

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.328 of 2013**

Ishwar Prasad Verma S/o Dhuruwa Aged About 35 Years R/o. Village-Chirpota, P.S. Kasdol, Distt. Raipur (Now Baloda Bazar-Bhatapara) C.G.

---- Claimant/Appellant**Versus**

1. Yogesh Kumar Satnami S/o Ramesh Kumar Satnami Aged About 20 Years R/o. Village- Farhada, P.S. Bhatapara Gramin, Distt. Baloda Bazar-Bhatapara C.G. Now Distt. Baloda Bazar-Bhatapara C.G.
2. Uday Pandey S/o Rama Pandey Aged About 38 Years R/o MIG-3, Sector-3, Shanker Nagar, Raipur C.G.
3. United India Insu. Co. Ltd. Micro Branch Office- Near P.O. Station Road, Bhatapara, Distt. Baloda Bazar-Bhatapara C.G.

---- Respondents

For Appellant	:	Shri S.P. Sahu, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****26/11/2019**

1. By the instant appeal, appellant/claimant is challenging the legality and validity of the impugned award dated 11.01.2013 passed by the First Additional Motor Accident Claims Tribunal, Baloda Bazar, Distt. Raipur, (Now Baloda Bazar Bhatapara) C.G (for short 'the Tribunal') in Claim Case No.17/2012, whereby the Tribunal allowed claim application in part and awarded a total sum of Rs.1,70,663/- as compensation under all heads in an injury case.
2. Brief facts necessary for disposal of this appeal are that on 29.07.2011 at about 10:50 am, the appellant (injured) was traveling on his motorcycle bearing registration No.CG07/JA/1155 along with Bhagwati Verma & Deshram Verma

and coming from village- Chirpota to Balodabazar. When they reached near village- Bamhanmudi, one Bolero Geep bearing registration No.CG010-F-7691, (hereinafter referred as “offending vehicle”), driven by respondent No.1- Yogesh Kumar Satnami, dashed against his motorcycle. On account of aforesaid accident, appellant/claimant suffered grievous injuries on various parts of the body including fracture injury on his right leg. He was immediately taken to Chanda Devi Hospital at Balodabazar where looking to grievousness of injuries, he was referred to Mekahar Hospital at Raipur where he remained admitted one day and thereafter he was taken to Arihant Hospital, Raipur for better treatment. On account of motor accidental injuries suffered by him, he filed claim application under Section 166 of the Act of 1988 before competent claims Tribunal on 28.08.2012 claiming Rs.8,18,000/- as compensation under various heads on the ground mentioned therein.

3. Non-applicant No.1/respondent No. 1- driver of the offending vehicle submitted reply to claim application and denied all adverse pleadings made therein. It was further pleaded that three persons were traveling on motorcycle and driver of said motorcycle drove his motorcycle rashly and negligently due to which, he met with the accident. It was also pleaded that on the date of accident driver of said motorcycle was not having valid and effective driving license to drive the motorcycle. Lastly it was pleaded that on the date of accident, offending vehicle was insured with the Insurance Company, therefore, liability if any for payment of amount of compensation would be on insurance company
4. Respondent No.3/Insurance Company submitted its reply to the claim application stating that on the date of accident driver of offending vehicle was not having valid and effective driving license and as such, there was breach of

condition of insurance policy, Insurance Company is not liable for payment of any amount of compensation.

5. The learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties arrived at a finding that the appellant failed to prove that he suffered permanent disability in the accident and further holding that he also failed to prove expenditure occurred towards conveyance or for future treatment ie, for removing the rod from his leg, awarded a total sum of Rs.1,70,663/- as compensation.
6. Learned counsel for the appellant submits that the Tribunal committed error in holding that the appellant failed to prove that he did not suffer any permanent disability and further erred in awarding amount only towards medical expenditure. He also submits that on the date of accident the appellant was working as 'Labour' and thereby earning Rs.120/- per day and due to injuries suffered by him in the accident, he could not able to work as labour and, therefore, amount of compensation awarded by the Tribunal required to be suitability enhanced.
7. Per contra learned counsel for respondent No.3/Insurance Company supported the impugned award and submits that the Tribunal has rightly assessed the amount of compensation. She also submits that the appellant was examined by Dr. N.K. Mandpe, who was the member of the District Medical Board, Mahasamund and he categorically stated in his evidence that disability certificate issued by the Medical Board is only with respect to his right leg, therefore quantum of disability mentioned in the disability certificate ie. 60% cannot be taken into consideration as for the whole body. She further submits that disability certificate has been issued only for the period of three

years and Dr. N.K. Mandpe also admitted in his evidence that disability suffered by the appellant can be cured or it cannot be cured after lapse of three years, therefore, statement of the examining doctor is not clear that he suffered permanent disability or not.

8. I have heard the learned counsel for the parties and perused the record.
9. The accident and injuries suffered by the appellant as well as treatment taken by him is not in dispute. The only question arises before this Court for consideration is whether the appellant has suffered permanent disability or not and whether the amount of compensation awarded is just and proper in the facts of the case.
10. On perusal of the material available on record, it is apparent that the appellant sustained grievous injuries over his right leg in the accident caused by the offending vehicle. The medical document (Ex.A-11) ie discharge ticket also makes it clear that the appellant remained admitted as indoor patient on 30.7.2011, where his x-ray examination was done and it was diagnosed that he has suffered fracture injury in his tibia fibula bone. He underwent a surgery for the fracture injuries on 07.08.2011 and, thereafter, discharged from the hospital on 18.08.2011. It is evident from Ex.A-43 disability certificate issued by the Medical Board that percentage of the disability is 60%.
11. Dr. N.K. Mandpe examined as AW-3 and stated in his evidence that the appellant suffered fracture injury in his tibia fibula bone. He denied the suggestion of percentage of disability has been mentioned in the disability certificate on the basis of presumption. He stated that percentage of the disability has been mentioned in the disability certificate on the basis of guidelines issued by the Government of India. In his cross examination in

paragraph Nos.5 he specifically admitted that disability certificate has been issued only for the period of three years and also stated that disability of the appellant can be cured or cannot be cured after three years.

12. On perusal of the evidence of examining doctor, it is apparent that even though specific question has put to him he has not stated in specific terms whether the disability of the claimant can be cured after lapse of three years or not.

13. In view of the medical documents available on records, evidence of the doctor AW-3 and looking to the nature of the injuries suffered by the appellant/claimant, who was working as 'Labour' it cannot be said that his work is not effected by the said injuries. The labours are required to do heavy work of loading or unloading etc, and looking to his leg injuries definitely he will have bearing over his working efficiency, which may affect his livelihood also, and therefore, finding recorded by the Tribunal holding that the appellant failed to prove the permanent disability is not sustainable and liable to be and is hereby set aside.

14. Now the next question arises before this Court for consideration as to what is the percentage of the disability, appellant suffered due to aforementioned injury for the purpose of calculation of the amount of compensation, which may have bearing on the earning of the appellant.

15. Insurance company has not put specific question whether the disability suffered by the appellant will affect the whole part of the body or not. But it cannot be ignored that disability certificate has been issued only with respect to his right leg. (Injury over Tibiya Fabula bone.)

16. Considering the nature of work in which appellant was engaged and injuries suffered by the appellant, in the considered opinion of this Court, percentage of disability can be assessed at the rate of 20% for the whole body. The Tribunal has not ascertained the income of deceased but what is evident from the record that on the date of accident appellant was earning Rs. 120/- per day from his labour work.
17. In view of the above, this Court deems fit and proper to assess monthly income of the appellant to Rs.3,500/- per month and by taking monthly income of Rs.3,500/-, the yearly loss of earning due to disability is assessed at Rs.8,400/- (20% of 3500 x 12). As on the date of accident appellant was 35 years of age, therefore, multiplier of 16 would be applicable and by applying multiplier of 16 to Rs.8,400/-. the loss of income due to accidental injury comes to Rs.1,34,400/- (8400x16).
18. Further the Tribunal has committed error in not warding any amount towards special diet & attendant. Looking to the date of accident, medical documents & discharge tickets available on record with respect to treatment of appellant, it shows that he remained admitted in the hospital from 30.7.2011 to 18.08.2011. In considered opinion of this Court, the appellant could not have performed his regular work for a period of about two months after discharge therefore, he is entitled to Rs.7,000/- (3500x2) for loss of income during laid down period of treatment, the appellant is also entitled for Rs.2,000/- towards special diet and Rs. 1,500/- for attendant.

19. Now, appellant/claimant is entitled for a total sum of Rs.3,15,563/- (134400 + 7000 + 2000 + 1500 + 170663 awarded by the Tribunal towards medical expenses, pain & suffering). This amount of compensation will carry interest @ 6% p.a. from the date of filing an application till its realization. Other conditions imposed by the Tribunal will remain intact.

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

Sd/-

(Parth Prateem Sahu)
Judge