that he suffered fracture injury over his right thigh, for which, District Medical Board, Mahasamund issued a certificate mentioning therein that he suffered 50% disability and looking to the nature of engagement of appellant for the purpose of earning of livelihood as he was pulling hand cart and carrying luggage and the part of body i.e. leg, in which, he has suffered injury, in the opinion of this Court, the injury will affect the earning of livelihood of the appellant. The learned Claims Tribunal committed an error in ignoring the disability certificate in its entirety without considering the nature of injury and part of body, on which, injury was suffered by the appellant. Though it is very difficult to ascertain the percentage of functional disability suffered by appellant, but looking to uncontroverted fact that the appellant is engaged in a work as hand cart puller and thereby earning his livelihood by loading and transporting goods on it. In the above facts, it will be appropriate to assess disability of appellant to the extent of

25% for the purpose of awarding the amount of compensation towards loss of future earning.

13. Now the question arises for consideration before this Court is whether learned Claims Tribunal awarded just and reasonable amount of compensation in the facts and circumstances of the case.
14. The object of the M.V. Act is to compensate the family of the victim or the injured suitably by awarding just and reasonable amount of compensation. There are two modes of awarding compensation. One is towards pecuniary loss which the injured or family members/legal representatives of the deceased suffers and the other is towards the non-pecuniary damages. The non-pecuniary damages are to be awarded towards the mental pain and agony and loss of amenities of life etc. The assessment of loss and damages suffered by the injured as non-pecuniary damages is difficult to assess, but cannot be assessed in a mechanical manner. But for arriving at a reasonable conclusion to award 'just compensation' to the injured, several factors are to be taken into consideration i.e. the injury of injured, the organ on which the injury sustained, permanent disability by loss of limb or any organ of the body etc., the part of the body affected and the work in which injured is engaged and how the body of the injured is affected by the injury.
15. Before the learned Claims Tribunal, appellant has pleaded that he was doing the work of hand cart puller and thereby earning Rs.300/- per day, but has not produced any evidence with respect to place of

work, employer under whom he was working or any documentary evidence with respect to his salary/income. The appellant has failed to prove his income as pleaded in claim application, therefore, in the facts and circumstances of case, income of appellant is to be assessed on notional basis. The date of accident was 14/07/2010, therefore, looking to minimum wages rate prevailing in the Districts of State C.G., it will be proper to hold engagement of appellant in labour work and his income to be assessed to Rs.3,500/- per month.

16. Considering the facts and circumstances of case, I hold the income of appellant on the date of accident to be Rs.3,500/- per month i.e. Rs.42,000/- per annum. As discussed, it has been held that the loss of earning capacity of the appellant will be 25% on account of permanent disability, which comes to Rs.10,500/- per annum. At the time of accident, deceased was aged about 35 years, therefore, in view of ratio laid down in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**¹, multiplier of 16 would be applicable in the present case. After applying multiplier of 16, total loss of income of appellant comes to Rs.1,68,000/- (10,500 x 16). In addition, the appellant is also entitled for an amount of Rs.1,87,760/- towards medical expenditure, Rs.30,000/- towards loss of income, Rs.5,000/- towards special diet and conveyance and Rs.20,000/- towards pain and suffering as already awarded by learned Claims Tribunal. The appellant will further entitled to Rs.7,000/- towards attendant.

¹ (2009) 6 SCC 121

17. On the basis of above calculation, appellants is entitled for a total compensation of Rs.4,17,760/- (1,68,000 + 1,87,760 + 30,000 + 5,000 + 20,000 + 7,000).
18. For the foregoing reasons, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. Appellant is now entitled for total amount of compensation of Rs.4,17,760/- instead of Rs.2,42,760/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge