

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 902 of 2014**

- Akshay Singh S/o Mahetaru Singh, aged about 35 years, Occupation, Rajmistri R/o Village Jogipur Thana and Tahsil Takhatpur, District Bilaspur C.G. Hall Mukam R/o Village Shardha Thana and Tahsil Lormi C.G.

-----Appellant/Claimant**VERSUS**

1. Krishan Kumar S/o Banshi Lal Sahu, aged about 31 years, Vehicle Driver Pickpur No. CG 12 E/0364 R/o Village Bhimpuri Police Chouki Junapur, Tahsil Takhatpur District Bilaspur C.G. **-----Driver**
2. Iffco Tokyo General Insurance Company Limited third Tal Shop No. 346-47 Lal Ganga shopping Complex G.E. Road, Raipur C.G. **-----Insurer**

----Respondents

For Appellant	:	Mr. A.L. Singroul, Advocate.
For Respondent No. 2	:	Mr. P.R. Patankar, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****04/08/2020**

1. The appellant claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 22-08-2014 passed in claim case no. 178/2011 by Additional Motor Accident Claims Tribunal, Mungeli, Bilaspur, wherein learned Claims Tribunal allowed the claim application in part and awarded sum of Rs. 65,000/- as compensation in an injury case.
2. Facts relevant for disposal of this appeal are that on 08-04-2010 when appellant was going from village Nevsa to Jogipur on motor cycle, while so, when he reached near Achanakmar square, one Pick Up vehicle bearing Registration No. CG 12E 0364 (hereinafter referred to as "offending vehicle") driven by Respondent 1/ Non-applicant 1 rashly and negligently dashed his motor cycle. In the said accident, appellant suffered grievous injuries over his left leg and right hand, he suffered fracture injury on left leg and right hand and become

unconscious on spot. Appellant was brought to the Community Health Centre, Kota. Looking to the grievousness of the injuries suffered by him after giving primary treatment, he was referred to CIMS Hospital, Bilaspur, as there was no orthopedic specialist available in the Hospital, he took treatment at Gayatri Nursing Home, Bilaspur. During the course of examination and diagnosis, it revealed that the appellant suffered fracture injury over his left femur bone and fracture injury over his right hand. Left femur was operated and steel rod was inserted, his right hand was also operated. The appellant after taking treatment from the hospital filed an application under Section 166 of the Motor Vehicles Act, seeking compensation of Rs. 4,40,000/- mentioning therein that due to the fracture injury suffered on his left femur bone and also at right hand, he became permanently disabled and is unable to do the work of Mason which he was doing prior to the date of accident. He also claimed amount on other heads like medical expenses and towards non-pecuniary damages.

3. Respondent 1/ Non-applicant 1 driver of the offending vehicle submitted reply to the claim application pleading therein that, there was no rash and negligent driving on his part, he was having a valid driving licence, valid permit registration and the vehicle was insured with Respondent 2/ Non-applicant 2-Insurance Company.
4. Respondent 2/Non-applicant 2 submitted reply to the claim application denying the fact of accident from the offending vehicle, it was also pleaded that Respondent 1/ Non-applicant 1 driver of the offending vehicle was not possessing valid and effective driving licence.
5. Learned Claims Tribunal, based on the pleadings, has formulated as many as six issues for consideration and on appreciation of pleadings and evidence placed on record by respective parties, held that Respondent 1/Non-applicant 1 caused the accident on 08-04-2010 while driving the offending vehicle rashly and negligently in which appellant/ claimant suffered grievous injury, there was no contributory negligence on the part of claimant, there was no breach of conditions of

insurance policy and awarded a total sum of Rs. 65,000/- as compensation including the medical bills of Rs. 41,000/-.

6. Learned counsel for the appellant submits that claimant in support of his pleading of permanent disability has placed on record copy of the permanent disability issued by the District Medical Board, wherein the permanent disability of the appellant has been assessed as 60% but the learned Tribunal has not considered the disability certificate. He further submits that the learned Claims Tribunal has not awarded the entire medical expenditure incurred by him which is placed on record, Tribunal erred in awarding only Rs. 4,000/- towards conveyance, Rs. 5,000/- towards special diet and Rs. 1,000/- towards attendant cost. Rs.4,000/- has been awarded towards pain and sufferings and Rs. 10,000/- towards loss of income during treatment period which is on lower side and prays for enhancement of impugned award suitably.
7. Per contra, P.R. Patankar learned counsel appearing for Insurance Company submits that the learned Claims Tribunal has considered that the claimant/appellant has failed to examine any doctor to prove the disability certificate produced as Ext. A-10. It is also pointed out that the Tribunal has awarded the entire amount towards medical bills which is placed on record and sufficient amount has been awarded on other heads also as per his entitlement in the facts and circumstances of the case. In view of the above submission, he submits that the impugned award does not call for any interference.
8. We have heard learned counsel for the respective parties and also perused the record of the case.
9. The appellant in support of his claim application has placed on record Ext. A-1 to A-9, copies of the record of criminal case including the final report, F.I.R. and MLC report marked as Ext. A-4, in which it is mentioned that as the appellant suffered lacerated wound over his right forearm, swelling over his left thigh, abrasion on left side foot and lacerated wound on right side foot. Appellant in

support of his injuries has placed on record the discharge ticket issued by Gayatri Hospital as Ext. A-6, wherein date of admission has been shown as 09-04-2010 and date of discharge as 22-04-2010. Perusal of Ext. A-6 would show that upon diagnosis, fracture of shaft right humerus and fracture of shaft left femur were found, the date of operation has been shown as 10-04-2010 and 15-04-2010. The pleadings and evidence of the appellant appear to be correct that he suffered fracture injury over his right hand and over his left femur and both the injuries got operated. Fracture of left femur was a commuted fracture. Appellant in support of his plea of permanent disability has placed on record the disability certificate issued by the District Medical Board as Ext. A-10 but none of the members of the Medical Board was called before the Claims Tribunal in witness box to prove the disability certificate. Ext. A-10 marked by the Claims Tribunal is a disability certificate issued on 06-04-2011, other disability certificate is also available on record dated 23-07-2013 but this certificate has not been marked exhibit as recorded by the Claims Tribunal. The disability certificate could not be proved by calling the concerned doctor on record, therefore, the submission made by the learned counsel for the appellant that the Claims Tribunal erred in not awarding any amount towards permanent disability is not sustainable. Learned Claims Tribunal was justified in not accepting permanent disability in absence of any admissible piece of evidence to prove the disability certificate, even if for any of the reasons the claimant/ appellant failed to prove the permanent disability certificate by bringing the doctor of Medical Board before the Claims Tribunal. But it is duty casted upon the Claims Tribunal under the Motor Vehicles Act, to award just and proper amount of compensation on the basis of the documents placed on record. Discharge ticket of Gayatri Hospital which is part of the criminal case and placed on record before the Claims Tribunal as Ext. A-6 was not disputed by the learned counsel for the Non-applicants therein, they have not said that the document Ext. A-6 is fake or forged document and, therefore, in the facts and circumstances of the case, it clearly appears that the appellant suffered fracture injuries as mentioned in discharge ticket and he took treatment from 09-04-2010

to 22-04-2010 and got the injuries operated on 10-04-2010 and 15-04-2010. The injuries suffered by the appellant were grievous in nature and he might not be able to perform his work of Mason as pleaded for about six months, in the facts and circumstances of the case when along with the left femur, his right shaft humerus was also fractured. Learned Claims Tribunal has awarded only Rs. 10,000/- towards loss of income which in the opinion of this Court appears to be on lower side.

10. Learned Claims Tribunal has not assessed the income of the deceased for awarding the loss of income during the period of treatment, but awarded lump-sum amount which in the opinion of this Court is an erroneous approach. The claimant/ appellant has pleaded that prior to the accident, he was working as Mason, looking to the date of accident i.e. 08-04-2010 and also the age of the appellant as 35 years and considering the price index, wage structure, we find it appropriate to assess the monthly wages of the appellant as Rs. 5,000/-. As we have held that the appellant is entitled for loss of income for six months, the appellant/ claimant will be entitled for a total sum of Rs. 30,000/- towards loss of income during treatment period. Learned Claims Tribunal has awarded only Rs. 4,000/- towards mental pain and sufferings ignoring the nature of injury suffered by him, cost of treatment undergone by the appellant wherein as per Ext. A-6, he undergone for operation twice, in the facts and circumstances of the case, we find it appropriate to award Rs. 20,000/- towards mental pain and sufferings. Learned Claims Tribunal has awarded only Rs. 4,000/- towards conveyance expenses, Rs. 5,000/- towards special diet which appears to be just and proper in the facts and circumstances of the case, Rs. 1,000/- towards attendant which is on the lower side and we find it appropriate to award Rs. 4,000/- towards attendant charge. Apart from the above, the appellant/ claimant will be entitled for a sum of Rs. 41,000/- as awarded by the Claims Tribunal towards medical expenses. The appellant failed to point out before this Court as to which bill placed on record has not been considered by the Claims Tribunal for awarding amount towards medical

expenditure.

11. Now, the appellant/ claimant will be entitled for a total sum of **Rs. 1,00,000/-** [Rs.30,000+Rs.20,000+Rs.4,000+Rs.5,000+Rs.41,000] as compensation instead of Rs. 65,000/- as awarded by the learned Claims Tribunal. The aforementioned amount will carry interest @ 6% from the date of filing of Claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

12. Resultantly, the appeal is allowed in part and the impugned award is hereby modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge