

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1134 of 2013**

- Tejram Tarak S/o Payare Lal Tarak, aged about 35 years (DELETED)
 - (a) Smt. Dipti Tarak W/o late Tejram Tarak, aged about 39 years
 - (b) Kritikant Tarak S/o late Tejram Tarak, aged about 13 years
 - (c) Ku. Kumud Tarak D/o late Tejram Tarak aged about 10 years
 - (d) Pyare Lal Tarak S/o late Kelu Ram Tarak, aged about 64 years
 - (e) Smt. Kaushliya Tarak W/o Pyare Lal Tarak, aged about 60 years

All R/o at village- Charoda P.S. Aarang, District Raipur C.G.

All legal substitution in cause title as appellants place Tejram Tarak

-----Appellants

VERSUS

1. Shri Kumar Koshare S/o Prabhu Lal Koshare, aged 42 years, Resident of village Bhagolipara Dallirajhara District Balod C.G.
Halmukam Pawan House Bhilai Infront of I.T.I. Near Khan Cycle Store Chhavani District Durg C.G.
-----Driver
2. Gurdeep Singh S/o Keshar Singh R/o Keshar Traders G.E. Road Charouda P.S. Bhilai District Durg C.G.
-----Owner
3. National Insurance Company Limited, through Branch Manager Mobin Mahal G.E. Road Raipur C.G.

---- Respondents

For Appellants	:	Mr. A.L. Singroul, Advocate
For Respondent 2	:	None.
For Respondent 3	:	Mr. Qamrul Aziz, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

12/10/2020

1. This is claimants' appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 16-09-2013 passed by learned Seventh Additional Motor Accident Claims Tribunal Raipur, District Raipur Chhattisgarh in claim case no. 116/2012 whereby learned Claims Tribunal allowed the claim application in part and

awarded total sum of Rs. 5,83,993/- as compensation in an injury case which includes Rs.4,55,731/- towards medical expenses.

2. Facts of the case relevant for disposal of this appeal are that on 04-06-2012 Tejram Tarak was traveling on a motor cycle bearing registration no. CG 04CT 8641 and going to Abhanpur from village Charoda. When he reached near village Thanod square at about 10:30 am, at that relevant time, non-applicant 1 while driving his truck bearing registration no. CG 07C 7866 (hereinafter referred to as "offending truck") rashly and negligently dashed the motor cycle of Tejram and caused accident. In the said accident, Tejram Tarak suffered grievous injuries over his head, left hand and others parts of the body. He was initially admitted to Ramkrishan Care Hospital, Raipur where he undergone operation of his head. Accident was reported to concerned police station based upon which crime 173/12 was registered against non-applicant 1 and after conclusion of trial final report/ charge-sheet was submitted before the Court of jurisdictional Magistrate.
3. Injured Tejram filed claim application through his next friend (wife) under Section 166 of the Act of 1988 seeking compensation of Rs. 22,00,000/- pleading therein that on account of head injury suffered by him he became permanently disabled, he lost his power of speech, movement and also lost his brain power. It was pleaded that prior to the date of accident, injured was working as Shiksha Karmi Grade-II and earning Rs. 11,000/- per month.
4. Non-applicant 1 and 2 who are driver and owner of the offending truck submitted their reply to the claim application, while denying the facts pleaded in the claim application further pleaded that the accident was a result of negligence of the claimant Tejram himself. On the date of accident non-applicant 1 was possessed with valid and effective driving licence, offending vehicle was insured with non-applicant 3-Insurance Company, the liability, if any, to satisfy the amount of compensation is upon non-applicant 3/ Insurance Company.

5. Non-applicant 3/ Insurance Company submitted reply to the claim application, denied the facts pleaded in the claim application further pleaded that no accident took place with the offending truck, no information was forwarded to Insurance Company regarding the accident in terms of Section 158 (6) of the Act of 1988. The insurer and owner of the vehicle driven by claimant were not arrayed as party non-applicants, hence, the claim application is not maintainable. Claimant himself was negligent. In alternate, it was pleaded that there was contributory negligence on the part of claimant/ injured himself. There was breach of policy conditions as non-applicant 1 driver of the offending truck was not possessing valid and effective driving licence and there was no valid permit and fitness certificate of the offending truck.
6. Learned Claims Tribunal, on the basis of pleadings made by the respective parties has formulated as many as six issues for consideration including the issue with regard to permanent disability, contributory negligence, breach of policy conditions. Upon appreciation of pleadings and evidence brought on record by the respective parties, Claims Tribunal arrived at a finding that the claimant Tejram suffered injuries on account of rash and negligent driving of offending truck by non-applicant 1. Permanent disability, contributory negligence and breach of policy conditions could not be proved. Claims Tribunal while allowing the claim application in part awarded Rs. 5,83,993/- as compensation.
7. Mr. A.L. Singroul, learned counsel for the appellants submits that during the pendency of this appeal original claimant/ injured died and at present his widow, children and parents are appellants as legal representatives. He submits that in the accident, original claimant suffered head injury and as per the medical document placed on record, there was fracture of bone and nerve of the brain was also affected. He pointed out that on account of head injury suffered by the original claimant he suffered permanent disability as he

lost his memory power, speech power and lost his independent movement. On the date of accident, injured was working as Shikshakarmi Grade-II and earning Rs. 11,000/- per month but since the date of accident he could not able to join his service as he was bedridden, ultimately, during the pendency of this appeal he died. He further contended that though permanent disability certificate could not be placed on record but the treating doctor was examined before the Claims Tribunal and he has very categorically stated that later the injured will suffer permanent disability, loss of memory power to some extent. Learned counsel contended that the Tribunal overlooked the documents, evidence placed on record and erroneously not awarded any amount of compensation towards loss of future prospects due to permanent disability, grievous injuries etc. Claims Tribunal has not awarded just compensation towards the injuries, particularly, the nature of injuries in view of the evidence of Dr. who has stated that the injured later will be affected from loss of memory power.

8. None appeared on behalf of Respondent 2.
9. Per contra, Mr. Qamrul Aziz, learned counsel for Respondent 3 submits that the Claims Tribunal has awarded Rs. 5,83,993/- in a motor accidental injuries, which cannot be said to be on lower side. He submits that the appellants have failed to prove the permanent disability by placing any disability certificate or any document before the Claims Tribunal. It is further contended that in absence of disability certificate issued by the Medical Board or the Doctor, the nature of disability cannot be ascertained and proved. It is also argued by Mr. Qamrul that the claimant had not entered into the witness box to prove his disability, if any. Claims Tribunal after taking into consideration the overall facts and circumstances of the case has awarded just amount of compensation which does not call for any interference.
10. We have heard learned counsel for the respective parties and also perused the record.

11. So far as, the submission made by learned counsel for the appellant-claimant that the Claims Tribunal failed to award just amount of compensation towards nature of injuries suffered by the claimant is concerned. Perusal of MLC report ext. P-3 available on record would show that the doctor found lacerated injury over upper arm, lacerated injury over right side of occipital region of the head and conjunction over occipital over head posteriorly. Ext. P-7 is the discharge summary of department of Neurosurgery of Ramkrishan Care Hospital which shows the date of admission as 04-06-2012 to 05-07-2012 wherein under the head of diagnosis it is mentioned as ***“Head Injury with Left F.T.P. Acute SDH with Mass Effect with Right Hemiparesis”*** It also mentions the operative procedure as *“Left Fronto Temporo Parietal Decompressive Craniotomy with Subtemporal Decompression with Evacuation of Thin Acute SDH with Expansile Duroplasty.* Under the head of operative findings, it is mentioned as *“Brain was Dense Oedematous; Left Fronto Temporal Contusion (+); Left Thin Acute SDH.”* Document of Ramkrishna Care Hospital placed on record would show that the claimant/injured was under continuous treatment from the date of accident till 27-02-2013 and last document of medical prescription placed on record is ext. P-89. The claim application was filed during the period of treatment itself on 13-10-2012. Wife of the injured being next friend of the applicant entered into the witness box before the Claims Tribunal and has stated that the speech power, power of thinking and understanding, memory power has been reduced and movement is also restricted. She stated that her husband became disabled to walk and move independently on account of accident. Relevant paragraph of her statement is extracted below.

“4. इतने इलाज के बाद भी मेरे पति पूर्ण रूप से स्वस्थ नहीं होने के कारण उसे पुनः रामकृष्ण केयर अस्पताल रायपुर में दिनांक 01.11.12 से 06.11.12 तक भर्ती किये थे जहाँ डॉक्टर ने उसके सर का पुनः ऑपरेशन कर उसके पेट में स्थानांतरित किये गये हड्डी को पुनः सर पर स्थापित किये। इसके बावजूद भी मेरे पति पूर्ण रूप से ठीक नहीं हो पाए हैं उसके बोलने सोचने एवं समझने की शक्ति क्षीण हो गयी है।”

12. She stated that prior to the date of accident her husband was working as Shikshakarmi Grade-II and earning Rs. 11,000/- per month. Dr. S.N. Madhariya of Ramkrishan Care Hospital where the injured took treatment was examined as AW-3. In his statement he stated that the injured admitted in their hospital twice, firstly immediately after the accident and then on 01-11-2012 to 06-11-2012, the second admission has been proved by placing document and bills Ext. P-36. In paragraph 6 of his evidence, the said doctor has stated as under.

“6. आवेदक की दुर्घटना में आयी चोट के कारण हॉस्पिटल में लाया गया तब उसकी स्थिति गंभीर थी और वह कोमा में था और आज तक उसकी याददास्त कमजोर हो चुका है तथा उसके, सोचने समझने की शक्ति काम हो चुकी है। उक्त चोट जो आवेदक को आयी है वह जिंदगी भर पूर्णरूपेण सुधर होने की सम्भावना नहीं है। आवेदक की जो स्थिति दुर्घटना के पूर्व थी वह किसी भी इलाज से संभव नहीं है और भविष्य में आवेदक को विकलांगता अवश्य रहेगी।”

13. Upon going through the aforementioned pleadings, document and evidence placed on record by the claimant in support of his claim, he has proved the nature of injuries and his status after the treatment taken by him proved by doctor AW-3. Doctor has stated that till now the memory power of the injured is reduced. This statement of the doctor recorded on 14-08-2013 ie. about one or two months after the date of accident. It is further stated that the injury suffered and complication will remain with him for whole of his life. He further stated that by no treatment injured will return to his earlier position. In future there will be disability. Learned Claims Tribunal has not considered this important evidence of doctor in view of the medical documents of treatment available on record and held that the claimant failed to prove the disability of injured. Claims Tribunal further considered that the doctor in his statement has stated that he has not placed on record document to show the disability, to assess the percentage of disability injured was required to be

examined by Medical Board. Wife of the injured AW-1 in her statement has stated that she has not placed on record any document to prove the disability of her husband (injured).

14. True it is that the claimant could not able to place any document to prove the disability of the injured but it is also clear from the records that the treating doctor entered into the witness box before the Claims Tribunal, who in very clear term has stated the nature of injury and its impact, hence, in clear terms he has stated the condition of the injured on account of his head injury that his memory power, power of speech and power to think have been reduced, even then the Claims Tribunal has not considered the pity and serious condition of the injured at the time of enquiry. Claims Tribunal could have put questions based on the material available on record and also on the basis of the statement/ evidence of doctor, could have put relevant question to the doctor if for any reason the claimant or his counsel failed to put any specific question to the treating doctor, particularly, when the application was filed through the wife of the applicant showing that he is unable to walk, lost his thinking power, memory power and power of speech. Claims Tribunal has not invoked the provisions for conducting proper enquiry and evaluating the facts as provided under Section 168 of the Act of 1988 and Rule 226 of the Chhattisgarh Motor Vehicles Rule, 1994. During the pendency of this appeal, injured died on 24-03-2015 and thereafter, names of legal representatives are substituted. On the date of accident as per the documents available on record, age of deceased was 33 years. Legal representatives of the deceased have not brought any document or material to show that the deceased died on account of complications of injuries suffered by him in motor accident, but from the material available on record what is proved and available before us for consideration is that late Tejram Tarak suffered grievous head injury, fracture injury over his head, he undergone operation of his head; doctor who treated and operated entered into the witness box before the Claims Tribunal stated that the power to think

and memory power of the injured was reduced and he will suffer disability in the future. Evidence of doctor remained uncontroverted, but the Claims tribunal has not awarded any amount towards the injury suffered by late Tejram Tarak. Even if the claimants for any reason have not placed on record the disability certificate and the Tribunal has not put any specific question with regard to disability, Tribunal could have considered the evidence which was already there on record in its entirety, in which it failed. Deceased Tejram undisputedly suffered the motor accidental injuries. During his lifetime, he filed application through his wife under Section 166 of the Act seeking compensation for the injuries suffered by him.

15. The object of the Act is to award just compensation to the victim of motor accident case. The Motor Vehicles Act is a beneficial piece of legislation and it is the bounden duty of the Court to see that the victim or injured of the motor accident to get just compensation. Taking into consideration the overall facts and circumstances of the case and particularly looking to the nature of injury ie. head injury (fracture of bone) and evidence of doctor wherein he stated that the memory power of the injured was reduced, his power to think and understand also got reduced and it will remain for whole of his life, there is no chance of his recovery and in future this disability will be there, we are of the view that the Tribunal has not awarded just compensation.
16. Looking to the above material available on record, we could have remanded back the case before the Claims Tribunal for re-consideration on the issue of disability percentage effecting his career but as during the pendency of this appeal unfortunately injured Tejram Tarak died, now it is not possible. But then this Court can award some compensation to some extent in view of the evidence and material available on record before this Court. Though the injured died during the pendency of this appeal, we are considering the award passed by learned Claims Tribunal whether just amount of

compensation was awarded to the claimants as on the date of passing of award or not, hence, this Court is of the opinion that the claimant was entitled for some more amount of compensation on that date.

17. For the foregoing reasons, we find it appropriate to award lump-sum amount of compensation of Rs. 2,00,000/- (in words: Rupees Two Lac only) looking to the nature of injury, the disability found by the treating doctor AW-3 and stated before the Claims Tribunal. The aforementioned amount of compensation will be in addition of the amount of compensation already awarded by the Claims Tribunal ie. Rs. 5,83,993 (which includes Rs.455731 towards medical expenses) +Rs. 2,00,000 making the total amount of compensation as **Rs. 7,83,993**. The amount of compensation awarded by this Court shall carry interest @ 7% pa from the date of filing of claim application till its realization.

18. In the result, 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