

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 959 of 2013

- United India Insurance Company Limited Thru- Its Divisional Manager, Divisional Office- Raipur, Kutchery Chowk, Raipur, P.O. Raipur, P.S. Moudhapara, Tah. And Distt. Raipur, Chhattisgarh

---- Appellant

Versus

1. Gokul Ram Nag, S/o Hiradhar Nag Aged About 48 Years R/o Near Shivaji Chowk, Fingeshwar Road, Rajim, Distt. Raipur, Chhattisgarh
2. Gopal Prasad Patel S/o Nanki Ram Patel Aged About 34 Years R/o Bareli, P.S. Bilaigarh, District : Raipur, Chhattisgarh (Driver of offending vehicle)
3. Ramesh Kumar Patel S/o Bhog Singh Patel R/o Village And Post- Bareli, P.S. And Tah. Bilaigarh, Distt. Raipur, Chhattisgarh (Owner of offending vehicle)

---- Respondents

For Appellant	: Shri Dashrath Gupta, Advocate
For Respondent- 1	: Shri Shivendu Pandya, Advocate
For Respondents- 2 and 3	: Shri Alok Chandra Rishi, Advocate on behalf of Shri Sandeep Dubey, Advocate

MAC No. 985 of 2013

- Gokul Ram Nag S/o Heeradhar Nag Aged About 48 Years R/o Near Shiwaji Chowk, Fingeshwar Road, P.O. And P.S. Rajim, Distt. Raipur, Chhattisgarh

---- Appellant

Versus

1. Gopal Prasad Patel. S/o Nanki Ram Patel Aged About 34 Years R/o Bareli, Post- And P.S. Bilaigarh, Distt. Raipur, Chhattisgarh (Driver of vehicle Sumo, bearing registration No.CG/10/7586)
2. Ramesh Kumar Patel S/o Bhog Singh Patel R/o Bareli, P.O. And P.S. Bilaigarh, Distt. Raipur, Chhattisgarh (Registered owner of vehicle Sumo, bearing registration No.CG/10/7586)
3. The United India Insu.Co.Ltd. S/o Thru- Divisional Manager, Divisional Office, Krishna Complex, Infront Of Kutchery, Kutchery Chowk, P.O. Raipur, P.S. Gol Bazar, Tah. And Distt. Raipur, Chhattisgarh (Insurer of vehicle Sumo, bearing registration No.CG/10/7586)

---- Respondents

For Appellant	: Shri Shivendu Pandya, Advocate
For Respondents- 1 and 2	: Shri Alok Chandra Rishi, Advocate on

behalf of Shri Sandeep Dubey,
Advocate

For Respondent- 3

: Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

06.05.2019

1. As both these appeals arising out of same accident and award, they are being decided by this common order.
2. MAC-959 of 2013 has been preferred by Insurance Company challenging the liability fastened upon it for payment of amount of compensation, whereas MAC- 985 of 2013 has been preferred by claimant for enhancement of award. In both the appeals challenge is to the award dated 29.07.2013 passed by 7th Additional Motor Accident Claim Tribunal, Raipur (for short, 'Claims Tribunal') in Claim Case No.74 of 2011.
3. Brief facts relevant for disposal of these appeals are that on 06.02.2010 claimant- Gokul Ram Nag was travelling on motorcycle bearing No.CG 04CJ-6105 along with his wife. He was going to Rajim from Basna. On the way when they reached near Rajim motel, at that relevant time one Tata Sumo bearing No.CG 10-7586 (offending vehicle) driven by Gopal Prasad Patel, driver of offending vehicle rashly and negligently dashed motorcycle. In the aforementioned accident, claimant sustained injuries over his person. Matter was reported to Police Station concerned based upon which Crime No.37/2010 was registered for commission of offences punishable under Sections 279, 337 and 338 of IPC against driver of offending vehicle. Claimant filed Claim application before competent Claims Tribunal claiming Rs.6,50,000/- as compensation

on the ground that after primary treatment at Government Hospital, Rajim, he was referred to Ramkrishn Hospital at Raipur where he took treatment as inpatient and got operated his leg due to which he became permanently disabled.

4. Driver and owner of offending vehicle submitted reply to claim application and denied all adverse pleadings made in claim application against them. They have also pleaded that on the date of accident offending vehicle was insured with non-applicant No.3 and therefore, liability, if any, would be on the Insurance Company.

5. Insurance Company submitted reply to claim application and took defense that Company not issued any Policy for offending vehicle, there was contributory negligence on the part of claimant himself and further that on the date of accident driver of offending vehicle was not possessing valid and effective driving license. It further pleaded that on the date of accident, there was no valid fitness and permit with offending vehicle and the same was being used for commercial purpose.

6. Learned Claims Tribunal while appreciating evidence available on record, held that accident took place on account of rash and negligent driving of offending vehicle Tata Sumo and further that there was no contributory negligence on the part of claimant, there is no violation of conditions of Insurance Policy, appellant did not suffer any permanent disability and awarded a total sum of Rs.3,01,156/- as compensation.

7. Learned counsel appearing for Insurance Company argued that learned Claims Tribunal committed error in awarding amount of

Rs.1,17,466/- for medical treatment, Rs.60,000/- for future treatment and Rs.98,690/- towards leave encashment. He further submitted that claimant is government servant and entitled for reimbursement of medical expenditure incurred by him and also submitted that claimant failed to produce any evidence with respect to leave taken by him and adjustment towards period of leave encashment for which he was entitled to. He further submitted that findings recorded by learned Tribunal with respect to medical treatment and future medical treatment are contrary to evidence and are perverse being contrary to material and evidence available on record.

8. Per contra, learned counsel for claimant submitted that there is no material on record that all medical bills were reimbursed by government department where he was working and further that looking to injury and treatment as inpatient, he had taken leave from office and therefore, learned Claims Tribunal rightly awarded amount of Rs.98,690/- towards leave encashment. It was further submitted that Dr Pankaj Dhabaliya, AW3 in his evidence admitted that rod was inserted on right leg of claimant and it is required to be taken out and estimate expense for this would be Rs.60,000. He further submitted that he has also filed separate appeal for enhancement of award on the grounds that learned Claims Tribunal not awarded any amount towards permanent disability and less amount was awarded towards medical expenses.

9. I have heard learned counsel for the parties and perused records. Perusal of medical documents marked as Ex.P/7 to P/14 would show that these are duplicate copies of bills which were not signed by Cashier. Even

other medical bills that have been placed on record of Ramkrishna Hospital, Raipur do not bear signature of any authorised person and they are also duplicate copies of medical bills except Ex.P/30 on which seal of hospital is present. Apart from above documentary evidence, claimant himself was examined as AW1. He specifically stated in his evidence that he took treatment as indoor patient at Ramkrishna Hospital from 06.02.2010 to 18.02.2010 ie about 13 days. Thereafter, he again admitted in hospital after seven months and took treatment from 14.09.2010 to 16.09.2010, for three days after after about three months, was treated as inpatient from 11th to 14th December, 2010 for four days. Thereafter, on 2nd and 3rd June 2011 he remained in hospital for treatment, ie for two days. As per his own evidence, total number of days claimant admitted for treatment as inpatient in hospital are 22 days only. Claimant further admitted in his cross-examination in para-5 that he received Rs.35,000 -40,000/- towards reimbursement from his department. In his evidence while accepting amount of reimbursement towards medical expenditure it has been admitted in categorical terms by him, but he had not stated that the other medical bills or balance amount of Rs.1,17,466/- has not been allowed or rejected by department. Even GS Dubey (AW2), Assistant Superintendent, Agriculture Department, in his evidence admitted that the employees of department are entitled for reimbursement of medical bills as per rules.

10. In view of above it is clear that claimant is entitled for reimbursement of medical bills from his own department and Ramkrishna hospital where he took treatment is a notified hospital by the State government. He

admitted that even Ex.p/30 is a duplicate computerised medical bill and not original bill. He has not submitted any document with regard to payment of any advance amount of Rs.1,12,000/-.

11. For the foregoing discussion and evidence available on record, in the opinion of this Court once claimant is entitled for amount of medical reimbursement and part of medical bill amount has already been reimbursed by department, in the opinion of this Court without there being any evidence that balance part of medical claim has been denied or rejected claimant is not entitled for any amount on the head of medical expenses or treatment. Learned Claims Tribunal committed error in awarding amount of Rs.1,17,466/- towards medical treatment and the same is hereby set aside.

12. In view of aforementioned discussions, learned Claims Tribunal committed error in awarding Rs.60,000/- towards future medical treatment also, because said amount can also be reimbursed by the department to claimant.

13. Next argument by learned counsel for the Insurance Company is that learned Claims Tribunal committed error in awarding amount of Rs.98,690/- towards leave encashment for 5 months 21 days.

14. I have perused evidence of claimant (AW1) himself and one GS Dubey (AW2), colleague of claimant, in this regard. Evidence of claimant (AW1) would show that he took treatment as inpatient on different dates and months for different period, within a gap of about 5-6 months. Total number of days shown that claimant was admitted in hospital for treatment

as inpatient would come to only 22 days. However, admission in hospital for treatment from 06.02.2010 to 18.02.2010 can be taken into consideration as it was the period of treatment of injuries immediately after the accident. Evidence of Dr Pankaj Dhabliya (AW3) also shows that claimant was admitted only from 06.02.2010 to 18.02.2010. Doctor does not say about any further admission of claimant for treatment of same injuries, nor any subsequent admission in the hospital for any other complaint. Dr Pankaj Dhabliya only proved admission of claimant in the hospital for a period of 13 days, ie from 06.02.2010 to 18.02.2010.

15. Learned Claims Tribunal while arriving at a finding that claimant took 171 days Earn Leave, not discussed any evidence and material for which it is important for reaching such conclusion and also for calculating period of admission in hospital. Even GS Dubey (AW3) who was examined before Claims Tribunal stated in his evidence that he had not filed any application of claimant for taking leave from his official duties. However, he further states that Exs.P/44 to 48 are documents in this regard. On perusal of these documents it reveals that claimant obtained Earn Leave from 06.02.2010 to 14.05.2010, ie for a period of 98 days. Claimant met with an accident on 06.02.2010 and thereafter, he was admitted in hospital, undergone surgery of his leg. In view of above it cannot be said that earn leave applied by claimant and accepted by department for a period of 98 days is for some other purpose.

16. In view of specific documentary evidence available on record, claimant is entitled for an amount towards his earn leave period of 98 days. Though order of department shows that claimant further filed an

application for EL from 02.08.2010 to 13.10.2010 for a period of 73 days mentioning reason for leave to be self treatment. This application was accepted by competent authority on 05.03.2011 vide Ex.A/4.

17. In view of above documentary evidence available on record by department where claimant is working, it can be said that claimant availed EL for the purpose of treatment for injuries sustained by him in the motor accident.

18. Earned Leave (EL) is a fixed leave provided to government servants to avail in their whole service period and total days of Earned Leave encashment provided to claimant as per evidence available on record is of 240 days. EL is a kind of leave that if it is not availed by government servant, then he is entitled for amount equal to the salary for the said period. In view of afore mentioned discussion, evidence and material available on record, learned Claims Tribunal rightly held that claimant took EL for 171 days on account of injuries sustained by him and if he had not availed EL for 171 days, then he could very well encash the said leave at the time of his superannuation or could avail the leave for any other purpose. Availing of Earned Leave for which he is entitled for encashment is also a loss sustained by claimant due to accident and injuries suffered by him. Therefore, learned Claims Tribunal has rightly awarded amount of compensation calculated on the basis of salary drawn by him while holding a finding that claimant availed EL of 171 days due to accidental injuries appears to be correct.

19. Learned counsel appearing for claimant argued that learned Claims Tribunal has not awarded any amount towards permanent disability which is assessed at 30% vide Ex.P/53 by Dr Pankaj Dhabliya (AW3). He further argued that learned Claims Tribunal not awarded entire amount of medical bills of treatment to claimant, and not awarded appropriate compensation on non-pecuniary damages.

20. So far as first argument raised by learned counsel for claimant that learned Claims Tribunal committed error in not awarding any amount towards permanent disability is concerned, I have perused evidence of GS Dubey (AW2) who is one of Senior Officers of department where claimant is working. He in his evidence categorically stated that after accident, claimant was working in the same office and department. Further that, claimant was promoted on the post of Senior Officer from the post of Rural Agricultural Development Officer. From this specific statement of AW2, it is clear that claimant did not suffer any loss of income or disability due to injuries sustained by him in the accident. Now, in the facts and circumstances of the case, it is to be assessed that whether claimant is facing any problem in his movement or suffering from any pain due to injury and having any disability as mentioned in Ex.P/53.

21. To appreciate argument of learned counsel for claimant, I have perused statement of treating doctor Dr Pankaj Dhabliya (AW3), who issued disability certificate Ex.P/53. Doctor in his evidence stated that 30% disability is there and certificate to that effect was issued with respect to right leg of claimant; he further admitted that before issuing that certificate, fresh x-ray of right leg of claimant was taken. But he has not

mentioned the comparative study between right leg and left leg, also not prepared chart for calculating disability of any part of body like strength, muscle movement, stiffness of leg etc. In view of aforementioned evidence, it appears that disability certificate issued by Dr Pankaj Dhabliya was not issued according to procedure prescribed and even not assessed disability of claimant after calculating required percentage of disability on each count of movement of leg. In view of above, disability certificate issued by Dr Pankaj Dhabliya (AW3) cannot be taken as admissible piece of evidence to assess disability of claimant. Even claimant in his evidence has not in categorical terms stated that what kind of problem he was facing in his movement and whether he was making any extra effort for any purpose due to the alleged disability suffered by him.

22. Now next it is to be seen that whether learned Claims Tribunal awarded suitable amount of compensation on non-pecuniary damages or not. Learned Claims Tribunal awarded a sum of Rs.20,000/- towards pain and suffering and Rs.5,000/- towards special diet. Learned Claims Tribunal not awarded any amount towards attendant and conveyance. Records clearly show that appellant has been treated as inpatient for 22 days and therefore, taking it as a period of one month, claimant is further entitled for an amount of Rs.4,000/- for attendant in the facts and circumstances of case.

23. Claimant is resident of Rajim, as per address mentioned in the claim application. He took treatment at Raipur and visited Ramkrishna Hospital at Raipur for about four occasions. Therefore, though specific evidence

towards conveyance expenses, have not been brought on record by claimant but the same could not be ignored also.

24. Motor Vehicle Act is a benevolent legislation and it is to be seen that claimant is being suitably compensated and even if assessment of compensation made in claim application is less for any reason, then Courts and Tribunals are not precluded from awarding a reasonable and just compensation to the claimants.

25. In the instant case, I am inclined to award Rs.6,000/- towards conveyance expenses.

26. In view of above discussions, claimant will not be entitled for any amount towards medical treatment but he will be entitled for award of Rs.4,000/- for attendant and Rs.6,000/- towards conveyance expenses.

27. Now the claimant will be entitled for total sum of Rs.98,690/- Earned Leave, Rs.10,221/- towards motorcycle repair, Rs.20,000/- towards pain and suffering, Rs.5,000/- for special diet, Rs.4,000/- towards attendant and Rs.6,000/- towards conveyance. Claimant will be entitled for Rs.1,43,911/- (Rupees forty-three thousand nine hundred eleven only) as total compensation instead of Rs.3,01,156/-.

28. The amount of compensation will carry interest @ 6% per annum from date of application. Other conditions laid down by learned Claims Tribunal will remain intact.

29. Any amount paid by Insurance Company shall be adjusted from the amount of compensation awarded by this Court. If after adjustment,

appellant- Insurance Company is entitled for any amount of recovery from claimant on account of excess payment, then the Insurance Company is entitled to recover it in accordance with law.

30. For the foregoing reasons both the appeals are allowed in part.

31. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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