

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 715 of 2013

D.K. Sharma S/o G.L. Sharma Aged About 48 Years (at present) R/o Mohala, P.S. Mohala, Distt. Rajnandgaon C.G.

----Appellant

Versus

1. Dinesh Kumar Verma @ Deenu S/o Ramsingh Verma Aged About 34 Years, (at present), Occupation- Driver, R/o Bandhabajar, P.S. Ambagarh Chauki, Civil & Revenue, Distt. Rajnandgaon C.G.
2. Smt. Mohini Vaishnav W/o Veerendra Vaisnav Aged About 43 Years, (at present) R/o Jaistambh Chauk, Rajnandgaon, Tah. Rajnandgaon, Civil and Revenue, Distt. Rajnandgaon C.G.
3. The Oriental Insu.Co.Ltd, Thru- Branch Manager, Near Railway Station, Rajnandgaon, Tah. And Distt. Rajnandgaon, Civil and Revenue, District : Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Manoj Paranjape with Shri Anurag Singh, Advocates.
For Respondent No.3	:	Shri Ratan Pusty, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

22/02/2019

1. By the instant appeal, the appellant/claimant is challenging the legality and validity of the impugned award dated 10.04.2013 passed by the 2nd Additional Motor Accident Claims Tribunal, Rajnandgaon, C.G (for short 'the Tribunal') in Claim Case No.03/2012, whereby the Tribunal has partly allowed the claim application of the appellant and awarded a total compensation of Rs.6,01,100/- under all heads, in an injury case.

2. Brief facts necessary for disposal of this appeal are that on 19.10.2010 the appellant (injured) along with his friend Baldev Sing was going towards Mohala from Ambagarh Chowki on his motorcycle bearing registration No.CG08/N/1520 and when he reached near village- Muretitola, one Scorpio vehicle bearing registration No.CG08-N-5407, (hereinafter shall be referred to as "the offending vehicle"), which was being driven by its driver i.e. respondent No.1-Dinesh Kumar Verma @ Deenu, on the wrong side of road, dashed against his motorcycle and on account of which he fell down and sustained grievous injuries on various parts of the body including right leg. The claimant/appellant was immediately taken to hospital at Ambagarh Chowki and looking to the seriousness of injury sustained by him in his right leg, he was referred to the District Hospital, Rajnandgoan and from there he was shifted to Mishra Specialty Hospital, Raipur for better treatment. Upon x-ray examination of leg injury, it was found that the claimant also sustained comminuted fracture to right femur and right tibia condyle. It was also found that there was non-union of fracture of right femur. The injured remained admitted in hospital from 19.10.2010 to 30.10.2010 and even after discharge from the hospital, he took continuous treatment but his injury could not be healed fully, despite taken best treatment. Looking to his uncured injury/fracture, appellant submitted himself before Medical Board. After examining the injured claimant, District Medical Board, Rajnandgoan issued a permanent disability certificate, which is Ex.P-8, and according to which, injured claimant has suffered 70% permanent disability in relation to his right leg, which is non-progressive and not likely to improve. Appellant thereafter filed a claim application before the concerned Claims Tribunal seeking compensation to the tune of Rs. 37,42,381/-.
3. Respondent No. 1- driver of the offending vehicle has submitted his reply to the claim application and denied all the averments made in the claim application

including the factum of accident. He further pleaded that the appellant made an exaggerated claim and therefore the same is liable to be dismissed.

4. Respondent No.2- owner of the offending vehicle, also filed his reply to the claim application denying claim of claimant and pleaded that a false report of accident has been lodged in the police station concerned in order to claim compensation. He further submits that the compensation claimed by the claimant is on higher side.
5. Respondent No.3/Insurance Company after service of notice made its appearance and submitted reply to the claim application stating that on the date of accident, it was deceased who drove his motorcycle rashly and negligently due to which, he met with the accident. It was further pleaded that on the date of accident the driver of offending vehicle was not having valid and effective driving license to drive the offending vehicle and as such, there was breach of condition of insurance policy and therefore, the insurance company is not liable for payment of any amount of compensation. Further, the monthly income, as pleaded by the claimant, has also been denied by the insurance company on the ground that there is nothing on record to substantiate that the claimant was working as Sub-Engineer in the Public Works Department and earning Rs.35,312/- per month. It has been further pleaded that neither the claimant has sustained any permanent disability in the said accident nor any loss of income had been occasioned to him and even after said accident, the claimant is discharging all his duties, which he was doing prior to accident, in proper manner. In these circumstances, it has been prayed that the claim application be dismissed.

6. Learned Claims Tribunal after considering the pleadings and evidence of the respective parties has partly allowed the claim application and awarded a total sum of Rs.6,01,100/- as compensation.
7. Learned counsel for the appellant submits that the Tribunal has committed error in assessing disability to the extent of 50% only, whereas the Medical Board vide Ex.P-8 has assessed the permanent disability to the extent of 70%. He further submits that the Tribunal has erroneously assessed the monthly income of the appellant. Admittedly, the appellant was working as Sub-Engineer, Public Works Department, Mohala and getting monthly salary of 35,000/-, but the Tribunal has taken only Rs.15,000/- as the monthly income of claimant/appellant for the purpose of calculating the compensation. This apart, the Tribunal has not awarded any amount towards the future medical expenses, as has been advised in the medical documents. Even no amount has been awarded towards the loss of amenities in life. The amount awarded by Tribunal under the head of pains and suffering is also very meager. The Tribunal not awarded any amount towards the conveyance expenses which the appellant has to incur in going to Raipur from Mohla, District Rajnandgaon for his treatment.
8. Per contra learned counsel for respondent No.3/Insurance Company has supported the impugned award and pleaded that the claimant/appellant has not suffered any loss of income due to his disability and he is still working on the same post which he was holding prior to the accident. Though the appellant has claimed that he is a government servant and earning Rs.35,000/- per month as salary, but he failed to bring on record any documentary proof in support thereof and therefore, the assessment of monthly income at Rs.15000/- by the Tribunal cannot be interfered with.

9. I have heard learned counsel for the parties and perused the record.

10. From the material available on record it is apparent that appellant sustained grievous injuries in an accident caused by the offending vehicle on 19.10.2010. Perusal of medical document (Ex.P-12) also makes it clear that after giving primary treatment to the appellant at District Hospital, Rajnandgaon, he was referred to Mishra Specialty Hospital, Raipur for better treatment where his x-ray examination was done and it was diagnosed that the claimant has suffered comminuted fracture in his right femur and right tibia condyle. The appellant underwent a surgery for uniting the fracture injuries and thereafter discharged from the hospital. As the appellant's fracture could not be united, therefore, he was again hospitalized on 04.09.2011 at Mishra Specialty Hospital ie. Ex.P-14, where implant failure of non-union of right old operated comminuted femur was diagnosed and therefore the appellant again underwent a surgery for freshening of bone ends and fixation with dual locking plates. He was discharged on 24.9.2011. The other documents i.e. conveyance expenses (EX.P-53 to Ex.P-69) are also available on record. The medical prescription Ex.P-19 specifically mentions that there is fracture of right femur non-union with implant failure and his union status needs about two years further time for complete healing. It has further been mentioned that looking to the weakness of ligament it requires surgery at higher center which may require expenditure of about Rs.3-4 lacs. Thus, the medical documents available on record clearly shows that the appellant was taking continuous treatment from the date of accident i.e. 19.10.10 till 07.07.2012. The disability certificate (Ex.P-8), which was issued by the District Medical Board on 15.10.2011, also says that the appellant had sustained permanent disability to the extent 70%, which is non-progressive and also not likely to improve.

11. The appellant himself entered into witness-box and stated that he sustained grievous injuries on his leg in the accident and as per medical certificate, he had suffered permanent disability to the extent of 70% in relation to his right leg. He has proved the accident. He further stated that his right leg was operated twice but still a surgery from a specialist of a big hospital of Mumbai or Delhi is required to set things right and for which he requires at least Rs.8 lakhs. He proved the medical documents which are available on record and stated that as the treatment has been taken by him from the private hospital, those bills will not be reimbursed by his department. He further admitted in his evidence that after sustaining permanent disability in the said accident, he has been posted in the office of Chowki Ambargarh Division and asked to do table work. He further admitted that after accident and suffering of permanent disability, there is no loss of income to him, but the expenses have been increased due to permanent disability.

12. I have also perused the evidence of AW-3 Dr. Prakash Bhalerao who is one of the members of the Medical Board which issued disability certificate (Ex.P-8) to the appellant. This witness has specifically admitted in his statement that the appellant sustained permanent disability in his right leg to the extent of 70% and that after examination of the injuries, a disability certificate was issued by him on 15.10.2011. He also admitted that on 16.2.2012 the certificate of Ex.P-18 was issued by him to enable the disabled person i.e. appellant herein, to avail the benefit of disability being a government servant. It was also stated that on the date of the examination there was fracture of right femur, non-union with implant failure which may be the cause of permanent disability. He was cross-examined by the respondent/Insurance Company but nothing could be brought on record which goes to show that the injury sustained by the appellant was not of grievous nature causing disability.

13. In view of the above evidence (oral and documentary evidence) available on records, admittedly the appellant sustained grievous injuries over various parts of his body including permanent disability in his right leg to the extent of 70%, which stands proved from the certificate of Ex.P-8 issued by the District Medical Board, Rajnandgaon.
14. Now the question which arises before this court for consideration is whether in the given facts and circumstance of this case the Tribunal has awarded just compensation to the appellant?
15. The Tribunal has already awarded Rs.3,51,000/- towards loss of income and Rs. 2,18,000/- towards medical expenditure. The award passed by the Tribunal was not challenged by respondent No.3/Insurance Company before any higher forum.
16. The Tribunal has not awarded any amount towards the loss of future amenities in life and also the conveyance expenses as claimed by the appellant in his claim application. Further the Tribunal has awarded very meager amount towards the attendant. As per medical prescription dated 17.2.2012 (Ex.P-19), due to non-union of fracture of right femur, the appellant will further require two years for complete healing i.e. upto February 2014, whereas, the accident took place on 19.10.2010. Looking to the length of continuous treatment from the date of the accident i.e 19.10.2010 till 17.02.2012 with the same hospital which has issued medical prescription (Ex.P-19), this document cannot be doubted at this stage by the Court. Even the respondent No.3/Insurance Company has not raised any objection before the Tribunal with respect to the admissibility of Ex.P-19. In view of the same, this Court is of the considered opinion that the appellant has not been awarded proper amount as was required to be awarded towards the attendant and future medical expenditure.

17. The documents available on record also shows that appellant used to travel from Mohla, District Rajnandgaon to Raipur for his treatment. These documents further show that the appellant had not been able to travel on public vehicles and he required a private vehicle to travel from his residence to hospital. Considering the medical documents available on record with respect to treatment at Misrha Specialty Hospital, Raipur, the bills of conveyance expenses cannot be held to be concocted or suspicious documents. Hence, the Tribunal has committed error in not considering those bills which were issued by the tours and travels agency. The Tribunal has further committed an error in awarding very meager amount towards conveyance expenses to the tune of Rs.5000/-, which is unsustainable and is hereby set aside.

18. Further, looking to the nature of the injuries, the appellant would also be entitled for loss of future amenities in his life as he has to live his entire life with permanent disability of 70% of his right leg. The medical documents and evidence available on record also shows that the appellant's right femur bone could not join even after about six months from the date of accident. As per medical prescription ie Ex.P19, due to non-union of fracture of right femur, the appellant would require further two years for complete healing. Looking to the long period of the treatment of the appellant, pains and suffering, which he had suffered while undergoing treatment, I am of the opinion that the Tribunal has committed an error in not considering the non-pecuniary damages in its proper perspective and therefore awarded only an amount to Rs. 20,000/-. In the considered opinion of this Court, the appellant is entitled to Rs.50,000/- towards pains and suffering in addition to the amount Rs.20,000/- as already awarded by the Tribunal. The appellant will have to live his whole life with 70%

disability on his right leg, therefore, he is also entitled for Rs.1,50,000/- towards loss of amenities in life. The appellant will also be entitled for a sum of Rs.25,000/- towards future attendant and conveyance for a further period of two years.

19. In view of the above, now the appellant will be entitled additional sum of Rs.2,25,000/-, apart from the amount already awarded by the Tribunal. This additional amount of compensation will carry interest @ 6% p.a., as awarded by the Tribunal, till its realization.

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

Sd /-

(Parth Prateem Sahu)

Judge