

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 464 of 2014

- Gopal Yadaw, S/o Pururam Yadaw, Aged About 48 Years, R/o Village And Post- Sipat, P.S. And Tah. Sipat, District (Civil and Revenue) Bilaspur , Chhattisgarh

---- Appellant /Applicant

Versus

1. Madhurendra Kumar @ Ditnendra Rai, S/o Late Ramawadh Rai R/o At Post- Satyendra Auto Chal Akaltara, P.S. And Tah. Akaltara, Distt. Janjgir-Champa, Chhattisgarh (Driver of the Truck No.CG-12 C 0955)
2. Saroj Devi, W/o Ditnendra Rai, R/o Main Road, Darri, P.S. Darri, Tah. And Distt. Korba C.G., Other Address- Ambedkar Chowk, Janjgir, P.S. And Tah. Janjgir, District (Revenue & Civil) Janjgir-Champa, Chhattisgarh (Owner of the Truck No.CG- 12C 0955)
3. Shri Ram General Insu.Co.Ltd., Thru- Branch Office, E/8, E.P.I.P. Ricco Industrial Area, Sitapur, Jaipur Rajasthan, Minu Complex, Main Road, Kosabadi, Korba, Tah. And District (Revenue & Civil) Korba (Insurer of the Truck No.CG 12 C 0955)

----Respondents/NAs

For Appellant	: Shri Anand Kesharwani, Advocate
For Respondents-1 and 2	: None appears
For Respondent-3	: Shri SS Rajput, Advocate

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

Per Parth Prateem Sahu, J.
29.09.2020

1. Claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 03.03.2014 in Claim Case-21 of 2012 passed by the 3rd Additional Member of the 1st Motor Accident Claims Tribunal, Bilaspur, wherein learned Claims Tribunal allowed the application in part and awarded total sum of Rs.1,02,800/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 13.12.2011, claimant/appellant was travelling on his bicycle and going to his house Akaltara at about 7 pm. At that relevant time, when he reached near Block Office, Akaltara one Truck bearing No.CG12C-0955 (for short, 'offending vehicle') coming from Akaltara, dashed bicycle of the claimant and caused accident. In the said accident he suffered grievous injuries over his person and his bicycle got badly damaged. He was taken to Community Health Centre, where it was found that there was fracture of right femur along with other injuries.

3. The appellant/claimant filed an application under Section 166 of the Act of 1988 mentioning that in the accident he suffered grievous injuries over his left leg, right hand and waist. Looking to the nature of injuries, he came to Bilaspur in a private vehicle for getting treatment at Moolchand Memorial Hospital, Bilaspur. It is also pleaded that there is fracture over the right tibia, fibula, fracture on pelvic and lacerated wound over his ankle. He undergone operation and took treatment as inpatient from 14.12.2011 to 26.12.2011 and incurred medical expenditure of about Rs.2,00,000/-. He suffered permanent disability on account of motor accidental injuries suffered by him and is unable to do the work of Confectioner (Halwai) which he was doing prior to the accident.

4. On account of aforementioned reasons, he claimed for Rs.7,65,000/- as compensation.

5. NA-1, driver of offending vehicle submitted reply to the claim application denying the entire pleadings made therein. It was further

pleaded that the accident was on account of self negligence of claimant himself. On the date of accident, claimant has consumed liquor. There was no accident from the offending vehicle by NA-1. On the date of accident, offending vehicle was insured with NA-3 and the liability, if any, would be upon the Insurance Company.

6. NA-3/ Insurance Company submitted reply to the claim application and denied the pleadings made therein. In additional pleadings it was pleaded that the driver of offending vehicle was not possessing valid and effective driving license on the date of accident and as such, there was breach of conditions of insurance policy. Therefore, claimant is not entitled for any compensation from NA3/Insurance Company.

7. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties, held that NA-1, driver of offending vehicle drove his vehicle rashly and negligently and dashed the bicycle driven by the claimant / appellant. Claimant suffered permanent disability, and there was no breach of conditions of insurance policy and awarded a total compensation of Rs.1,02,800/-.

8. Shri Anand Kesharwani, learned counsel for the appellant submits that learned Claims Tribunal erred in fixing the income of the appellant / injured at Rs.3,000/- per month, ignoring the pleadings and evidence wherein income of the appellant on the date of accident has been stated to be Rs.8,000/- per month. He further argued that Claims Tribunal has not considered the Disability Certificate issued by the medical expert of 25% and assessed percentage of loss of income as 10% only on presumption

and surmises. He further argued that the the Claims Tribunal has not awarded any amount towards loss of amenities and joy in life in the facts of the case, where appellant suffered permanent disability and proved the same by examining doctor as AW-2. The amount of compensation awarded on the head of loss of income during the period of treatment, pain and suffering, special diet, attendant and transportation are on lower side. It is lastly contended that learned Claims Tribunal has not awarded the entire bills claimed towards medical expenses.

9. Per contra, Shri SS Rajput, learned counsel for the Insurance Company submits that claimant has not proved the income in accordance with law by placing documentary evidence before learned Claims Tribunal. It is further contended that in the Disability Certificate, doctor specifically mentioned that 25% moderate disability, the occupation of the appellant / claimant is of confectionery for which he does not have to walk or run nor he has to lift any weight, hence, Claims Tribunal justified in assessing loss of working efficiency to the extent of 10% which cannot be said to be erroneous. He also pointed out that Claims Tribunal awarded sufficient amount on other heads, the award passed by learned Claims Tribunal in the facts and circumstances of the case, is just and proper which does not call for any interference.

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

11. Accident of offending vehicle and liability of the Insurance Company are not in dispute. Learned counsel for the appellant has raised the first

ground regarding assessment of income by the Claims Tribunal to be on lower side. Occupation of the appellant / claimant to be confectionery also has not been denied or disputed. The nature of engagement and work of the claimant definitely will come within the category of skilled labour and hence, in the considered opinion of this court, the Claims Tribunal erred in assessing monthly income of appellant / claimant as Rs.3,000/- per month only for the year 2011. In absence of evidence to prove income by placing documentary evidence, it is for the Courts and Tribunal to assess the monthly income on notional basis. For assessing monthly income on notional basis, several factors are required to be taken into consideration like date of accident, nature of occupation, cost of living, price index and wage structure. Looking to the date of accident and nature of engagement of the appellant to be a confectionery, we find it appropriate to hold the income of the claimant as Rs.4,500/- per month instead of Rs.3,000/-.

12. So far as the submission with regard to disability assessed by the Claims Tribunal to the extent of 10% for assessing loss of working efficiency is concerned, permanent disability certificate issued by the Medical Board is filed as Ex.P9, perusal of which would show that doctor has recorded healed fracture femur, Gama right knee healed fracture. The Disability Certificate was issued mentioning moderate disability. To prove the above certificate, claimant has examined Dr. S.S.Bhatia, AW2 who is Orthopaedic Specialist of the District Hospital, Bilaspur. In his evidence, he stated that there was fracture of right femur for which rod was implanted, fracture of pelvic bone which was found to be united. Though, in his evidence, doctor has stated that the Disability Certificate Ex.P9 was

issued after examining the whole body and not part of the body, the Claims Tribunal, after taking note of the pleadings, disability of the claimant, and evidence of the doctor, has arrived at a finding that the claimant / appellant suffered only 10% loss of earning capacity.

13. In view of the aforementioned facts and evidence available on record, particularly taking into consideration the Disability Certificate (Ex.P-9) issued by AW2 and his evidence that nature of disability of the claimant was of moderate as well as nature of occupation, we do not find any error in the finding recorded by the learned Claims Tribunal that the claimant suffered 10% loss of earning capacity.

14. Learned Claims Tribunal has awarded Rs.25,000/- towards medical expenses, Rs.6,000/- towards loss of income during the period of treatment, Rs.15,000/- towards future treatment, and Rs.10,000/- for pain and suffering, nutritious diet, travelling and attendant. Looking to the facts and circumstances of the case nature of injury and its treatment, we are of the view that Claims Tribunal awarded meagre amount on all other heads and not awarded any amount towards loss of amenities and joy in life.

15. For the above discussion, we find it appropriate to re-compute the compensation to be awarded to the claimant.

16. Income of the appellant is assessed Rs.4,500/- per month and Rs.54,000/- per annum.

17. The Tribunal assessed loss of earning capacity / income due to permanent disability to the extent of 10%. As held by Hon'ble Supreme

Court in the case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in **(2017) 16 SCC 680** there shall be an addition towards future prospects. On the date of accident claimant was 48 years of age, hence there will be an addition of 25% of his established income towards future prospects. By adding 25% of the established income of the injured, yearly income of the injured for the purpose of calculating the amount of compensation, comes to Rs.67,500/- {54000 + (54000 x 25/100)}.

18. The appellant suffered 10% of permanent disability, therefore, yearly loss of income comes to Rs.6,750/-(10% of yearly income).

19. The appellant has been shown as 48 years on the date of accident , appropriate multiplier to be applied is 13. Upon multiplying yearly loss of income with multiplier of 13, total loss of income comes to **Rs.87,750/-**.

20. Apart from the above, the claimant will be entitled for **Rs.18,000/-** (4500 x 4) towards loss of income during the period of treatment. **Rs.25,000/-** towards pains and suffering, nutritious diet, travelling and attendant, **Rs.15,000/-** towards loss of amenities and joy in life because the appellant being 48 years of age, has to live for whole of his life with the disability suffered by him in the Motor Accident.

21. So far as the award of compensation towards medical bills, learned Claims Tribunal has taken into consideration the documents placed on record from Ex.P10 to Ex.P18 for awarding the medical expenses. Learned counsel for appellant could not able to point out as to which of the

bills placed on record have not been considered by the Claims Tribunal for awarding compensation.

22. In view of the above, the appellant / claimant will be entitled for an amount of **Rs.48,609/-** towards medical expenses as assessed by the learned Claims Tribunal.

23. Now the appellant / claimant will be entitled for a total sum of **Rs.1,94,359/-** (87750 + 18000 + 15000 + 25000 + 48609), instead of Rs.1,02,800/- awarded by the learned Claims Tribunal.

24. The aforementioned amount of compensation shall carry 6% interest from the date of filing of the claim application till its realization.

25. Other conditions imposed by the learned claims tribunal will remain intact.

26. In the result, appeal is allowed in part and the impugned award passed by the learned Claims Tribunal is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge