

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 596 of 2014**

Digeshwar Sahu S/o Khoman Lal Sahu, Aged About 23 Years, R/o Village Sirrikhurd, Police Station Fingeshwar, Revenue District Gariyaband, Civil District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Santosh Kumar Sahu S/o Parshu Ram Sahu, Aged About 23 Years, R/o Village Borsi, Police Station Fingeshwar, District Gariyaband, Chhattisgarh.
2. Uday Ram Sahu S/o Late Banshi Ram Sahu, R/o Village Borsi, Police Station Fingeshwar, District Gariyabandh, Chhattisgarh.
3. The New India Insurance Company Limited, Divisional Office 11, Life Insurance Road, Commercial Campus, Pandri Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Shri A.D. Kuldeep, Advocate
For Respondent No.1 & 2	: None
For Respondent No.3	: Shri Deepak Gupta, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, Judge****17/09/2020**

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') for enhancement of compensation of the award dated 20/02/2014 passed by the Seventh Additional Motor Accident Claims Tribunal Raipur, Chhattisgarh (hereinafter

referred to as 'Claims Tribunal') in Claim Case No.34/2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.3,07,307/- as compensation in an injury case.

2. Brief facts relevant for disposal of this appeal, are that, on 13/11/2012, appellant/claimant was travelling on Motorcycle bearing No.MH-39/G/8732 along with Manoj Yadav (pillion rider) and going to Sirrikhurd from Raipur. When they reached near Mohan Dhaba on National Highway No.30 near Abhanpur, non-applicant No.1 driving his Tata ACE No.CG-04/JC/4860 (hereinafter referred to as 'offending vehicle') rashly and negligently, dashed the motorcycle. In the aforementioned accident, appellant/claimant suffered fracture injury over his left femur apart from other injuries, he was immediately taken to Primary Health Center, Abhanpur and thereafter, he was referred to Shree Narayana Hospital, Raipur where appellant/claimant took treatment as inpatient from 13/11/2012 to 01/12/2012 and undergone operation of his left femur.
3. Appellant/claimant filed an application under Section 166 read with Section 140 of the M.V. Act pleading therein that on account of aforementioned injuries, he suffered disability; he has incurred considerable amount on his medical treatment and claimed compensation of Rs.14,50,000/- on different heads.

4. Non-applicants No.1 and 2/driver and owner of the offending vehicle submitted reply to claim application and denied entire pleadings made therein. It was pleaded that appellant/claimant met with an accident on account of his own negligence. Dashed his motorcycle with own Harvester and fell down; there was no accident with offending vehicle; on the date of accident, non-applicant No.1 was possessing valid and effective driving licence; the vehicle was insured with non-applicant No.1, hence, the liability, if any, for payment of amount of compensation would be upon non-applicant No.3/Insurance Company.
5. Non-applicant No.3/Insurance Company submitted reply to claim application and denied entire pleadings made therein. It was pleaded that appellant/claimant himself was negligent and dashed with other vehicle. In alternate, it was pleaded that there was contributory negligence on the part of appellant/claimant/driver of motorcycle; there was no valid and effective driving licence with non-applicant No.1 as well as there was no fitness and permit of offending vehicle, leading to breach of conditions of insurance policy, hence, Insurance Company is not liable to pay any amount of compensation.
6. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as six issues for consideration. On appreciation of the pleadings and

evidence placed on record by the respective parties, learned Claims Tribunal held that non-applicant No.1 while driving offending vehicle rashly and negligently, knocked down the motorcycle driven by appellant/claimant from its back side and caused accident; permanent disability on account of accidental injuries could not be found to be proved; contributory negligence could not be found to be proved as well as breach of conditions of insurance policy was not found to be proved. Awarded a total sum of Rs.3,07,307/- as compensation to appellant/claimant and fastened liability upon non-applicants jointly and severally to satisfy the amount of compensation.

7. Shri A.D. Kuldeep, learned counsel for the appellant/claimant submits that learned Claims Tribunal has erred in not awarding any amount towards disability suffered by him on account of fracture of left femur. He argued that appellant/claimant had to undergo operation and rod was implanted, but even after taking treatment in one of the best Hospitals, he could not recover/cured fully. He pointed out that the learned Claims Tribunal erred in assessing the income of appellant/claimant as Rs.3,000/- per month only ignoring the date of accident i.e. 13/11/2012 and even if, appellant/ claimant is to be treated as ordinary manual labourer on the date of accident, then his income will be much more than assessed by learned Claims Tribunal. It is

contended that on the date of accident, appellant/claimant was working as driver of Harvester and earning Rs.15,000/- per month. It is further contended that learned Claims Tribunal has erred in not awarding appropriate amount of compensation on the heads of loss of income during the period of treatment, pain and suffering along with other non-pecuniary damages.

8. Per contra, Shri Deepak Gupta, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal has taken into consideration the entire material available on record and has awarded just amount of compensation. He further submits that appellant/claimant has not placed any evidence with regard to disability, if any, suffered by him, hence it cannot be presumed that appellant/claimant has suffered permanent disability on account of motor accidental injuries. It is contended that learned Claims Tribunal in absence of any evidence has assessed the income of Rs.3,000/- per month on notional basis, which cannot be said to be erroneous.
9. We have heard learned counsel for the respective parties and perused the record carefully.
10. So far as the income of appellant/claimant assessed by learned Claims Tribunal as Rs.3,000/- per month is concerned, it was pleaded that he was engaged as driver of Harvester, but has not placed any reliable piece of evidence

i.e. licence in this regard, hence, the submission made by learned counsel for the appellant/claimant that appellant/claimant was working as driver of the Harvester cannot be accepted in absence of any licence. But the facts remains that appellant/claimant is able-bodied person, aged about 23 years and for earning his livelihood, at least he must be working as an ordinary manual labourer. The income of a labourer like appellant/claimant is to be assessed on notional basis taking into consideration the wage structure, cost of living and price index prevailing in the State/District at that relevant time.

11. Taking into consideration overall facts and circumstances mentioned above, we find it appropriate to reckon the income of appellant/claimant as Rs.4,500/- per month. Learned Claims Tribunal has held that looking to the nature of injuries and its grievousness, appellant/claimant may not have been able to work for a period of 6 months, which is not under challenge, hence, loss of income during the period of treatment would come to Rs.27,000/- (4,500 x 6).
12. Learned Claims Tribunal has awarded a sum of Rs.20,000/- towards injuries and pain and suffering, which in the opinion of this Court, is on the lower side. Looking to the fracture injury suffered by appellant/claimant on his left femur and the period of treatment as inpatient for about 19 days, we find it appropriate to award Rs.25,000/- towards injuries suffered

by appellant/claimant and Rs.20,000/- towards pain and suffering.

13. The appellant/claimant will be entitled for a sum of Rs.1,50,000/- towards treatment, Rs.1,09,107/- & Rs.8,200/- towards purchase of medicine and Rs.5,000/- towards special diet and conveyance expenses as awarded by learned Claims Tribunal. Learned Claims Tribunal has not awarded any amount towards attendant. Looking to the period of treatment and nature of injuries, we find it appropriate to award Rs.4,000/- towards attendant for a period of one month.
14. Now appellant/claimant will be entitled for a total sum of Rs.3,48,307/- (27,000 + 25,000 + 20,000 + 1,50,000 + 1,09,107 + 8,200 + 5,000 + 4,000) as compensation instead of Rs.3,07,307/-. The amount of compensation shall carry interest at the rate of 6% from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.
15. In the result, appeal is allowed in part. The impugned award is modified to the extent indicated herein above.

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

Sd/-
(Parth Prateem Sahu)
Judge