

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1060 of 2014**

- Sonechand Banjare, S/o Chhedilal Banjare, aged about 22 years, R/o Chhuiya Khaida, Police Station & Tahsil Baloda Bazar, Revenue & Civil District Baloda Bazar (CG)

---- Appellant**Versus**

1. Sahdev, S/o Shri Panchram Dhritlahare, aged about 30 years, (Driver of the offending vehicle Tata Magic No.CG04/T/7099).
2. Shyam Ratan Prasad, S/o Shri Panchram Dhritlahare, aged about 50 years, (Owner of the offending vehicle Tata Magic No.CG04/T/7099).

Both are R/o village Dotopar, Police Station & Tahsil Baloda Bazar, District Baloda Bazar (CG)

3. Manager, Bharti Exca General Insurance Company Limited, First Floor, Igen Survey No. 28, Dodankundi Gaon, K.R. Puram, Dobali, Bangalore 37 W.B. Present Address- First Floor, Igan Chawala Complex, Devendra Nagar Road, Sai Nagar, Raipur, Distt. Raipur (CG) (Insurer of offending vehicle Tata Magic No.CG04/T/7099).

---- Respondents

For Appellant	:	Ms. Laxmin Kashyap, Advocate under the authority of Mr. P.K. Patel, Advocate
For Respondent No.3	:	Mr. Bhavesh Acharya, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu**29/01/2020**

1. Appellant- Claimant has filed this miscellaneous appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 30.8.2014 passed by learned 1st Additional Motor Accident Claims Tribunal, Balodabazar (henceforth 'the Claims Tribunal') in Claim Case No.164/11 by which the Claims Tribunal allowed claim application in part,

awarded a total sum of Rs.1,10,456/- as compensation in an injury case.

2. Facts of case, in brief, are that on 7.1.2011 at about 1.30 p.m. claimant/ appellant was going towards Balodabazar on his motorcycle bearing registration No.CG04-CZ-2476. On way, one Tata Magic bearing registration No.CG04-T-7099, coming from opposite direction, dashed the motorcycle of appellant as a result he sustained grievous injuries. Claimant/appellant was immediately taken to a hospital at Balodabazar and after providing primary treatment there, he was shifted to Ramkrishna Care Hospital, Raipur where he remained admitted upto 27.1.2011. Accident was reported to the police station based on which crime bearing No.42/2011 was registered against respondent No.1 herein for commission of offence under Sections 279, 337, 338 of the Indian Penal Code. After recovery from the injuries suffered in the aforementioned accident, the appellant filed claim application under Section 166 of the Act of 1988 claiming Rs.30,00,000/- as compensation on the grounds mentioned therein.
3. After filing of written statement by non-applicant Nos.1 & 2/ respondent Nos.1 & 2, driver & owner of offending vehicle respectively, they did not appear before the Claims Tribunal and were proceeded ex-parte.
4. Non-applicant No.3/Respondent No.3-Insurance Company filed its reply to claim application and admitted that the offending vehicle was insured for the period from 30.07.2010 to

29.07.2011. However, it was pleaded that on the date of accident, the offending vehicle was being driven in violation of condition of insurance policy i.e. without valid permit and fitness. The insurance company is not liable for payment of amount of compensation. It was also pleaded that there was contributory negligence on the part of claimant-injured.

5. On appreciation of pleadings and evidence brought on record by the respective parties, the Claims Tribunal held that the accident took place due to rash and negligent driving of offending vehicle by its driver i.e. non-applicant No.1, and awarded total sum of Rs.1,10,456/-, as compensation for the injuries sustained by claimant/appellant.
6. Learned counsel for claimant-appellant submits that the Claims Tribunal erred in awarding very meagre amount of Rs.1,10,456/- as compensation. The amount of compensation assessed and awarded by the Claims Tribunal is against well settled law governing assessment of quantum of compensation. Claimant-appellant sustained fracture injury in thigh bone resulting in 'permanent disability', but no compensation under the head of 'permanent disability' has been awarded by the Claims Tribunal. Claimant/ appellant has not only specifically pleaded in claim application but also stated in his statement that at the time of accident, he was working as 'Computer Operator' and earning Rs.12,000/- per month, however, while awarding compensation the Claims Tribunal erroneously disbelieved the job and income of appellant and taken monthly income as Rs.3,000/-, on

notional basis, which is very low. Amount awarded under other conventional heads like, special diet, attendant, conveyance etc. are also on lower side.

7. Per contra, learned counsel for respondent No.3 Insurance Company submits that appellant has not produced certificate issued by the competent Medical Board regarding nature and extent of permanent disability suffered by him. Even the doctor, who had treated claimant/appellant, has not been examined before the Claims Tribunal to prove the fact of permanent disability. In these circumstances, the amount of compensation awarded by the Claims Tribunal cannot be faulted with.
8. I have heard learned counsel for the parties and perused the record.
9. Claimant/appellant has filed discharge ticket (Ex.A-19) issued by Ramkrishna Care Hospital, Raipur. It is mentioned in the discharge ticket that appellant was admitted on 7.1.2011 and discharged on 27.1.2011. MLC Investigation Report (Ex.A-11) shows that claimant/appellant suffered commuted fracture of right shaft femur and of first metatarsal. Relevant portion of Ex.A-12 reads thus;-

“Final Diagnosis

Comp. Comm # shaft femur right M/3rd with comp.
comm. # 1st MT with dislocation PIPJ 3rd , 6th, Toes
with crushed Distal Phalanx 2nd 3rd Toe.

10. From the medical documents available on record it is established that appellant suffered fracture injuries in accident, but there is nothing on record to prove that any of the injuries

sustained by him has resulted in permanent or partial disablement. Further, appellant did not appear before the Medical Board for determination of nature and percentage of disability, if any, sustained by him and even the doctor, who treated the appellant, had not been examined before the Claims Tribunal to prove disability, if any, suffered by claimant/appellant. Since the appellant failed to prove that any permanent disability occurred to him due to grievous injuries to him in the said accident, no compensation can be awarded to him under the head 'permanent disability'. This being the position, the Claims Tribunal was justified in not awarding any amount of compensation under the head 'permanent disability'.

11. As regards determination of monthly income of claimant/ injured as Rs.3,000/- on notional basis. No doubt, pleading and oral evidence of claimant/appellant is that at the time of accident, he was earning Rs.12,000/- per month by working as 'Computer Operator'. But, he failed to examine his employer or produce any documentary evidence to show his monthly income i.e. Rs.12,000/-, and engagement as 'Computer Operator'. Even, he has not produced any document/certificate showing that he underwent computer training course. In absence of the same, this Court is of the opinion that the Claims Tribunal has not committed any mistake in assessing monthly income of deceased on notional basis. However, looking to the wage rate and price index prevailing in the State of Chhattisgarh at the time of accident i.e. in the year 2011, I feel that monthly income of deceased can be taken as Rs.3,500/-, in place of Rs.3,000/-

per month.

12. The Claims Tribunal awarded loss of income for three months.

Considering the medical evidence brought on record by claimant/appellant, nature of injuries and period of hospitalization of claimant/appellant as 'indoor patient', in the opinion of this Court, the Claims Tribunal was justified in awarding loss of earning for a period of three months. However, in view of monthly income of deceased as assessed by this Court, now appellant will be entitled for Rs.10,500/- towards loss of income during laid down period, instead of Rs.9,000/- as awarded by the Claims Tribunal.

13. The Claims Tribunal has awarded Rs.2,000/- towards pain and suffering. Considering the nature of injuries suffered, the treatment which appellant had undergone, as borne out from medical records, and duration of hospitalization as indoor patient, I consider that an amount of Rs.10,000/- will be proper and adequate compensation for the pain & suffering undergone by claimant/appellant due to injuries sustained by him in the accident in question, instead of Rs.2,000/- as determined by the Claims Tribunal.

14. As regards the amount of Rs.94,856/- awarded towards medical expenses, Rs.2,100/- towards attendant, Rs.1,500/- towards transportation during hospitalization of appellant, Rs.1,000/- towards special diet, in view of the evidence available on record and in the given facts & circumstances of case, I do not see any good ground to interfere and enhance the compensation

awarded by the Claims Tribunal under the aforesaid heads. The same are just and proper.

15. In the result, the appeal is allowed in part. The impugned award is modified to the extent that claimant/appellant shall be entitled for Rs.10,500/- for loss of income during laid down period instead of Rs.9,000/- and Rs.10,000/- as compensation for pain & suffering, instead of Rs.2,000/-, as awarded by the Claims Tribunal. This additional amount of Rs.9,500/- (8000+1500) shall carry simple interest @ 7% p.a. from the date of filing of claim petition till actual realization. Rest of the award impugned passed by the Claims Tribunal shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-