

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1046 of 2014

Tikam Mandavi S/o Ram Sevak Mandavi Aged About 28 Years, Caste-Gond, R/o. Village- Malgaon, P.S. Kanker, Civil & Revenue Distt. Kanker C.G.

---- Appellant

Versus

1. Kulvender Singh S/o Buta Singh Aged About 29 Years R/o Kanker Roadways, Near Civil Line, Raipur, Distt. Raipur C.G.
2. Kanker Roadways A.O. Near Civil Line, Raipur, Distt. Raipur C.G.
3. H.D.F.C. Ergo General Insu. Co. Ltd. Branch Office, Gandhi Udhyan Near Civil Line, Jagdalpur, Distt. Bastar C.G.

--- Respondents

For Appellant	: Mr. Awadh Tripathi, Advocate.
For Respondent No.1 & 2	: None.
For Respondent No.3	: Mr. Nilesh Thakur, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

23/09/2020

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 Motor Accident Claims Tribunal, North Baster, Kanker, Distt. Kanker, (CG) (for short, 'the Tribunal) vide award dated 09.07.2014 passed in Claim Case No.54/2013, whereby the Tribunal allowed application in part and awarded total compensation of Rs.2,80,000/- in an injury case.

2. Facts relevant for disposal of this appeal are that on 31.05.2011, appellant alongwith one Raghuveer Netam was returning to his village -Malgaon on motorcycle bearing registration No.CG05-B-8382. Raghuveer Netam was travelling as 'pillion rider' whereas appellant was driving the motorcycle. When they reached near Keshkal Ghati, one Bus bearing registration No.CG19-F-0990, (for short, 'offending vehicle') coming from Kanker dashed the motorcycle

as a result of which, appellant suffered grievous injuries over his person and pillion rider Raghuveer Netam died. Appellant was immediately taken to Govt Hospital Kanker where after giving primary treatment he was referred to higher hospital for better treatment. Appellant was admitted in Samarparn Hospital, Raipur where he took treatment from 31.05.2011 to 19.07.2011. Accident was reported to Police Station -Keshkal based upon which, crime was registered against driver of offending vehicle.

3. Appellant/claimant on account of motor accidental injuries sustained by him, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.6,30,000/- on the ground that he incurred medical expenses to the tune of Rs.4,00,000/- and amount on other different heads.

4. Non-applicant Nos.1 & 2 submitted reply to application and denied the fact of accident from offending vehicle by its driver. Accident was on account of negligence of appellant himself, on the date of accident, non-applicant No.1 was having valid and effective driving license. Vehicle was insured with respondent No.3/Insurance Company, hence liability, if any, to make payment of amount of compensation would be of Insurance Company.

5. Non-applicant no.3/Insurance Company submitted its reply to application pleading therein that information of accident was not given to Insurance Company. Insurance company of motorcycle is also a necessary party and claim application has been filed on false and fabricated grounds. It was further pleaded that on the date of accident, offending vehicle was plied in breach of condition of Insurance Policy as non-applicant No.1 -driver of offending vehicle was not having valid and effective driving license.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal upon assessing income of appellant at Rs. 9,676/- per month,

awarded total compensation of Rs.2,80,000/- along with interest @ 6% p.a and fastened liability to satisfy the amount of compensation upon non-applicants, jointly & severally. The Tribunal further held that appellant/claimant suffered grievous injuries only and not permanent disability.

7. Learned counsel for the appellant submits that the Tribunal erred in not awarding entire amount of medical bills, appellant has submitted medical bills of Rs.1,89,170/- of Samarpan Hospital, Raipur where he took treatment from 31.05.2011 to 19.07.2011 but the Tribunal has awarded only Rs.1,20,000/- as compensation. Rest remaining amount of medical bills ie Rs.69,170/- has not been awarded on the ground that no cash receipt has been placed on record to prove the expenditure of that amount. He submits that finding recorded by the Tribunal disbelieving the expenditure of amount of Rs.69,170/- towards medical expenses is without any basis. He submits that the Tribunal has awarded only Rs.2,000/- for diesel on the head of conveyance /transportation ignoring the facts that appellant is resident of Distt. Kanker and after accident, he was brought to Raipur, thereafter, he returned to his residence ie village at Kanker district. He further submits that appellant took treatment as in-patient for about 50 days, but no amount has been awarded towards attendants & special diet. The Tribunal awarded very meager amount of compensation towards pain & sufferings ie Rs. 18,000/- and not awarded any amount towards loss of amenities in life. He submits that the amount of compensation awarded to claimant be enhanced suitably.

8. Learned counsel for the respondent No.3/Insurance Company submits that as the appellant is a Government employee working as 'Shiksha Karmi' hence, he is not entitled for any amount of compensation towards loss of future income as there is no loss of income. As per the evidence of appellant himself, he is

entitled for medical leave for which he was paid. He further submits that the Tribunal was justified in not awarding entire medical bills because appellant has not produced any documentary evidence ie payment receipt of the bills issued by the Samarpan, Hospital in respect of Rs.69,170/-. He further submits that after considering the entire facts and circumstances of this case, the Tribunal 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. So far as submission made by the learned counsel for the appellant with regard to non award of the amount of Rs.69,170/- is concerned, we have gone through the records of claim case and found that appellant was admitted as indoor patient in Samarpan Hospital at Raipur, (Ex.P-132) final bill is of Rs.1,89,170/- was raised by the Samarpan Hospital, but taking into consideration the fact that the appellant has not produced any receipt showing payment of balance amount of medical bills of Rs.69,170/ as shown in Ex.P-132, the Tribunal has awarded Rs.1,20,000/- only. If the appellant has placed reliance upon the document of Ex.P-132, then it has to be read as it is unless and until it is proved otherwise by producing documents like cash receipt etc. showing payment of balance amount by the appellant to hospital. In case at hand, document of Ex.P-132 clearly reflects an outstanding of Rs.69,170/- against the total bill of Rs.1,89,170/- and even before this Court the appellant has not placed on record any cogent and reliable piece of evidence showing payment of balance amount of Rs.69,170/-.

11. In view of above, the submission made by the learned counsel for the appellant that the Tribunal erred in not awarding balance amount of Rs.69,170/-

towards medical expenditure is not sustainable and the same is hereby repelled.

12. So far as submission made by the learned counsel for the appellant with regard to the award of compensation under different heads is concerned, perusal of documents (Ex.P-132) shows that appellant took treatment at Samarpan Hospital, Raipur from 31.05.2011 to 19.07.2011 where he remained admitted as in-patient for about 50 days, but the Tribunal has not awarded any amount of compensation towards attendant. In the considered opinion of this Court that, appellant might have required attendant during the aforesaid period of treatment, therefore, we find it appropriate to award Rs.12,000/- towards attendant expenses for a period of three months ie Rs. 4000/- per month.

13. The Tribunal has awarded Rs.2,000/- towards transportation which is on lower side and not awarded any amount towards special diet. Looking to the facts and circumstances of this Case, we find it appropriate to award a lump-sum amount of Rs.10,000/- towards conveyance and special diet.

14. Appellant suffered injuries over his abdomen & compound fracture of left femur. Looking to the nature of injuries and period of treatment, we find it appropriate to award Rs.25,000/- towards pain and sufferings instead of Rs.18,000/- as awarded by the Tribunal. Appellant will also be entitled to Rs.25,000/- toward loss of amenities in life & Rs.25,000/- for injuries suffered by him. The appellant will also be entitled for amount of Rs.2,60,000/- towards medical treatment and medicines as awarded by the Tribunal.

15. True it is that appellant is entitled for medical leave as per service Rule, but said leave are limited and fixed for each year. The medical leave can be used by the appellant, if he for any other reason, suffers medical ailment and requires bed rest or indoor treatment. The object of the Act is to compensate

the injured or family members of deceased for the loss suffered. The utilization of medical leave for motor accidental injuries is loss to an employee as his leaves in the account of medical leave will be reduced for that period. In the aforementioned facts, we find it appropriate to award loss of income for two months as the period of treatment itself is from 31.05.2011 to 19.07.2011 ie 50 days. As per salary slip Ex.P-13 total salary of appellant is Rs.9,676/- per month. Accordingly, loss of income during period of treatment for two months would come to Rs.19,352/- (9676X2) rounded off to Rs.19,350/-.

16. Now appellant/claimant will be entitled for total sum of **Rs.3,76,350/-** (260000 + 25000 + 25000 + 25000 + 10000 + 12000+19350) instead of **Rs.2,80,000/-** 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. Amount already paid shall be adjusted in total amount of compensation.

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

Sd/-

(P.R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-