

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.962 of 2015**

1. Tikam Ram Sahu S/o Anup Ram Aged About 48 Years R/o Village Dhangaon, Police Station Lalbag, Tahsil and District Rajnandgaon Chhattisgarh. **----Non-applicant No.2/Owner.**

2. Goutam Sahu S/o Tikam Ram Sahu Aged About 23 Years R/o Village Dhangaon, Police Station Lalbag, Tahsil and District Rajnandgaon Chhattisgarh. **----Non-applicant No.1/Driver**

---Appellants**Versus**

1. Rohit Kumar Dewangan S/o Sukhitram Aged About 33 Years R/o Village Dhangaon, Police Station Lalbag, Tahsil and District Rajnandgaon Chhattisgarh. **---Applicant/Claimant.**

2. United India Insurance Company Limited Through The Branch Manager, Branch Office-Kamti Line Rajnandgaon Chhattisgarh.

---Non-applicant No.3.**-----Respondents**

For Appellants	: Mr. A. D. Kuldeep, Advocate.
For Respondent No.1	: Mr. Samir Singh, Advocate.
For Respondent No.2	: Ms. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****05/11/2020**

1. Appellants -Owner & Driver of Tractor & Trolley bearing registration No.CG07/N/0562 & CG07/N/0563 respectively have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 29.04.2015 passed by learned 1st Additional Motor Accident Claims Tribunal, Rajnandgaon (CG) in Claim Case No.131/2012, whereby the Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded Rs.83,600/- as compensation in injury case.

2. Facts relevant for disposal of this appeal are that on 05.01.2011, respondent No.1/claimant (injured) alongwith other persons was returning from village -Dhangaon on Tractor & Trolley bearing registration No.CG07/N/0562 & CG07/N/0563 (for short, 'offending vehicle') after attending engagement ceremony. On the way at about 10:30 P.M, near village -Saltikri, non-applicant No.1, driver of offending vehicle, drove his vehicle rashly and negligently due to which, it turned turtle. As a result, claimant suffered fracture injury over his right leg; grievous injuries over his chest; including other injuries on various parts of body. Accident was reported to concerned police station based upon which crime was registered against non-applicant No.1.
3. Injured filed an application under Section 166 of the Act of 1988 before the Tribunal seeking compensation of Rs.6,95,000/- pleading therein that on the date of accident, he was working as Agent in Sahara Insurance Company and earning Rs.10,000/- per month. On account of fracture injury suffered by him in accident, he underwent operation at District Hospital, Rajnandaon and for further treatment of internal injury of chest he took treatment at Apollo Hospital, Bhilai for which he underwent 'heart surgery". He has suffered permanent disability and now unable to earn his livelihood.
4. Non-applicant No.1 & 2, driver & owner of offending vehicle, submitted their reply to application, while denying the pleadings made therein also denied the fact of accident from non-applicant No.1. They further pleaded that for taking monetary benefits, claimant has lodged false complaint against non-applicant No.1 with the help of police of PS - Dongargarh. Claimant has not suffered any grievous injuries. He is healthy and doing

all his work normally. The amount of compensation claimed is highly exaggerated.

5. Non-applicant No.2/Insurance Company submitted its reply to application and denied the pleadings made therein. It was further pleaded that offending tractor was insured under the terms and condition of Insurance Policy but offending trolley was not insured with it. On the date of accident, offending vehicle was used for other than agricultural purpose ie for carrying passengers. Claimant has not suffered permanent disability. On the date of accident, non-applicant No.1 was driving the offending vehicle after consumption of liquor. As such there was breach of policy condition, hence, Insurance Company is not liable to indemnify the insured.
6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that on account of rash and negligent driving of offending vehicle by non-applicant, claimant suffered grievous injuries and became permanently disabled to the extent of 10%. Fact of valid and effective driving license of non-applicant No.1 was not found to be proved. Offending vehicle was plied in breach of policy condition. Tribunal allowed application in part, awarded a sum of Rs.83,600/- as compensation along with interest @ 6% p.a. While exonerating the Insurance Company from its liability, fastened liability upon non-applicants No.1 & 2 to pay the amount of compensation, jointly or severally.
7. Learned counsel for the appellants submits that Tribunal erred in assessing 10% permanent disability and awarding excessive amount of compensation to claimant without there being any cogent and reliable

piece of evidence. Claimant wrongly claimed compensation towards 'surgery of 'heart', whereas it is not on account of accidental injuries suffered by him in accident. He further submits that claimant took treatment as in-patient only for 8 days but even then the Tribunal has awarded Rs.12,000/- towards nutritious food and attendant which in the facts of the case is on higher side. Tribunal erroneously exonerated Insurance Company from its liability.

8. Per contra, learned counsel for respondent No.1/claimant submits that the Tribunal based upon the pleadings and evidence available on record has awarded just and proper amount of compensation, which does not call for any interference. He further submits that though the District Medical Board after examination of injuries of claimant has issued permanent disability certificate to the extent of 40% even then Tribunal has assessed percentage of disability as 10% only. To prove the said disability certificate claimant has examined Dr. Prakash Bhalerao as AW-2.

9. Learned counsel for respondent No.2/Insurance Company supports the impugned award.

10. I have heard learned counsel for the respective parties and perused the record of claim case.

11. So far as first submission made by learned counsel for the appellant with regard to permanent disability to the extent of 10% is concerned, claimant has placed on record medical documents as Ex.P-4 disability certificate & Ex.P-7 discharge ticket of District Hospital, Rajnandgaon. Perusal of Ex.P-7 discharge ticket shows that claimant suffered fracture injury on his femur and took treatment as in-patient from 06.01.2011 to

13.01.2011. In Ex.P-4 disability certificate it is mentioned that claimant suffered fracture injury in his right leg. Dr. Prakash Bhalerao was examined as AW-2 to prove the said disability certificate, who has stated in his evidence that after perusal of medial documents & x-ray report, he found malunited of fracture of right tibia and fibula and shortening of right leg by three centimeters. He admitted that claimant has not mentioned about suffering of any 'heart' disease. The Medical Board has assessed permanent disability to the extent of 40% and opined that disability is non-progressive or non likely to improve. Taking into consideration the disability certificate coupled with evidence of doctor, I do not find any good reason to interfere with the assessment of percentage of disability assessed by Tribunal towards loss of earning capacity.

12.The Tribunal has assessed monthly income of claimant as Rs.3,000/- only whereas, date of accident is 05.01.2011 and on that date claimant was aged about 33 years. Upon taking into consideration the date of accident, age of claimant, the income of claimant might be more.

13.So far as submission with regard to award of Rs.12,000/- is concerned, Tribunal in Para No.14 of impugned award has awarded Rs.12,000/- towards nutritious diet, fruits, attendant and other miscellaneous expenses. The amount of Rs.12,000/- towards compensation on several heads, looking to the nature of injuries suffered by claimant and assessment of monthly income of claimant, I am not inclined to interfere with the said awarded amount.

14.The Tribunal has awarded loss of income for the period of three months which cannot be said to be for excessive period looking to the nature of injuries which is a fracture injury and malunited. The award of Rs.5,000/-

on the heads of pains and suffering cannot be said to be on higher side, rather it appears to be on little lower side in the facts of the case.

15. In view of above, I do not find any ground to interfere with the amount of compensation awarded by the Tribunal.

16. For the foregoing reasons, appeal being devoid of substance which is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-