

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 569 of 2013

Sangeeta Gupta wife of Shri Vyasdeo Gupta, aged about 30 years, occupation Kirana R/o village Kenanibahal, P.S. & Tahsil Tamnar, Civil and Revenue District Raigarh (CG)

----Appellant

VERSUS

1. Pradeep Kumar Pobia S/o Indrajeet Pobia, aged about 21 years, R/o Midmida, Lahangapali, PS/Chauki-Jute Mill Raigarh, Tahsil & District Raigarh (CG)
2. Nasir Ahmed S/o Sheikh Abdul, occupation- owner of vehicle, R/o Fatahamuda, Banjinpali, Chauki-Jute Mill Raigarh, Tahsil & District Raigarh (CG)
3. The Shree Ram General Insurance Company Limited, through Branch Manager, Shree Ram General Insurance Company Limited, E/8, EPIPRIICOA, Industrial Area, Seetapur, Jaipur (Rajasthan) 302022.

-----Respondents

For Appellant	:	Mr. M.K.Sinha, Advocate
For Respondents 1 & 2:	:	None
For Respondent 3	:	Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

24/06/2019

1. The appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter the Act 1988) challenging the impugned award dated 26.2.2013, passed by the Motor Accidents Claims

Tribunal, Raigarh (CG) in Claim case No. 39/2012 wherein the learned claims tribunal allowed the claim application in part and awarded a total sum of Rs.50,300/- as total compensation in an injury case.

2. Brief facts relevant for disposal of this appeal are that on 17.1.2011 at about 12.20 pm, when the appellant was travelling on a motorcycle along with her husband and minor son while returning from a hospital at Raigarh and was going towards village Jakela at that relevant time, when they reached near Moda Godown of Orissa Road, Raigarh, one Truck bearing No.CG13 D 8318 driven by non-applicant 1, dashed the motorcycle on which the appellant was travelling. In the aforementioned accident, the appellant and her husband (driver of motorcycle) suffered injuries over their person. The appellant suffered fracture over her left leg. She was admitted to District Hospital Raigargh, where she took treatment as inpatient from 17.1.2011 to 28.2.2011. After recovery from the injuries suffered by the appellant, she filed claim application before the competent claims tribunal claiming compensation of Rs.27,28,000/-.
3. Non-applicants 1 and 2 despite service of notice remained unrepresented, therefore, they were proceeded ex-parte. Non-applicant 3/Insurance company submitted its reply to the claim application and denied all the adverse pleadings made in the claim application and further denied the fact of accident, injuries suffered by the claimant and period of treatment. It was further pleaded that on the date of accident, non-applicant 1 was not possessing valid and effective driving licence and the tractor was being plied on public road without any valid registration,

fitness and permit along with the defence that there was contributory negligence on the part of the driver of the motorcycle.

4. The learned claims tribunal on appreciation of pleadings and evidence available on record, held that the accident took place due to rash and negligent driving of the tractor by non-applicant 1 and appellant/ claimant suffered accidental injuries on her person. The claims tribunal further held that there was no violation of the conditions of insurance policy as on the date of accident, the driver of the offending vehicle was possessing valid and effective driving licence. After recording the aforementioned finding, the claims tribunal awarded a total sum of Rs.50,300/- on account of disability, inconvenience during the period of treatment, Rs. 5,000/- towards loss of working efficiency and Rs.10,300/- towards medical expenses.
5. Learned counsel for the appellant submits that the learned claims tribunal committed error in not awarding any amount towards future loss of earning capacity ignoring the disability certificate issued by the District Medical Board. He further argued that the learned claims tribunal ought to have awarded the loss of future prospects in view of the disability of 25% suffered by him which was also proved by issuance of disability certificate from the competent medical board. He also argued that the learned claims tribunal committed error in not awarding any amount towards loss of income during the period of treatment and pain and suffering ignoring the grievous nature of injuries suffered by the appellant.
6. Per contra, learned counsel appearing for the respondent 3/ insurance

company submitted that the learned claims tribunal has rightly assessed the amount of compensation in view of the evidence placed on record by the claimant. He further argued that the claims tribunal has rightly not awarded any amount towards loss of future income as the appellant herself failed to prove any loss of income due to disability if any suffered by her.

7. I have heard learned counsel for the parties and perused the record.
8. The appellant, in support of her claim application has submitted as Ex. P6 which is a MLC report wherein it has been mentioned that the appellant suffered lacerated wound/injury on lower leg and the Doctor has advised for x-ray of the left leg.
9. The appellant has also submitted Discharge Ticket Ex.P15 issued by the Kirodimal Govt. Hospital, Raigarh wherein the date of admission of the appellant is mentioned as 17.1.2011 and date of discharge as 28.2.2011. The document Ex.15 would also show the final diagnosis as compound fracture on her left leg.
10. Looking to the documents Ex.P6 and Ex.P15 it cannot be said that the nature of injuries as mentioned in the claim application by the appellant and stated in her evidence to be false. From the aforementioned documents, it is clear that the appellant/claimant suffered compound fracture over her left leg and she took treatment for about 43 days as inpatient.
11. Though the claimant/appellant has filed disability certificate issued by the District Medical Board, Raigarh mentioning therein that she suffered 25%

permanent physical impairment and also showing it that it will not likely to improve. Perusal of Ex.P14 which is a disability certificate would also show that the Medical Board has not recommended for re-assessment of the disability suffered by the appellant/claimant after any particular period. From the perusal of disability certificate it is evident that as the disability certificate has been issued by the team of 4 Doctors of the Medical Board who were experts in their field and therefore, the disability certificate issued by the medical board cannot be questioned. To prove the disability certificate, the claimant/appellant has examined Dr. Sharad Awasthi, one of the members of the Medical Board as AW2. Dr. Sharad Awasthi, AW2 in his statement though stated that he had issued the disability certificate mentioning therein that there was 25% permanent disability, but he has not stated that the disability will affect earning capacity of the appellant/claimant with the same percentage. Even the claimant has not put any question to Dr. Sharad Awasthi, AW2 as to what problem will she be facing in her life in executing or discharging her work. In cross-examination, the appellant/claimant has stated that at present she can properly move and walk but subsequently she stated that she used to walk lamely.

12. The appellant/claimant though pleaded that she was doing the business of grocery shop and also doing the work of tailoring etc. but not produced any document with regard to any kind of business to be done by her as pleaded in her claim application. The claimant on one hand has not placed any documentary evidence with regard to the nature of her engagement i.e. business of grocery shop or tailoring or produced any

independent witness to support the claim of the appellant with regard to the nature of work as pleaded and stated by her.

13. In view of the above, the learned claims tribunal has rightly come to the conclusion that the appellant/claimant failed to prove the business and his income from it. The claimant in her cross-examination has admitted that she is a house wife. The claims tribunal has held that appellant/claimant failed to prove loss of future income from the business as stated and pleaded by her. But looking to the nature of injuries and the disability said to be suffered by her and proved vide Ex.P/14 has awarded a total sum of Rs.25,000/- towards permanent disability.

14. As the claimant/appellant failed to prove her business and earning from the business, therefore, she will not be entitled for any amount towards loss of future earning but she will be only entitled for the permanent disability suffered by her and the learned claims tribunal has rightly awarded an amount of Rs.25,000/- towards it. The claims tribunal has not awarded any amount towards loss of income during the period of treatment. Undisputedly, the appellant/claimant took indoor treatment for about 43 days at Govt. Hospital Raigarh, looking to the grievousness of the injuries, the appellant could not be able to perform her regular work for a period of one month after discharge. In view of the above, in the opinion of this Court, the appellant/claimant will be entitled for loss of income during the period of treatment. As it has been pleaded and stated that the appellant was house wife and at the same time, the learned claims tribunal has not found the appellant engaged in any other business

and therefore, in the opinion of this Court, looking to the work which the house wife performs in managing the family or keeping house in good condition, washing clothes of the family members, cooking food for family members etc. the work which she performs as a house wife can be assessed as a work to be done by a maid servant for full time.

15. As the date of accident is 17.1.2011, therefore, the income of the appellant for the purpose of calculating the amount of compensation is assessed as Rs.3,500/- per month. Looking to the period of treatment as inpatient for 43 days and the requirement of further bed rest, in the opinion of this Court, the appellant/claimant will also be entitled for loss of income for a period of 4 months. Thus, the appellant/claimant will be entitled for an amount towards loss of income as Rs.14,000/- (Rs.3,500/- x 4). The claims tribunal has not awarded any amount towards attendant ignoring the fact that the appellant was admitted in hospital for more than 1 ½ months and therefore, in the opinion of this Court, the appellant/claimant will also be entitled for a sum of Rs.6,000/- towards attendant including her diet. As the Doctor vide Ex. P14 has issued a disability certificate of permanent nature and also opined that the disability will not likely to improve, the appellant/claimant will be entitled for a sum of Rs.20,000/- towards loss of amenities in life. Apart from the aforementioned amount, the appellant will be entitled for an amount awarded by the claims tribunal i.e. Rs.25,000/- towards permanent disability, Rs.10,000/- towards inconvenience during the period of treatment and Rs.5,000/- towards loss of working efficiency and Rs.10,300/- towards medical expenses. Now, the appellant/claimant will

be entitled for total sum of Rs.90,300/- from the non-applicants 1, 2 and 3 jointly and severally instead of Rs.50,300/-.The amount of compensation will carry interest at the rate as awarded by the Claims Tribunal. Other conditions imposed by the learned claims tribunal shall remain intact.

Sd/

(Parth Prateem Sahu)

Judge