

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 261 of 2015

Aarti Das, S/o Late Itwari Das, Aged About 45 Years, R/o- Nyapara, Jhopdapara, Thana- Tarbahar, Revenue/Civil Distt -Bilaspur, CG.

---- Appellant/claimant

Versus

1. Mohammad Habib, S/o Rashuk Khan, Aged About 50 Years, R/o- Jamnipali, Lata Basti, Post Bankimongra, Thana -Darri Revenue/Civil District -Korba, CG. (Driver). **--- Non-applicant No.1.**
2. Premshankar Tiwari S/o Shri J. Tiwari, R/o- Indira Nagar, Bankimongra, Thana – Darri, District : Korba, CG. (Owner). **--- Non-applicant No.2.**
3. Branch Manager, National Insurance Company Ltd. Branch Office-Taha Complex, Vyapar Vihar Road, Civil Distt - Bilaspur, Chhattisgarh. **--- Non-applicant No.3/Respondents**

For Appellant	: Mr. Samir Singh, Advocate.
For Respondent No.1 & 2	: None.
For Respondent No.3	: Mr. R. N. Pusty, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

02/11/2020

1. Claimant/appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned 3rd Additional Motor Accident Claims Tribunal, Bilaspur, (CG) (for short, 'the Tribunal) vide award dated 24.12.2014 passed in Claim Case No.65/2012, whereby the Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded Rs.84,000/- as compensation in injury case.
2. Facts relevant for disposal of this appeal are that on 07.08.2012 claimant (injured) was traveling on motorcycle as 'pillion rider' alongwith Dwarika Prasad Yadav. When they reached near Bannak Chowk, one Truck bearing registration No.CG-04/G/9304 (for short, 'offending vehicle') driven by Non-applicant No.1 rashly and negligently, dashed the motorcycle from its rear side and caused accident. In the aforesaid

accident, claimant suffered fracture injury on his left hand and grievous injuries on his leg and chest. Accident was reported to Police Station -Tarbahar Bilaspur based upon which crime was registered against non-applicant No.1, after completion of investigation, charge-sheet was also filed before the Court of Competent Jurisdiction. Claimant took treatment from CIIMS Hospital, Bilaspur and thereafter in Hospital of Dr. Shekhar Tiwari situated at Vyapar Vihar, Bilaspur.

3. Appellant filed an application under Section 166 of the Act of 1988 before the Tribunal seeking compensation of Rs.7,80,000/- pleadings therein that on the date of accident, he was working as Loader (Cooley) at Satyam Shivam Rice Mill and earning Rs.6,000/- per month. On account of motor-accidental injuries, he suffered fracture injury on his left hand, incurred expenditure of Rs.1,00,000/- on his treatment. On account of motor-accidental injuries, he is unable to do any work.
4. Non-applicant Nos.1 & 2 -driver and owner of offending vehicle, did not appear before the Tribunal, as such, they were proceeded ex-parte.
5. Non-applicant No.3-Insurance company submitted reply to application while denying the pleadings made therein also denied the fact of involvement of offending vehicle in accident. It was pleaded that accident was on account of negligence on the part of driver of motorcycle ie Dwarika Prasad Yadav. Accident was reported after 17 days, seizure of vehicle was after 27 days of the accident and even claimant was medically examined after 21 days of the accident.
6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that claimant suffered motor accidental injuries on account of rash and negligent driving of offending vehicle by

non-applicant No.1. Contributory negligence, breach of policy condition and permanent disability was not found to be proved, but held that claimant suffered grievous injuries over his person. Tribunal allowed application in part, awarded a sum of Rs.84,000/- as compensation along with interest @ 6% p.a, fastened liability upon non-applicants jointly and severally to pay the amount of compensation.

7. Learned counsel for the appellant/claimant submits that claimant suffered permanent disability which is apparent from medical documents and permanent disability certificate placed on record as Ex.32, but the Tribunal without any reason has not considered disability certificate. Ex.32 issued by the Medical Board in which there is specific mention that claimant suffered 30% permanent disability. He further submits that Tribunal has awarded very meager amount of compensation on different heads. Hence, amount of compensation under different heads are to be enhanced suitably.
8. Learned counsel for respondent No.3-Insurance company submits that Tribunal taken note of the fact that after the accident claimant took treatment at Hospital and was discharged on 15.09.2012; disability certificate was issued by the Medical Board on 27.09.2012, which shows that claimant did not wait till recovery period of injuries, hence, disability certificate cannot be accepted in evidence. The Tribunal has rightly disbelieved the disability certificate for the purpose of calculating percentage of permanent disability and loss of income on account of permanent disability if any. He further submits that the Tribunal has awarded amount of compensation on almost all the heads under which

claimant is entitled for. Amount of compensation awarded by the Tribunal to claimant is just and proper which does not call for any interference.

9. I have heard learned counsel for the parties and perused the record of claim case.
10. So far as submission with regard to non-considering of disability certificate is concerned. I have perused the medical documents showing treatment taken by claimant. Date of accident is 07.08.2012 and FIR was lodged on 24.08.2012, which was placed on record as Ex.P-2. Claimant was medically examined by a Government Doctor on 28.08.2012. After the accident, claimant took treatment at CIIMS Hospital Bilaspur ie Government Hospital. CT scan placed on record as Ex.P-5 which shows that claimant suffered fracture of left humerus M-3, Ct Scan of IS spine and pelvis of both hip has been suggested. It is also mentioned that 'Fracture of RT Scapula and Multiple bilateral ribs'. Admission sheet of CG Institute of Medical Sciences dated 07.08.12 has been placed on record as Ex.P-7 in which it is mentioned that 'Tenderness over, Shoulder joint, Pain over chest' and other fracture injury of Humerus Bone. Claimant was referred to surgical orthopedic ward and on the basis of request of family members of claimant he was discharge on 08.08.2012.
11. Discharge tickets of Dr. Shekhar Tiwari Nursing Home is placed on record as Ex.P-6 to show that claimant took treatment as in-patient from 12.08.2012 to 15.09.2012. Date of operation mentioned as 19.08.2012 & 13.09.2012.
12. From the aforementioned documents, it is clear that claimant suffered fracture injury over his left hand ie humerus bone and further fracture of right scapula and multiple bilateral ribs. The Tribunal in Para No.12 of

impugned award also recorded a finding that claimant suffered grievous injuries over his person.

13. Looking to the fact that after discharge from the hospital on 15.09.2012, claimant appeared before the Medical Board on 27.09.12, ie within a period of 12 days of discharge, for getting permanent disability certificate. After undergoing operation of injuries and discharge from the hospital, patient is required to wait for some period to get operated injuries to be recovered completely, which in this case was not done. The fracture injury of patient after undergoing operation requires some time ie recovery period for getting it cured completely. According to the facts of this case, claimant has not waited for that recovery period and has appeared before the Medical Board. Even after the finding of the Tribunal disbelieving medical certificate, claimant did not appear before the Medical Board again for getting disability certificate, if actually claimant became permanently disabled on account of injuries suffered by him.

14. In view of the aforementioned facts and circumstances of this case, ie date of accident, date of discharge from hospital, date of permanent disability and further considering that claimant has not placed on record any other disability certificate of his examination on some other date, I do not find any infirmity or illegality in the finding with regard to permanent disability recorded by Tribunal, the said finding is affirmed.

15. So far as other submission made by learned counsel for the claimant with regard to enhancement of amount of compensation is concerned, upon perusal of impugned award would show that Tribunal has awarded Rs.30,000/- towards operation, Rs.10,000/- towards future medical treatment, Rs.4,000/- towards special diet, Rs.5,000/- towards attendant,

Rs.3,000/- towards conveyance/transportation, Rs.6,000/- towards loss of income during the period of treatment, Rs.10,000/- towards pains and suffering, Rs.16,000/- towards purchase of medicines. Tribunal has not awarded any amount towards injuries suffered by claimant. As per medical documents available on record, claimant suffered fracture injuries over his humerus bone, ribs and scapula, I find it appropriate to award Rs.25,000/- towards injuries suffered by claimant. Looking to the nature of injuries, operation and period of treatment, I find it appropriate to award Rs.25,000/- towards pains and suffering instead of Rs.10,000/-. The Tribunal has assessed income of claimant on notional basis as Rs.3,000/- per month which appears to be lower side. Date of accident is 07.08.2012, hence, in any case claimant being manual labour (Cooley) working in rice mills could have earned much more than income assessed by the Tribunal. Taking into consideration wage structure, nature of occupation, price index, I find it appropriate to assess income of claimant as Rs.4,000/- per month instead of Rs.3,000/- per month. After the accident looking to the nature of occupation and nature of injuries suffered by claimant, he may not have continued with his work for the period of four months, hence, I award Rs.16,000/- towards loss of income during the period of treatment. (4000 X 4).

16. Apart from above, claimant is also entitled for Rs.30,000/- towards operation, Rs.16,000/- towards purchase of medicines, Rs.10,000/- towards future medical expenses, Rs.4,000/- towards special diet, Rs.5,000/- towards attendant, Rs.3,000/- towards transportation as already awarded by the Tribunal.

17. Now claimant will be entitled for a total sum of **Rs.1,34,000/-** (Rs.25,000/- + Rs.25,000/- + Rs.16,000/- + Rs.30,000/- + Rs.16,000/- + Rs.10,000/- + Rs.4,000/- + Rs.5,000/- + Rs.3,000/-) as compensation instead of **Rs.84,000/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

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

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-