

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.689 of 2014**

Jivanlal S/o Late Budhram Aged About 56 Years R/o. Village- Subhash Chowk, Ward No. 51, Borsi, Durg, P.S. Pulgaon, Tah & Distt. Durg C.G.

---- Appellant/Claimant**Versus**

1. Khulasram Sahu S/o Late Dukhwa Ram Sahu Aged About 35 Years R/o Potiyakala, Abadi Para, Post- Hanoda, P.S. Pulgaon, Tah & Distt. Durg C.G. (Driver)
2. Sudarshan Lal Sahu S/o Mahtaru Ram Sahu Aged About 45 Years R/o Potiyakala, Ward No. 52, Abadi Para, Post- Hanoda, P.S. Pulgaon, Tah & Distt. Durg C.G. (Owner).
3. Universal Sompo General Insu. Co. Ltd. Thru- Branch Manager, Branch Office, First Floor, B-07, Shriram Nagar, T.V. Tower Road, District : Raipur, CG.

--- Respondents

For Appellant	: Mr. A. D. Kuldeep, Advocate.
For Respondent No.1 & 2	: Mr. Gautam Khetrapal, Advocate.
For Respondent No.3	: Mr. P. Acharya, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****Judgment on Board****Per Parth Prateem Sahu, J****15/09/2020**

1. Appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the legality and validity of the impugned award dated 29.11.2013 passed by learned 6th Additional Motor Accident Claims Tribunal, Durg, C.G (for short 'the Tribunal') in Claim Case No.88/2012, whereby the Tribunal allowed claim application in part and awarded a sum of Rs.15,800/- as compensation in an injury case.
2. Facts relevant for disposal of this appeal are that on 25.04.2012 after attending one marriage, appellant alongwith his wife and granddaughter returning from village Supela to their village Borsi on motorcycle bearing

registration No.CG07/AA/2585, (for short 'the motorcycle'). On the way, one Tata Magic bearing registration No.CG07-CA-1921, (for short, 'offending vehicle'), driven by respondent No.1-Khulasram Sahu, dashed against the motorcycle, as a result, appellant suffered fracture injury on his right leg. He was taken to Jawahar Lal Nehru Hospital & Research Centre, Bhilai for treatment, where he remained admitted from 26.04.2012 to 09.05.2012. Accident was reported to concerned police station and based upon which Crime No.224/12 for the offence under Sections 279, 337, 338 of the Indian Penal Code was registered against driver of offending vehicle.

3. Appellant/claimant filed claim application under Section 166 of the Act of 1988 before the Claims Tribunal claiming compensation of Rs.2,34,520/- as compensation on the ground mentioned therein that on the date of accident, he is working as "Operator" in Bhilai Steel Plant, Bhilai and getting salary of Rs.33,904/- per month. On account of accident, he became unfit and thereby suffered loss of salary.
4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, submitted their joint reply to application and denied almost entire pleadings made therein against them. They have also denied the fact of accident from offending vehicle stating that offending vehicle was impleaded in accident only on the basis of assumption and a false and fabricated case was registered against driver of offending. It was further pleaded that if offending vehicle is found to be involved in any manner, in alleged accident, then liability to pay amount of compensation will be upon non-applicant No.3-insurance company as on the date of accident offending

vehicle was insured with it and there was no breach of any of the condition of Insurance Policy.

5. Non-applicant No.3/Insurance Company submitted its reply to application and also denied almost entire pleadings made therein. It was pleaded that non-applicant No.2-owner of offending vehicle as well as concerned police station have not forwarded the information with regard to the accident from the offending vehicle. It was also pleaded that deceased himself was responsible for the accident as he was carrying two passengers in his motorcycle on the date of accident. It was further pleaded that there was breach of condition of Insurance Policy as on the date of accident, driver of offending vehicle was not possessing valid and effective driving license to drive offending vehicle. Insurance Company is not liable to indemnify the insured.
6. Upon appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that appellant/claimant suffered grievous injuries in motor accident occurred due to rash & negligent driving of offending vehicle by non-applicant No.1 and that Insurance Company also failed to prove contributory negligence on the part of deceased as also breach of any condition of Insurance Policy and awarded Rs.15,800/- as compensation.
7. Learned counsel for the claimant/appellant submits that though the Tribunal recorded a finding that appellant/claimant suffered grievous injuries in accident, but awarded very meager amount of compensation to him ie Rs.1,000/- towards pains and suffering, Rs. 10,000/- towards other loss of leave, Rs.1500/- towards special diet, Rs. 2000/- towards conveyance expenses & Rs. 1300/- towards attendant. He further

submits that the Tribunal erred in not awarding any amount towards loss of income during the period of treatment, whereas appellant remained unfit for about 464 days and also deprived of bonus on account of non-working for the aforesaid period. On the aforesaid grounds, he prays that amount of compensation awarded to appellant/claimant be enhanced suitably by modifying the impugned award.

8. Per contra, learned counsel for respondent No.3/Insurance Company submits that the Tribunal has assigned the reasons for not awarding any amount of compensation towards loss of income during period of treatment as appellant/claimant is a government employee and he took treatment from Jawahar Lal Nehru Hospital & Research Centre, Bhilai, where he has not incurred any medical expenses. He further submits that appellant/claimant has failed to prove loss of income on account of leave taken during the period of treatment. The treating doctor was also not examined by appellant, therefore, amount of compensation towards permanent disability has not been awarded to him.
9. We have heard learned counsel for the parties and also perused the records.
10. Claimants in support of claim application, filed documents of criminal case to prove the accident and copy of medical documents of treatment taken by him at Jawahar Lal Nehru Hospital, Bhilai has been filed as Ex.P-2 to P-17. Perusal of Ex. P-8 ie discharge ticket would show that appellant was admitted in hospital on 26.04.2012, where on provisionally diagnosis, it was found that fracture of shaft femur right and commuted fracture of IT femur right Typed -I. At page No.14 of medical documents,

it is mentioned that fracture of neck femur right & fracture of shaft femur right upper 1/3rd.

11. The nature of injuries suffered by appellant, the injuries are definitely of grievous in nature, but at the same time looking to the part of the body where he suffered fracture injury ie on right femur and also on his right femur neck, which will definitely cause difficulty for him in his normal movements and routine activities of life.
12. So for as argument raised by learned counsel for appellants with regard to non award of any amount of compensation towards loss of income during the period of treatment ie 464 days is concerned, appellant has not filed any certificate from the employer to show that 464 days of his absence was without salary or leave availed by the appellant is from his Earned Leave account. The appellant has filed attendance report obtained from employer issued by Shri P.K. Sharma Junior Manager on 12.03.2013, as Ex.P-19, the recording made in attendance report is under the duty code. The appellant has made an attempt to prove his case by examining Junior Manager Shri P. K. Sharma as AW/2 but specific evidence in this regard has not come in his evidence. Though this witness has very specifically stated in evidence that from April, 2012 to September, 2013, appellant was present only for 51 days. The appellant has proved that he could not work for a long period as he was show absent in attendance register.
13. Looking to the nature of the injuries and period of treatment as evident from medical documents placed on record by appellant, he might have taken rest for long time for recovery from the injuries. If he has suffered loss of income in any manner due to accidental injuries then he is entitled

for amount of compensation for the aforesaid period. Taking into account medical documents showing his admission on multiple occasions for treatment as inpatient, lastly on 16.01.2013, we find some force in submission of learned counsel for the appellant that appellant was declared unfit to perform his duties for many numbers of days, but the period and number of days is required to be proved and also the loss of income suffered by the appellant during that period.

14. The amount of compensation awarded by the Tribunal to the appellant on other heads is also on lower side, the Tribunal has awarded Rs.1,000/- towards pains and suffering in the case where appellant suffered two fractures injuries on his one leg (femur and femur head), he was continuously under treatment as per documents available on record from April, 2012 to January, 2013.
15. Considering the pleadings and medical documents placed on record by the appellant, wherein it is mentioned that appellant remained unfit for considerable long time and also the period showing his absence from his work, we find it appropriate to remand back the matter to concern Tribunal to reassess the amount of compensation after affording an opportunity to the appellant to prove the period on which the appellant remained unfit on account of motor accidental injury. Further, to prove loss of income suffered by the appellant for such period.
16. As we have already remitted back the case to pass award on loss of income/monetary loss of the appellant, if any, on account of accidental injuries suffered by him, we find it appropriate to direct the Tribunal to reconsider the award of amount on all heads taking into consideration the judgments passed by the Hon'ble Supreme Court in case of **R. D.**

Hattangadi v. Pest Control (India) Pvt. Ltd & Anr reported in **(1995) 1 SCC 551 & Raj Kumar v. Ajay Kumar & Anr** reported in **(2011) 1 SCC 343.**

17. Needless to say that the parties will be at liberty to file additional documents, lead further evidence in support of their case. The Tribunal shall thereafter pass award a fresh after giving opportunity of hearing to the respective parties in accordance with law.
18. Looking to the date of filing of application, it is directed that the Tribunal will make all endeavor to decide the case within a period of five months from the date of receipt of the records of claim case alongwith order passed by this Court.
19. In the result, appeal is allowed in part.
20. Record be sent back.

Sd/-

(P.R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-