

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1195 of 2013

- Jagdish Tilwani, S/o Late Nanakram Tilwani, Aged About 38 Years, R/o Lakhe Nagar, P.S. Azad Chowk, P.O. Vivekanand Ashram, Tahsil & Distt. Raipur, Chhattisgarh

---- Appellant /Claimant

Versus

- (Deleted) Mohan Singh As Per Honble Court Order Dated 26-09-2019
- The I.C.I.C.I. Lombard General Insu. Co.Ltd. Thru- Branch Manager, Branch Office, Devendra Nagar Turning, P.S. Devendra Nagar, P.O. Raipur, District : Raipur, Chhattisgarh (Insurer of vehicle Car bearing registration No.CG/04/HA/8608)

-----Respondent

For Appellant : Shri Shivendu Pandya, Advocate
For Respondent- 2/Insurance : Shri Shailesh Tiwari, Advocate
Company

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**

Per Parth Prateem Sahu, J
20.07.2020

1. This is claimant's appeal filed under Section 173 of the Motor Vehicle Act, 1988 challenging the legality and propriety of the impugned award dated 23.04.2013 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur (for short, 'Claims Tribunal') in Claim Case No.97 of 2012, whereby learned Claims Tribunal allowed the application in part and awarded Rs.2,39,647/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 19.12.2011 at about 3.30 pm, appellant was travelling on his Motorcycle bearing No.CG 04-DN 0803 (hereafter, referred to as 'Motorcycle') and going to his house at Lakhenagar Chowk for lunch. At that relevant time, one Car bearing

No.CG04-HA 8608 (for short, 'offending vehicle') dashed the Motorcycle and caused accident. In the aforementioned accident, appellant suffered grievous injuries over his left leg, including fracture of left femur along with injury on his head, hands, stomach and waist. Accident was reported to concerned Police Station, based on which Crime No.543 of 2011 was registered against the driver-cum-owner of offending vehicle.

3. Appellant filed an application under Sections 166 and 140 of Motor Vehicles Act, 1988 pleading therein that in the above mentioned accident, appellant suffered fracture injury over his left side, which could not be cured even after treatment taken by him at Ramkrishna Care Hospital, Raipur and became permanently disabled. Prior to the accident, he was doing business of Grocery shop, but after the accident, he is unable to do the business which he was doing prior to the accident and claimed Rs.6,60,000/- as compensation.

4. NA1/driver-cum-owner of offending vehicle appeared before the learned Claims Tribunal but did not file reply to claim application and further, at the time of recording evidence, he did not appear and was proceeded *ex-parte*.

5. NA2/Insurance Company of offending vehicle submitted reply to claim application, denying the facts pleaded therein, submitted that accident was on account of self negligence of appellant/ claimant himself; accident was not informed to the Insurance Company in accordance with provisions of 158(6) of Motor Vehicles Act, 1988; NA1 was not possessing a valid and effective driving license on the date of accident, and there was

breach of conditions of Insurance Policy; therefore, Insurance Company is not liable for payment of any amount of compensation.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that NA1 drove the offending vehicle rashly and negligently and dashed the Motorcycle, on which appellant was travelling and caused accident. In the said accident, claimant suffered grievous injuries. He suffered 50% permanent disability on his left leg and contributory negligence could not be proved. Driver-cum-owner of offending vehicle was possessing valid and effective driving license on the date of accident and awarded a total sum of Rs.2,39,647/- as compensation.

7. Shri Shivendu Pandya, learned counsel for the appellant submits that the appellant placed on record medical documents showing the nature of injury and treatment vide Ex.P8 to 45. He further submitted that due to injuries suffered by the appellant in the aforementioned accident, he became permanently disabled. Appellant was examined by the District Medical Board, Mahasamund and Disability Certificate Ex.P46 was issued. It is further submitted that learned Claims Tribunal ignoring the Disability Certificate issued by the Medical Board mentioning the permanent disablement to the extent of 50% proved by Dr NK Mandape, AW2, Orthopaedic Specialist, wrongly presumed disability of the appellant only to the extent of 25%, which is erroneous and perverse. He also contended that learned Claims Tribunal committed error in not considering the income of the appellant as Rs.12,000/- per month from the business of Grocery Shop (Kirana Shop) but calculated the amount of compensation

by assessing the income of appellant as Rs.3,000/- per month, which is on lower side. It is further contended that learned Claims Tribunal has not awarded sufficient amount on the head of non-pecuniary damages and further the entire medical bills have not been awarded, whereas, the appellant have stated to have expended Rs.1.5 lakhs towards his treatment and submits that the impugned award of compensation may be enhanced suitably.

8. Per contra, Shri Shailesh Tiwari, learned counsel appearing on behalf of the Insurance Company submits that the Disability Certificate said to be issued by the Medical Board, but in the Disability Certificate, the certificate has been issued only for the left leg and not for the whole body therefore, learned Claims Tribunal justified in assessing disability of the appellant to the extent of 25% for the purpose of calculating the amount of compensation. He further contended that the Disability Certificate Ex.P46 itself appears to be doubtful because the appellant is resident of Raipur as per the details given by him in the Cause-title of Claim application and other documents available on record, except the Disability Certificate. Further while recording the evidence also, he has mentioned his address of Raipur only, but, in the Disability Certificate Ex.P46, address of the appellant has been shown to be Gajpaara, Mahasamund, ie of another district. Only for the purpose of getting Disability Certificate from Mahasamund Medical Board, shows his address of Mahasamund. The appellant, who is resident of Raipur has not filed the Disability Certificate issued by the Medical Board, Raipur or has not examined any Doctor as witness of Ramkrishna Care Hospital, from where he took treatment. In

view of above submission, learned counsel for the Insurance Company submitted that the award passed by learned Claims Tribunal does not call for any interference in the facts and circumstances of present case.

9. We have heard learned counsel for the respective parties and also perused the record.

10. So far as the ground raised by learned counsel for the appellant with regard to the permanent disability suffered by him in the accident, we have perused the medical documents placed on record by the appellant. Ex.P43 is the Discharge summary issued by the Ramkrishna Care Hospital, wherein the date of admission of the appellant has been shown as 21.12.2011 and date of discharge as 22.12.2011. Perusal of discharge summary would show final diagnosis of fracture of the Shaft Femur (left) with left Tibial Spine and the appellant underwent surgery on 21.12.2011. Closed Interlocking under GA (left) was done. The other medical documents which are available on record about the payment of amount ie Ex.P27 dated 19.12.2011 of depositing Rs.5,000/- with the Hospital as also several tests which were done in the said hospital. From the above, it is apparent that immediately after the accident, the appellant was admitted in the hospital on 20.12.2011, he underwent operation and discharged on 22.12.2011.

11. So far as the mentioning of permanent disability suffered by the appellant in Disability Certificate Ex.P 46 issued by the Medical Board, Mahasamund, the submission made by learned counsel for the respondent/Insurance Company appears to have some force that the

appellant has got the Disability Certificate from Mahasamund by mentioning his wrong address, to be resident of Gajapara, Mahasamund, whereas, he is resident of Lakhenagar Chowk, Raipur. This difference of address shown in Disability Certificate is apparent on the face of record. The appellant in his evidence admitted that he is resident of Raipur in para-11 of his evidence and further he has not taken any treatment from the hospital at Mahasamund. Having this material available on record before this Court, wherein the appellant is resident of Raipur, accident occurred in Raipur and he got himself treated at Ramkrishna Care Hospital, Raipur, but only for the purpose of preparing Disability certificate, he approached the Medical Board of Mahasamund, which, in the opinion of this Court, appears to be a ill-motive of the appellant and he has not approached the Court with clean hands. Be that as it may, the Insurance Company has not filed any appeal to challenge the validity and legality of the documents and considering the disability of the appellant to the extent of 25%, as held by the learned Claims Tribunal, we are not inclined to consider the said issue. But we are also not considering the submission made by learned counsel for the appellant with regard to the assessment of the disability of the appellant in the peculiar facts of the case as discussed above.

12. Apart from the above, the Disability Certificate Ex.P46 is with regard to left leg only as admitted by Dr NK Mandape, AW2 in Paragraph-15 of his evidence.

13. For the foregoing reasons, we are not inclined to interfere with the percentage of disability assessed by the learned Claims Tribunal.

14. The second submission of learned counsel for the appellant that the learned Claims Tribunal erred in assessing monthly income of the appellant on lower side i.e Rs.3,000/- per month is concerned, learned Claims Tribunal has discussed the evidence mentioning therein that in view of the pleadings and statement made by the appellant with regard to his business of grocery shop and earning Rs.12,000/-per month, he failed to produce any document or other evidence except his oral statement. Learned Claims Tribunal also discussed that the appellant has not produced any copy of license of running grocery shop nor his bank account, or his income tax return. Further, learned Claims Tribunal considered the issue that no document has been filed to show that due to permanent disability suffered by him, his business came to be closed.

15. Before this Court also, learned counsel for the appellant except for pointing out the pleadings and oral evidence, could not place any evidence/material which was escaped by the learned Claims tribunal for considering the income of the appellant. In view of the foregoing reasons, learned Claims Tribunal is justified in not considering the pleading and oral statement of the appellant with regard to the nature of business and occupation as pleaded and stated in his claim application in absence of admissible piece of evidence and rightly assess the income of appellant on notional basis.

16. Learned Claims Tribunal assessed the income of the appellant as Rs.3,000/- per month on 19.12.2011 ie on the date of accident. Notional income is to be fixed considering the price index, wage structure, cost of living etc., and looking to the fact that appellant is residing at Raipur, we

find it appropriate to fix income of appellant as Rs.4,000/- per month and Rs.48,000/- per annum.

17. So far as other submission made by learned counsel for the appellant that learned Claims Tribunal erred in awarding meagre amount on other heads, ie technical and non-technical heads is concerned, going by the impugned award, it would show that learned Claims Tribunal awarded Rs.49,647/- towards the medical bills considering the documents placed on record by the appellant. Learned counsel for the appellant could not able to point out before this Court from the records that learned Claims Tribunal has escaped in its consideration any medical bill which is marked as Exhibits.

18. In view of above, we do not find any infirmity in the finding recorded by the learned Claims Tribunal that the Claimant is entitled for Rs.49,647/- towards medical expenditure.

19. Learned Claims Tribunal awarded Rs.5,000/- towards special diet, conveyance and attendant. Learned Claims Tribunal further awarded Rs.50,000/- towards the permanent disability due to the accidental injuries suffered by him, pain and suffering etc.

20. Looking to the quantum of amount awarded by the learned Claims Tribunal on the head of permanent disability, pain and suffering to the extent of Rs.50,000/-, we find that learned Claims Tribunal though have not bifurcated the amount of compensation on the heads of pain and suffering, loss of amenities in life etc., but the just amount of compensation has been awarded to the appellant in the facts and

circumstances of the case. Therefore, we are of the view that in its entirety, learned Claims Tribunal has awarded Rs.50,000/- towards non-pecuniary damages which is just and proper.

21. Learned Claims Tribunal not awarded any amount towards loss of income during the period of treatment for which he is entitled for.

22. In view of the discussions above, the amount of compensation to be awarded requires re-calculation, which is as under:

Income of the appellant is assessed as Rs.4,000/- per month and Rs.48,000/- (4000 x 12) per annum. Appellant on the date of accident was 38 years of age, therefore, there will be an addition of 40% of the established income towards future prospects as per law laid down by Hon'ble Supreme Court in the case of **National Insurance Company Vs Pranay Sethi** reported in **2 AIR 2017 SC 5157**. By adding 40% of Rs.48,000/- towards future prospects, total yearly income of the claimant comes to Rs.67,200/-.

As held by learned Claims Tribunal, the appellant suffered permanent disability to the extent of 25%, which is not under challenge. Upon calculating the amount of 25% of yearly income, appellant's yearly loss of income comes to Rs.16,800/- (67200 x 25/100).

By multiplying above yearly loss of income with appropriate multiplier of 15, total loss of income comes to Rs.2,52,000/- (16800 x 15).

The appellant may not be able to do his work for two months for which he is entitled for Rs.8,000/- (4000 x 2)

Apart from the above, appellant will be entitled for a sum of Rs.49,647/- towards medical expenses, Rs.5,000/- towards attendant, special diet and conveyance and Rs.50,000/- towards non-pecuniary damages ie pain and suffering, loss of amenities in life and permanent disability etc., as awarded by learned Claims Tribunal.

23. Now, the appellant/claimant will be entitled for a total sum of Rs.**3,64,647/-** (252000 + 8000 + 49647 + 5000 + 50000) instead of Rs.2,39,647/- as awarded by learned Claims Tribunal.

24. The aforementioned amount will carry interest @ 6% from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal will remain intact.

25. Appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge