NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 774 of 2013

- Lomesh Kumar @ Lomash Kumar, S/o Kawal Singh, aged about 25 years, R/o Gudum, P.S. Daundi, District Balod (CG) Presently R/o Village & Post- Motipur, Tahsil Rajnandgaon, P.S. & District Rajnandgaon (CG)

---- Appellant

Versus

1. Gaukaran Yadu, S/o Late Mani Ram Yadu, aged about 45 years, R/o Kanhargaon, P.S. Bhanupratappur, District Kanker.
2. The New India Insurance Company Limited, through Branch Office, Parakh Bhawan, Station Road, Durg, Distt. Durg (CG)

---- Respondents

For Appellant	:	Mr. Dashrath Kushwaha, Advocate on behalf of Mr. P.K. Patel, Advocate
For Respondent No.1	:	Mr. K.N. Nande, Advocate
For Respondent No.2	:	Mr. Sudhir Agrawal, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

09/07/2020

1. I.A. No.1, which is an application for condonation of delay of 08 days in filing this appeal, being not opposed by learned counsel for the respondents, is hereby allowed and delay in preferring this appeal is condoned.
2. With the consent of the parties, the matter is heard finally.
3. Feeling partially aggrieved by the award dated 12.4.2013 passed by the learned Additional Motor Accident Claims Tribunal, Balod (for short 'the Claims Tribunal') in Claim Case No.26/12 thereby partly allowing claim application of claimant/appellant herein and awarding a total sum of

Rs.47,000/- as compensation along with interest @ 6% p.a. from the date of filing of claim application, in an injury case, the appellant-claimant has preferred this miscellaneous appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') for enhancement of compensation.

4. Facts relevant for disposal of this appeal, in brief, are that on 28.1.2010 appellant-claimant along with one Bhagwan Singh was going towards his house on a bicycle. On the way, one Mahindra Jeep bearing registration No.CG07-ZA-1064 (for short 'the offending vehicle'), coming from opposite direction, driven by respondent No.1 herein, dashed against bicycle of claimant-appellant as a result he fell down and sustained grievous injuries on various parts of his body including fracture injuries on his right shoulder, elbow & wrist. Claimant-appellant was firstly taken to Mathai Hospital, Dondi for treatment and thereafter he was hospitalized in Shaheed Hospital, Dallirajhara where he was treated as inpatient from 29.1.2010 to 15.2.2010. When the claimant-appellant could not fully recovered from injuries, he took treatment from District Hospital, Rajnandgaon and also at Gayatri Hospital, Supela, Bhilai. He remained admitted in Gayatri Hospital, Supela from 21.1.2011 to 23.1.2011. Despite taking constant treatment, appellant-claimant could not recover fully and he suffered permanent disability. Under such circumstances, the claimant/appellant filed a claim application before the Claims Tribunal seeking an amount of Rs.17,32,000/- as compensation specifically pleading therein that on the date of accident, he was 24 years old and earning a sum of Rs.200/-

per day by performing job of a 'Mason', however, due to injuries suffered by him in the accident, now he is unable to perform the said work as efficiently as he was doing prior to the accident.

5. Respondent No.1 owner-cum-driver of offending vehicle, filed his reply to claim application and denied the averments made therein. It was pleaded that accident took place due to negligence on the part of claimant himself; the amount of compensation claimed is highly exaggerated and on the date of accident, the offending vehicle was fully insured with respondent No.3-insurance company, therefore, the insurance company is liable to indemnify the owner in case any compensation is awarded by the Claims Tribunal.

6. Respondent No.2- Insurance Company also filed its reply to claim application and denied the averments made therein. It was pleaded that offending vehicle was supposed to be plied within the terms and conditions of insurance policy and if it is found that the offending vehicle was plied without valid permit, fitness, driving license or in contravention of any of the conditions of insurance policy, then the owner of offending vehicle is not supposed to be indemnified by insurance company. It was pleaded that there was non-compliance of the provisions of Section 134 of the Act of 1988 on the part of the non-applicant No.1. The disability certificate produced by claimant was not admissible as it was not issued by a competent Medical Board. Pleadings in claim application with respect to inability of claimant to perform the work of Mason as also monthly income of claimant prior to accident as Rs.6,000/- have been denied.

7. The Claims Tribunal after appreciating the pleadings and evidence placed on record (oral & documentary both) by the respective parties has arrived at a conclusion that the claimant has not suffered permanent disability rather suffered grievous injuries in the accident caused by offending vehicle, which was driven in a rash and negligent manner by its driver; awarded an amount of Rs.47,000/- as compensation along with interest @ 6% p.a. and since the offending vehicle was insured with insurance company on the date of accident and it was not plied in breach of any of the conditions of insurance policy, the insurance company has been held liable to make payment of the entire amount of compensation.

8. Learned counsel for claimants/appellant submits that the claimant/ appellant has suffered more than one fracture injury on his right upper limb of body i.e. shoulder, arm & wrist. He underwent surgery in the course of treatment at Shaheed Hospital, Dalli-Rajhara and thereafter he also took treatment from Gayatri Hospital, Supela, Bhilai, but he could not recover fully and he has suffered permanent disablement to the extent of 45%, which is evident from the certificate issued by the doctor. On account of permanent disability, the claimant is unable to perform work of Mason as efficiently as he was performing prior to the date of accident. He further submits that the Claims Tribunal has not awarded any amount towards loss of future income and of during the period of treatment ignoring the fact that on account of injuries suffered, the appellant would not be able to do work of Mason for a period of about 8-10 months.

The Claims Tribunal has also not awarded any amount towards attendant, conveyance and special diet, ignoring specific pleadings and evidence to the effect that appellant took treatment as inpatient from the hospitals situated in different cities of the State of Chhattisgarh.

9. Per contra, learned counsel appearing on behalf of respondent No.2- Insurance Company submits that the compensation awarded by the Claims Tribunal is just and proper in the given facts of the case. The permanent disability certificate is normally issued by the Medical Board after expiry of period of six months from the date of accident, but, in the present case the disability certificate (Ex.P-22) has been issued before expiry of period of six months from the date of accident, therefore, the same cannot be relied upon to ascertain the extent of permanent disability suffered by appellant. He further submits that even in the disability certificate it has been opined that condition is progressive in nature and reassessment is recommended after a period of three years, which means the disability is likely to improve with future treatment. He also points out that disability certificate was not issued by a competent Medical Board consisting of five doctors.

10. We have heard learned counsel for the parties and perused the record.

11. It is not in dispute that respondent No.2-Insurance Company is liable to indemnify the insured.

12. As regards non-grant of compensation by the Claims Tribunal towards loss of income during the treatment period, perusal of

record of claim case would show that appellant suffered fracture injury on his right arm, right shoulder & right wrist and in support thereof x-ray reports have been placed on record by claimant. The doctor, who has issued disability certificate, has been examined as AW-3 and this witness has proved the permanent disability certificate of claimant/ appellant. A glance of disability certificate would reveal that condition of claimant/appellant is progressive in nature, meaning thereby the injuries mentioned in the disability certificate were found to be progressive in nature and there are chances of reduction in percentage of disability. Looking to the nature of disability and medical evidence available on record, the possibility of variation in percentage of disability of appellant cannot be ruled out, but at the same time this fact cannot be lost sight of that the injuries suffered by appellant in accident are grievous in nature. In the given facts & circumstances of the case, it would be appropriate to award a sum of Rs.20,000/- towards the injuries suffered by him. Accordingly, we award a sum of Rs.20,000/- to the claimant/appellant.

13. Perusal of impugned award reveals that the Claims Tribunal has not awarded any amount towards loss of income during treatment period. Considering the nature of injuries, treatment taken by appellant coupled with the fact that he underwent surgery in the course of treatment and further considering the nature of employment pleaded in claim application and stated by claimant in his statement recorded before the Claims Tribunal i.e. Mason, we feel that after the accident, claimant/ appellant

must have not been able to perform his work for a period of atleast four months from the date of accident and as such, he is entitled to get compensation towards loss of income for a period of four months.

The income of claimant/appellant has not been assessed by the Claims Tribunal. Even otherwise, there is no documentary evidence on record showing monthly income of claimant / appellant except pleadings in claim application and oral statement of claimant recorded before the Claims Tribunal. In such a situation, it would be appropriate to assess monthly income of claimant/appellant on notional basis. The accident took place in the year 2010, therefore, considering the nature of employment pleaded by claimant, price index and minimum wage rates prevailing on the date of accident in the State of Chhattisgarh, we deem it proper to fix monthly income of claimant/ appellant at Rs.4,500/-. Hence, the compensation towards loss of income during the period of treatment is assessed at Rs.18,000/- (4500x4).

14. Claimant has not filed any document showing that he has taken help of attendant and thereby incurred expenses. However, keeping in view the nature of injuries suffered by claimant/appellant and the fact that claimant/appellant took constant treatment as inpatient and also underwent surgeries, he must have needed an attendant to look after him immediately after the accident, therefore, he is entitled to attendant charges. Even if gratuitous services were rendered by some or other family members, the Claimant cannot be deprived of its benefit

on the gain of the tort feasor.

Although the claimant has not brought on record anything showing that he has spent money on conveyance, but from the medical documents available on records it is clear that appellant took treatment at Dallirajhara, Rajnandgaon & Bhilai, whereas he is resident of District Balod. So, naturally the claimant must have spent some money on conveyance in visiting different hospitals from his place of residence after the accident.

As regards the special diet, true it is that claimant has not placed anything on record showing that he has spent money on special diet. However, keeping in view the fact that appellant has suffered grievous injuries including fracture injury and that he underwent surgeries in Shaheed Hospital, Dallirajhara and Gayatri Hospital, Supela, therefore, in order to have a speedy recovery, the claimant-appellant must have taken special diet and might have incurred expenses on the same. Hence, appellant is also entitled for compensation under the head 'special diet'.

Accordingly, we grant a sum of Rs.10,000/- as lump sum compensation towards attendant charges, conveyance and special diet.

15. Apart from above, the Claims Tribunal has awarded a sum of Rs.3,000/- towards pain & sufferings. In our opinion, the said amount is on lower side. Taking into account the nature of injuries including fracture injuries, the fact that appellant took treatment as inpatient and underwent surgeries and further considering the evidence of the doctor (AW-3) that appellant is

likely to suffer permanent disability to some extent in future, we feel that if an amount of Rs.10,000/- is awarded towards pain & sufferings, it would meet the ends of justice.

16. On the basis of above discussions, the compensation awarded is recomputed as under:;-

Sr.	Heads		Amount Awarded
1.	Medical Expenses	:	44,000/- (as awarded by Claims Tribunal)
2.	For grievous injuries	:	Rs.20,000/-
3.	Loss of income during treatment period.	:	Rs.18,000/-
4.	For Pain & Sufferings	:	Rs.10,000/-
5.	For Attendant, Special Diet & Conveyance		Rs.10,000/-
	Total	**:**	**Rs.1,02,000/-**

17. Thus, the total amount of compensation for which claimant/ appellant is entitled to receive comes to Rs.1,02,000/-. Since the Claims Tribunal has already awarded Rs.47,000/-, after deducting the said amount, the claimant/appellant is entitled for enhanced amount of Rs.55,000/-. This amount of compensation shall carry interest @ 7% p.a. from the date of filing of claim application till realization.

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

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-