

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 891 of 2013

- Praveen Verma, S/o Hari Ram Verma, aged about 19 Years, R/o Ranwa Bhata Ring Road, Bhatagaon, Behind Primary School, Raipur, P.S. Tikrapara, Distt. Raipur, Chhattisgarh

---- Appellant/Claimant

Versus

1. Akash Agrawal, S/o Ram Kishan Agrawal Aged About 18 Years R/o Temple Road, Katabhanjhi, Tah. Katabhanjhi, Distt. Katabhanjhi, Orissa (Driver of offending vehicle No.CG 08/ZE 5900)
2. Proprietor, Sanjay Kumar Kothari S/o Swaroop Chand, Grain Merchant Commission Agency, R/o Kamthi Line, In front Of Dena Bank, Rajnandgaon, Distt. Rajnandgaon C.G., Presently At- M.M. Sharma, Puran Dal Mill Gali, Ramsagar Para, P.S. Azad Chowk, District : Raipur, Chhattisgarh (Owner of offending vehicle No.CG 08/ZE 5900)
3. The National Insu. Co. Ltd. S/o Thru- Branch Manager, Branch Office Mobin Mahal, 2nd Floor, G.E. Road, District : Raipur, Chhattisgarh (Insurer of offending vehicle No.CG 08/ZE 5900)

-----Respondents

For Appellant	: None appears
For Respondents- 1 and 2	: None appears
For Respondent-3/Insu. Comp	: Shri Goutam Khetrapal, Advocate

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**

Per Parth Prateem Sahu, J
15.07.2020

1. This case is listed before this Court under the head of 'Targeted for hearing and Disposal'. No one appeared on behalf of appellant today. Looking to the pendency of the case for last seven years and also the appeal is for enhancement of the award of compensation in favour of appellant, as also the Insurance Policy and liability of the Insurance Company is not in dispute, we have taken up this case for hearing in absence of learned counsel for the appellant.

2. Appellant/Claimant has challenged the award dated 24.06.2013 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur (for short 'Claims Tribunal') in Claim Case No.186 of 2011, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.1,10,189/- as compensation in an injury case.

3. Facts relevant for disposal of this appeal are that, on 11.01.2007 appellant/claimant was travelling on Hero Honda Passion Plus bearing No.CG 04-CP-4422 (hereafter referred to as 'Motorcycle') along with Rohit Sahu as pillion and going to city at about 12.30 pm. At that relevant time, respondent-1/NA-1, who was riding on a Scooter bearing No.CG 08-ZE 5900 (for short, 'offending vehicle') dashed the Motorcycle and caused accident. In the aforementioned accident, appellant suffered grievous injuries over his right hand, right shoulder, right eye and also on left leg. He was taken to Ramkrishn Hospital, Raipur, for treatment and his left knee was operated. Accident was reported to concerned Police Station, based upon which, Crime No.19 of 2007 was registered against respondent-1/NA1, rider of offending vehicle.

4. Appellant filed an application under Section 166 of Motor Vehicles Act, 1988, seeking compensation of Rs.17,00,000/- on account of injuries suffered by him, stating therein that he became permanently disabled due to the injury suffered by him on his left knee.

5. Respondent-1/NA1, rider of offending vehicle submitted reply to the claim application and denied the pleadings made therein. It was further pleaded that on the date of accident, he was possessing valid and

effective driving license and the offending vehicle was insured with respondent-3/NA-3, Insurance Company.

6. Respondent-2/NA2, registered owner of offending vehicle did not appear before learned Claims Tribunal and was proceeded *ex parte*.

7. Respondent- 3/NA3 Insurance Company filed its reply to claim application and denied the pleadings made therein. It was further pleaded that accident was not informed to the Insurance Company as required under Section 158 (6) of Motor Vehicle Act, 1988. Driver of offending vehicle was not possessing valid and effective driving license on the date of accident and on account of it, case under Section 3/181 of Motor Vehicle Rules was also registered. There was breach of conditions of Insurance Policy.

8. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, held that NA1/rider of offending vehicle due to rash and negligent driving of offending vehicle, dashed Motorcycle of the claimant in which he suffered injuries; but permanent disability was not found to be proved; there was no breach of conditions of Insurance Policy of the offending vehicle and also of the Motorcycle; contributory negligence was not found to be proved and awarded a sum of Rs.1,10,189/- as compensation.

9. The appellant in his claim application, has raised the ground that learned Claims Tribunal committed error in not holding the appellant to be permanent disabled on account of motor accidental injuries suffered by him. Loss of income during the period of treatment and compensation for

recovery period of two years had not been awarded even though the appellant pleaded and proved that the appellant was doing a part time job as Computer Operator in a tent house and earning Rs.3,000/- per month. The other ground raised in the memo of appeal is that learned Claims Tribunal has not considered the income of claimant, pleaded for assessing the loss of income due to the motor accidental injuries suffered by him and awarded meagre amount of compensation.

10. Shri Gautam Khetrapal, learned counsel for respondent-3/Insurance Company submits that learned Claims Tribunal based upon the evidence available on record, has awarded just and proper amount of compensation. He argued that evidence of Dr Pankaj Dhabaliya, AW2 (treating doctor) has not found any fracture injury on the person of appellant as pleaded in his claim application and the plea of permanent disability has not been proved by the appellant as there is no permanent disability certificate filed and proved by him, before the learned Claims Tribunal. He also submits that the pleading made by the appellant in the memo of appeal that learned Claims Tribunal not assessed his income is not correct because, learned Claims Tribunal has considered and held the income of the appellant as Rs.3,000/- per month and also submits that impugned award does not call for any interference.

11. We have heard learned counsel for the Insurance Company and perused the record.

12. In pleadings of claim application, appellant/claimant has pleaded that he suffered grievous injuries over his right hand, right shoulder, right

eye and also on left leg, along with grievous injury on his head. Apart from the pleading of personal injuries, the appellant/claimant has also pleaded about the damage of Motorcycle. In claim application, he has pleaded that he took treatment as In-patient at Ramkrishn Hospital, Raipur, from 11.01.2007 to 31.05.2007. In support of his pleading, claimant has filed Final Report as Ex.P1, copy of FIR as Ex.P2, MLC report of Ramkrishn hospital as Ex.P4. Invoice cash memo of Ramkrishn hospital dated 12.01.2007 as Ex.P22 and dated 21.04.2007 as Ex.P32 and Discharge ticket of Ramkrishn hospital as Ex.P 45. Upon going through these three documents ie Ex.P22, P32 and P45, it is clearly mentioned in Ex.P22 that the appellant admitted on 11.01.2007 ie the date of accident and was discharged on 12.01.2007; in Ex.P32, it is mentioned that appellant was admitted on 21.04.2007 and discharged on the same day. In discharge ticket Ex.P45, it is mentioned that the appellant admitted in hospital on 31.05.2007 and operated on 31.05.2007. From perusal of these three documents placed on record by the appellant, it only appears that the appellant got admitted for his treatment thrice in Ramkrishn hospital, but only for a day or two on each count. He was not admitted in the hospital for treatment continuously from 11.01.2007 to 31.05.2007. Therefore, the pleadings made by the appellant before learned Claims Tribunal in the claim application do not appear to be correct. In support of his pleadings with regard to the nature of injury and the treatment taken by him, he has examined Dr Pankaj Dhabaliya, AW2 (treating doctor), Orthopaedic Specialist of Ramkrishn hospital, who in his statement before the Claims Tribunal very specifically stated that there was no fracture injury over his leg. He further stated that the appellant

suffered ligament injury over his knee, which was operated through Microscope and operated part of the body has been mentioned as PCL and MCL (Ligaments). He further stated that after operation, the appellant has not again visited to his hospital for any treatment. In his evidence, he has not stated about any permanent disability suffered by the appellant. The ground raised in the memo of appeal that learned Claims Tribunal has not considered the permanent disability suffered by him and not awarded any amount towards the same, is not sustainable in view of aforementioned facts and documents placed on record and evidence of Dr Pankaj Dhabaliya, AW2. Even on perusal of the documentary evidence available on record, it only shows admission of the appellant in hospital on three occasions –firstly, for two days, secondly for a day and third time operated. Papers filed on record of Ramkrishn hospital of first admission do not mention about any operation and his treating doctor AW2 stated that he has operated PCL and MCL ligament through Microscope only on 31.05.2007 and discharged him on the same day.

13. For the reasons mentioned above, we are of the view that learned Claims Tribunal has rightly recorded a finding that the appellant did not suffer any permanent disability due to motor accidental injuries.

14. So far as the amount of compensation awarded by learned Claims Tribunal on account of injury suffered, learned Claims Tribunal has awarded the entire medical bills placed on record amounting to Rs.89,052/- and the grounds raised in memo of appeal, it is not pleaded that learned Claims Tribunal has not considered all the medical bills placed on record by him for awarding the medical expenses.

15. Learned Claims Tribunal has taken into account loss of income during the period of treatment, ie for a period of two months and awarded Rs.6,000/- which in the opinion of this Court, on lower side. Learned Claims Tribunal has ignored the medical documents which show that left knee of the appellant was operated on 31.05.2007 and in between January to May, he was admitted in the hospital in the month of April also for treatment of his injuries. In these circumstances, we find it appropriate to hold that the appellant may not be able to work for a period of four months. Learned Claims Tribunal has accepted income of appellant as Rs.3,000/- per month and therefore, loss of income for a period of four months will be Rs.12,000/-.

16. Learned Claims Tribunal further awarded Rs.1,000/- towards special diet and conveyance; Rs.5,000/- towards pain and suffering. Looking to the nature of injury as per medical documents placed on record by the appellant, for which he continuously suffered for a period of five months, we find it appropriate to award Rs.15,000/- towards pain and suffering and Rs.2,000/- towards special diet and conveyance.

17. Now, the appellant/claimant will be entitled for total compensation of **Rs.1,27,189/-** (Rs.89052/- towards medical bills, Rs.9,137/- towards damages to Motorcycle, Rs.12,000/- towards loss of income during the period of treatment, Rs.2,000/- towards special diet and conveyance and Rs.15,000/- towards the grievous injuries and pain and suffering), instead of Rs.1,10,189/- as awarded by learned Claims Tribunal. The liability to satisfy the amount of compensation will be on the Non-Applicants jointly and severally.

18. The aforementioned amount will carry interest @ 7% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

19. In the result, appeal is allowed in part and the impugned award is modified as above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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