

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 1012 of 2013

Nirmal Singh, S/o Sonha Singh, aged about 50 years, Resident of House No.73/B, Maitri Vihar, Bhilai Nagar, Tahsil Durg, District Durg (C.G.).

---- Appellant

Versus

1. Ram Salaune, son of Seetaram Yadav, aged about 25 years, Resident of Village Jarha, Post Tamara Desh, P.S. Gud, District Riwa, (M.P.).

(Driver of the offending Vehicle No.M.P. 17, C.A. 1745).

2. Rakesh Kumar Tripathi, Son of Shri R.P. Tripathi, aged about 33 years, Resident of Khatkhari, Riwa (M.P.) Pin No.486001.

(Owner of the offending vehicle No.M.P. 17, C.A. 1745).

3. Branch Manager, Bajaj Allianz General Insurance Company Limited, H.I.G. First Floor, Shivaji Nagar, Pragati Nagar, Opposite Petrol Pump, Bhopal (M.P.).

(Insurer of the offending vehicle No.M.P. 17, C.A. 1745).

---- Respondents

For Appellant	: Mr. Syed Majid Ali, Advocate
For Respondent No. 1	: None
For Respondent No. 2	: None
For Respondent No. 3	: Mr. Rohitashva Singh, Advocate on behalf of Mr. Bhaskar Payashi, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

27/06/2019

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 23/11/2012 passed by Sixth Additional Motor Accident Claims Tribunal, Durg District Durg (C.G.) (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.15/2011, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.1,63,878/- as compensation in an injury case.

2. Brief facts relevant for disposal of this appeal are that on 30/12/2010 at about 1.45 pm, when appellant/claimant was travelling on a Motorcycle bearing registration No.CG-07/LX/6098 and going to Radhika Nagar from Supela, at that relevant time, one Maruti Car bearing registration No.MP-17/CA/1745 (hereinafter referred to as 'offending vehicle') dashed motorcycle of appellant/claimant. In the aforementioned accident, appellant/claimant suffered injuries over his right leg/thigh and back along with other injuries. On medical examination, it was found that appellant/claimant suffered fracture injury on his right leg. He was initially admitted to J. L. N. Hospital and Research Centre, Bhilai and thereafter, he was shifted to Ramkrishna Care Hospital at Raipur where he took treatment as inpatient from 01/01/2011 to 09/01/2011.
3. After recovering from injuries suffered by him appellant/claimant filed claim application before the concerned Claims Tribunal claiming Rs.6,80,000/- as compensation mentioning therein that he suffered permanent disability to the extent of 31%.

4. Non-applicants No.1 and 2 submitted joint reply to claim application and pleaded that offending vehicle was owned by non-applicant No.2 and at the time of alleged incident, offending vehicle was driven by non-applicant No.1. They have denied the fact of accident and pleaded that no accident took place from their vehicle. They have further pleaded that on the date of accident offending vehicle was insured with non-applicant No.3/Insurance Company from 19/02/2010 to 18/02/2011, therefore, the compensation if awarded by Claims Tribunal then it will be liability on non-applicant No.3/Insurance Company to satisfy the amount of compensation.
5. Non-applicant No.3 -Insurance Company submitted reply to claim application and pleaded that information with respect to accident was not forwarded, there was head on collision between two vehicles, therefore, there was contributory negligence on the part of appellant/claimant also. It was further pleaded that there was violation of conditions of insurance policy, therefore, 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 held that accident took place due to rash and negligent driving of offending vehicle by non-applicant No.1, there was no contributory negligence on the part of appellant/claimant, there was no violation of conditions of insurance policy and awarded a total sum of Rs.1,63,878/- as compensation

along with interest @ 6% from the date of filing of claim application till its realization in an injury case.

7. Learned counsel appearing for appellant/claimant submitted that learned Claims Tribunal awarded very meager amount of compensation ignoring the injuries and permanent disability suffered by him to the extent of 31% as assessed by the doctor issuing disability certificate vide Ex.P-33. He further submitted that learned Claims Tribunal has also awarded very less amount towards loss of income during the period of treatment, pain and suffering, special diet, attendant and conveyance.
8. Per contra, learned counsel appearing for respondent No.3/Insurance Company submitted that appellant/claimant though filed disability certificate (Ex. P-33), but he could not able to prove the same by examining the doctor who issued disability certificate. He further submitted that there was no loss of income due to any disability or during the period of treatment as offending vehicle owned by appellant/claimant is being driven by driver employed by him as per his own statement.
9. I have heard learned counsel appearing for parties and perused the record carefully.
10. Perusal of record would show that appellant/claimant suffered multiple injuries, for which, he was admitted to J. L. N. Hospital and Research Centre, Bhilai Steel Plant from 30/12/2010 to 01/01/2011 vide Ex. P-1. Thereafter, he was referred to Ramkrishna Care

Hospital at Raipur where he took treatment as inpatient from 01/01/2011 to 09/01/2011, which is evident from Ex. P-7.

11. The injuries suffered by appellant/claimant is not in dispute. Looking to the medical documents placed on record by appellant/claimant, it appears that learned Claims Tribunal has considered all the documents and medical expenditures incurred by appellant/claimant for his treatment and awarded a total sum of Rs.1,41,778/- towards medical expenses.
12. Now the question arises for consideration that whether learned Claims Tribunal had considered loss of income of appellant/claimant and further amount of compensation awarded on other heads are just and proper ?
13. Learned Claims Tribunal looking to the injuries suffered by appellant/claimant as well as evidence available on record held that appellant/claimant could not able to perform his work for a period of 6 months and assessed his income as Rs.6,000/- per month.
14. Learned Claims Tribunal while awarding amount of loss of income during period of treatment has wrongly held that appellant/claimant has not suffered any loss of income during the period of treatment as his vehicle was being driven by driver engaged by him. True it is that as per evidence of appellant/claimant himself, it is evident that after accident, he engaged driver for driving his vehicle which he was driving at the time of accident and earning livelihood from it.

15. Now the question which requires for consideration is whether what will be the wages of driver which he has paid ?
16. Looking to the undisputed fact that appellant/claimant owned vehicle which he was using for the purpose of Taxi, therefore, it cannot be said that evidence given by appellant/claimant that he engaged driver to run the Taxi in his absence cannot be said to be a false statement. Work of driver comes under the category of 'skilled labour', therefore, looking to the date of accident and the period of engagement of driver by appellant/claimant in the year, 2011 in Bhilai city, in the opinion of this Court, wages of driver can be taken as Rs.200/- per day i.e. Rs.6,000/- per month.
17. As learned Claims Tribunal held that appellant/claimant cannot be able to perform work for a period of 6 months, therefore, loss of income which the appellant/claimant suffered is Rs.36,000/- ($6,000 \times 6 = 36,000/-$). Now the appellant/claimant will be entitled for a sum of Rs.36,000/- towards loss of income during the period of treatment instead of Rs.18,000/- awarded by learned Claims Tribunal.
18. Learned Claims Tribunal has awarded Rs.1,000/- towards pain and suffering. The injuries suffered by appellant/claimant in the accident are grievous in nature. The appellant/claimant suffered fracture injury over his right leg and undergone operation. He was under treatment as inpatient for a period of 11 days. Looking to the injuries suffered by appellant/claimant, it cannot be said that appellant/claimant got cured on the date of discharge from the hospital itself.

19. Looking to the medical evidence available on record, in the opinion of this Court, appellant/claimant will be entitled for a sum of Rs.10,000/- towards pain and suffering instead of Rs.1,000/- awarded by learned Claims Tribunal.
20. As the appellant/claimant was admitted in hospital for a period of 11 days for his treatment and looking to the fact that he undergone operation, therefore, in the opinion of this Court, appellant/claimant will be entitled for a sum of Rs.3,000/- towards special diet and Rs.3,000/- towards attendant instead of Rs.1,000/- and Rs.1,100/- awarded by learned Claims Tribunal.
21. The appellant/claimant is resident of Bhilai whereas he took treatment at Ramkrishna Care Hospital at Raipur. After the accident he has to travel from Bhilai to Raipur by private conveyance and thereafter he has to return from Raipur to Bhilai to his house after discharge from the hospital, therefore, in the opinion of this Court, appellant/claimant will be entitled for a sum of Rs.2,000/- towards conveyance instead of Rs.1,000/- awarded by learned Claims Tribunal.
22. For the foregoing reasons, appeal is allowed in part and impugned award passed by learned Claims Tribunal is modified accordingly. Now, appellant/claimant is held entitled for a total amount of compensation of Rs.1,95,778/- (1,41,778 + 36,000 + 10,000 + 3,000 + 3,000 + 2,000) instead of Rs.1,63,878/- 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

Yogesh