

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 570 of 2014

Sheikh Tahir S/o Latif Khan Aged About 36 Years, Occupation -Driver,
 R/o Ward No. 04, Nayapara, Mahasamund, Distt. Mahasamund C.G.

---- Appellant/claimant

Versus

1. Krishna Poul S/o Dilip Poul Aged About 34 Years R/o Joygachipur, P.S. Kajipur, Distt. Culcutta Howra, West Bengal.
2. Pijush Shah S/o P. Shah R/o Village- Joygachi Kalamandir Road, Post/P.S. Hawra, Distt. North 24 Paragna, West Bengal.
3. Bhartiya Ex General Insurance Co. Ltd. 26 Shakespeare Sarai, Dimbal Court Ground Flour, Calcutta, West Bengal.

--- Respondents

For Appellants	: Mr. Shahid Ahmed, Advocate.
For Respondent No.1 & 2	: None.
For Respondent No.3	: Mr. Bhavesh Acharya, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

30/09/2020

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned Additional Motor Accident Claims Tribunal, Mahasamund, (CG) (for short, 'the Tribunal) vide award dated 03.03.2014 passed in Claim Case No.07/2013, whereby the Tribunal allowed application filed under Section 166 of the Act of 1988 in part and awarded total compensation of Rs.52,000/- in an injury case.

2. Facts relevant for disposal of this appeal are that on 18.02.2011 at about 11:30 a.m, appellant was going to Mahasamund from village-Jhalap on truck bearing registration No.CG04/G/2058, ((for short, 'the truck'), when he reached near village -Kawwajhar on NH-53, one another truck bearing registration No.WB25/C/3976, (for short, 'offending vehicle') which was coming from opposite direction, dashed the truck in which appellant was travelling, as a result appellant suffered grievous injuries on both of his legs. He was taken to Primary Health Centre, Tumgaon, where after giving primary treatment referred to Government Hospital, Mahasamund, then to Mekahara Hospital, Raipur. Accident was reported to PS -Tumgaon based upon which, crime was registered against non-applicant No.1 -driver of offending vehicle.

3. Appellant/claimant filed an application under Section 166 of the Act of 1988 seeking compensation of **Rs.12,70,000/-** on the ground that on the date of accident, he was aged about 36 years, working as 'truck driver' with Simran Transport Company thereby getting Rs.7,000/- per month as salary. In motor-accident, he has suffered grievous injuries over his legs, became permanently disabled and unable to perform his work which he was doing prior to accident.

4. Non-applicant Nos.1 & 2, driver and owner of offending vehicle, initially represented before the Tribunal, thereafter on account of their absence, they were proceeded ex-parte.

5. Non-applicant no.3/Insurance Company submitted its reply to application, denied the pleadings made therein, including the fact of accident from the offending vehicle. It was pleaded that application itself is not maintainable as owner, driver & Insurance company of truck bearing registration No.CG04/G/2058, which was driven by appellant, have not been impleaded as parties to application. Amount of compensation claimed is highly exaggerated

and there was contributory negligence on the part of appellant. There was breach of condition of insurance policy as on the date of accident non-applicant No.1 was not possessed of valid and effective driving license, there was no valid permit and fitness certificate of offending vehicle.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that accident was on account of rash and negligent driving of Non-applicant no.1 in which, appellant/claimant suffered permanent disability. Plea that non-applicant No.1 was not having valid and effective driving license resulting breach of policy condition was not found to be proved. The Tribunal allowed claim application in part, awarded total compensation of Rs.52,000/- along with interest @ 6% p.a and fastened liability to satisfy the amount of compensation upon non-applicants, jointly and severally.

7. Learned counsel for the appellant/claimant submits that the Tribunal erred in awarding very meager amount of compensation. He submits that appellant has placed on record permanent disability certificate issued by the District Medical Board, Mahasamund ie Ex.P-46 mentioning therein 45% permanent disability on his right leg, but no amount of compensation has been awarded towards permanent disability/loss of income. He further submits that the Tribunal erred in assessing income of appellant as Rs.5,000/- per month, ignoring the fact that appellant has placed on record evidence of his employer showing his income as Rs.7,000/- per month. The Tribunal has not awarded adequate amount under the heads of mental pain and agony, attendant, special diet & loss of amenities in life ect,. He prays that amount of compensation may be enhanced suitably.

8. Learned counsel for respondent No.3/Insurance Company while supporting the impugned award submits that as per pleadings and evidence available on

record, appellant, who was working as 'truck driver', suffered fracture injury on his tibia fibula bone only. There is no evidence to the effect that on account of permanent disability, he is not able to perform his work as 'truck driver'. He further submits that the Tribunal after considering entire facts and materials available on record as well as nature of injuries, has awarded just and proper amount of compensation which does not call for any interference.

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

10. To appreciate the submission made by Learned counsel for the respective parties, we have perused the documents, pleadings and evidence available in claim case. Appellant has placed on record Ex.P-2 ie discharge tickets of Dr. Bhim Rao Ambedkar Memorial Hospital, Raipur & Ex-P-3 ie medical slip issued by the Department of Orthopedic. Perusal of these documents would show that appellant suffered compound fracture over tibia fibula u/3rd & Patellar Tendon Rupture right & fracture of medial condyle left (Lt). It is also apparent that appellant has undergone operation and patella tendon repair was done by screw fixation, he took treatment from 18.02.2011 to 25.02.2011, thereafter, he again went for treatment on 23.03.2011, 18.05.2011, 17.06.2011, 14.09.2011, 19.10.2011 till 17.11.2012. All this goes to show that appellant suffered grievous nature of injuries in accident. Appellant is shown to be resident of Mahasamund but all the medical documents which are available on record are of Raipur.

11. As regards the ground raised by the learned counsel for the appellant with regard to the amount of compensation towards loss of income due to permanent disability. In examination-in-chief filed in shape of affidavit under Order 18 Rule 4 of CPC, appellant has stated that due to injuries suffered by

him in accident, he is unable to drive the truck. To prove his employment and income, appellant examined Joginder Sing as AW-5. He admitted that appellant was driving his truck, he was paid Rs.7,000/- per month as salary. After the accident, he left the job of driving his truck. In cross examination, he stated that as per his information, appellant is driving truck of other person of Mahasamund. In view of above of evidence, we do not find any error on the part of the Tribunal in holding that the appellant has not suffered loss of earning capacity, but looking to the nature of injuries suffered by the appellant in accident as appearing from the medical documents annexed on record, he is entitled for appropriate amount of compensation for said injuries.

12. Coming to the next ground raised by the learned counsel for the appellant that the Tribunal erred in assessing income of appellant as Rs.5,000/- per month. The appellant has very specifically pleaded in his pleadings that on the date of accident, he was working as 'truck driver' in Simran Transport Company and thereby getting Rs.7,000/- per month as salary. Appellant has placed on record the certificate issued by his employer and to prove said certificate examined Jodinder Singh as AW-5. This witness has stated in his evidence that appellant is a truck driver, admitted issuance of letter Ex.P-51 showing employment and salary of appellant. In view of evidence of AW-5, income pleaded by the appellant has been proved, hence, the Tribunal erred in not considering the income as pleaded and proved by appellant. Without assigning any reason, Tribunal assessed income of appellant as Rs.5,000/- per month which is erroneous and it is hereby set aside. We recon the income of appellant on the date of accident to be Rs.7,000/- per month.

13. The Tribunal has awarded Rs.15,000/- towards loss of income during the period of treatment considering the period of treatment to be of 3 months,

Rs.11,640/- towards medical expenses, Rs.10,270/- towards transportation, Rs.5,000/- towards pain and sufferings, Rs.5,000/- towards attendant & Rs.5,000/- special diet. Except for medical expenses, transportation & special diet, amount of compensation awarded by the Tribunal in the facts of the case appears to this Court to be on lower side. Further the Tribunal has not awarded any amount towards the grievous injuries & loss of amenities in life.

14. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal.

15. On the basis of medical bills produced by the appellant, the Tribunal has awarded sum of Rs.11,640/- towards medical expenses & Rs.5,000/- towards special diet, which in our considered opinion does not call for any interference and are hereby affirmed. However, looking to the continuous treatment taken by the appellant by coming to Raipur from Mahasamund, amount of Rs.10,270/- awarded towards transportation expenses is on lower side and deserves to be enhanced suitable. Accordingly, we award Rs.15,000/- towards transportation expenses & Rs.8,000/- towards attendant for the period of 2 months.

16. Looking to the nature of injuries of appellant as mentioned in medical documents and considering his occupation as 'truck driver', we are of the view that he may not have performed his work for the period of 5 months, hence, he is entitled for loss of income during the period of treatment ie Rs.35,000/- (7000X5). It is clear from the medical documents that appellant suffered compound fracture over tibia fibula u/3rd & Patellar Tendon Rupture right & fracture of medial condyle left (Lt) and he took treatment from 18.02..2011 till 07.11.2012, therefore, we find it appropriate to award Rs.25,000/- towards loss of amenities and joy in life. Looking to the nature of

injuries ie two fracture injuries, we find it appropriate to award Rs.30,000/- towards grievous injuries, Rs.25,000/- towards pain & sufferings instead of Rs.5,000/- as awarded to by the Tribunal.

17. Now appellant/claimant will be entitled for a total sum of **Rs.1,54,640/-** (Rs.11,640 + Rs.5,000 + Rs.15,000 + Rs.8,000+ Rs.35,000 + Rs.25,000 + Rs.30,000 + Rs.25,000) instead of **Rs.52,000/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

18. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

Sd/-

(R. Ramamchandra Menon)
Chief Justice

Jamal/-

Sd/-

(Parth Prateem Sahu)
Judge