

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1220 of 2014**

- Dulesh @ Duleshwar S/o Tilak Ram Sahu, aged about 23 years, R/o Village - Bodra (B), Thana and Tahsil Kurud, Civil & Revenue Distt. Dhamtari C.G.

---- Appellant**Versus**

1. Sanjay, S/o Chhannu Ram, aged about 24 years, R/o Ward No. 10, Hatari, Thana- Nawapara, Rajim, Revenue Distt. Gariyaband Civil Distt. Raipur (CG)
2. Smt. Sushila W/o Makhan Lal Dewangan, aged about 42 years R/o House No. 42, Nawapara, Rajim, Thana- Nawapara, Rajim, Revenue Distt. Gariyaband Civil Distt. Raipur (CG)
3. Divisional Manager, Shriram General Insurance Company Limited, E-8, Rayko Industrial Area, Seetapur, Jaypur, Civil & Revenue Distt. Jaipur (Rajasthan)

---- Respondents

For Appellant	:	Mr. Sunil Sahu, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. Deepak Gupta, 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. Feeling partially aggrieved by the award dated 01.10.2014 passed by the learned Chief Motor Accident Claims Tribunal, Dhamtari (for short 'the Claims Tribunal') in Claim Case No.142/13 thereby partly allowing claim application of claimant/appellant herein and awarding a total sum of Rs.1,34,910/- as compensation along with interest @ 6% p.a., in an injury case, the appellant-claimant has preferred this

miscellaneous appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') for enhancement of compensation.

2. Facts relevant for disposal of this appeal, in brief, are that on 14.2.2013 appellant-claimant along with one Jalam Singh Verma was going to village Nawapara from village Bodra on his motorcycle bearing registration No.CG06-C-6764. When he reached in between village Bhendri & village Chandana, one Bus bearing registration No.CG04-E-0171 (for short 'the offending vehicle'), driven by respondent No.1 herein, came to the side of claimant/appellant and gave a dash to his motorcycle as a result he fell down and sustained grievous injuries. Claimant-appellant was firstly taken to Matarani Hospital, Rajim for treatment, however, looking to the grievousness of his injuries, he was referred to Medical College Hospital, Raipur. Two days thereafter he was taken to Nanak Hospital Devendra Nagar, Raipur where he remained admitted for 19 days and got himself treated. Upon diagnose, it was found that appellant suffered fracture injuries on his femur & tibia-fibula bones and also injury on his right foot. During the course of treatment, appellant-claimant underwent surgeries for the fracture of femur and tibia & fibula bones. A rod was implanted in his femur bone and a plate in tibia fibula bone. Despite taking constant treatment, appellant-claimant could not recover fully and he suffered permanent disability. Report of accident was lodged in Police Station Magarlod based on which crime bearing No.29/13 was registered against non-applicant No.1 for commission of

offence under Sections 279, 337, 338 of IPC.

3. Under the above circumstances, the claimant/appellant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.16,50,000/- pleading therein that on the date of accident, he was 23 years old and earning a sum of Rs.9,000/- per month by performing job of a 'Mason', however, due to permanent disability suffered by him in the accident, now he is unable to perform the said work as efficiently as he was doing prior to the accident.
4. Non-applicant No.1, driver of offending vehicle, did not appear before the Claims Tribunal and as such, he was proceeded ex-parte.
5. Non-applicant No.2, owner of offending vehicle, submitted his reply to claim application and denied the pleadings made therein. It was pleaded that prior to the date of accident, the offending bus has been sold to one Sanju Gada and an agreement to this effect has been executed on 28.1.2013, therefore, liability, if any, would be upon said Sanju Gada and not on the non-applicant No.2. It was also pleaded that on the date of accident, non-applicant No.1 was holding valid and effective driving license and the offending vehicle was not plied in breach of any of the conditions of insurance policy, therefore, in case of award of any amount of compensation by the Claims Tribunal, the insurance company is liable to indemnify the insured.
6. Respondent No.3- Insurance Company also filed its reply to claim application and denied the pleadings made therein. It was

pleaded that accident took place due to rash and negligent driving of motorcycle by the claimant himself. There was head on collision between motorcycle and offending bus and thereby the claimant also contributed towards the accident. Insurance company of motorcycle is also necessary party, but it has not been impleaded in claim application. Non-applicant No.1 was not possessed with valid and effective driving license on the date of accident and even there was no valid permit and fitness certificate of the offending vehicle. Since the offending vehicle was plied in breach of conditions of insurance company, the insurance company is not liable to indemnify the insured.

7. Upon appreciation of the pleadings and evidence placed on record by the respective parties, the Claims Tribunal held that the accident in question occurred due to rash and negligent driving of offending vehicle by non-applicant No.1; income of claimant and permanent disability have not been found to be proved, breach of condition of insurance policy has also not been found to be proved. The Claims Tribunal awarded a total sum of Rs.1,34,910/- as compensation out of which Rs.1,31,910/- is awarded towards medical expenses incurred by claimant/appellant in his treatment.
8. Mr. Sunil Sahu, learned counsel for claimants/appellant submits that the claimant has placed on record medical documents, x-ray reports, permanent disability certificate in support of his pleading with regard to permanent disability suffered by him. He also points out that the claimant had examined Dr. Rajendra Ahire as treating doctor of Dr. B.R. Ambedkar Hospital, Raipur

and Dr. Vinod Pandey to prove disability certificate Ex.P-79. He contended that Dr. Pandey (AW-3) in his evidence has specifically stated that the claimant has become disabled to do work of Mason, even then the Claims Tribunal has not awarded any amount towards the permanent disability suffered by claimant/ appellant. He also argued that the Claims Tribunal has not awarded any amount of compensation on non-pecuniary damages except Rs.3,000/- towards mental pain and agony, whereas the medical documents placed on record itself show grievousness of injuries suffered by claimant/appellant causing permanent disability to him. He also argued that the Claims Tribunal has not awarded any amount towards transportation, special diet, attendant, grievous injuries and loss of income during the period of treatment. In these circumstances, the amount of compensation awarded by the Claims Tribunal requires to be enhanced suitably.

9. Per Contra, Mr. Deepak Gupta, learned counsel appearing on behalf of respondent Insurance Company submits that from perusal of copy of disability certificate available on record as Ex.P-79, it is clear that claimant/appellant suffered only temporary disability and not permanent disability. He submits that in the disability certificate it is specifically mentioned that disability is temporary in nature, therefore, the Claims Tribunal was justified in holding that appellant has not suffered permanent disability. He submits that looking to the facts and circumstances of the case and also the injuries suffered by the claimant/appellant, the Claims Tribunal has awarded just and

proper amount of compensation which does not call for any interference.

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

11. In the application filed under Section 166 of the Act of 1988 it has been pleaded by claimant/appellant that on account of grievous injuries suffered by him in the accident in question, he was taken to the Medical College Hospital, Raipur where he took treatment for about two days and thereafter he was shifted to Nanak Hospital, Devendra Nagar, Raipur where he remained hospitalized for 19 days from 16.2.2013. It has also been pleaded that apart from internal injuries on his ankle and foot, claimant/appellant had suffered fracture injuries on his right femur bone and tibia-fibula bone, as a result he underwent surgeries and he has sustained permanent disability.

12. Discharge ticket of Nanak Hospital, Raipur has been placed on record by claimant/appellant as Ex.P-77. In this discharge ticket, the diagnosis noted is 'segmental fracture of shaft right femur with commuted fracture of right tibia upper 1/3rd with intra articular extension with lower pole fracture of patella (right)'. Appellant-claimant has examined Dr. Rajendra Ahire, Orthopaedic Specialist of Dr. B.R. Ambedkar Hospital, Raipur, as AW-2, who has stated in his evidence that appellant was admitted in the hospital and upon examination, he noticed two fractures on his right thigh, one in upper part of tibia bone and another on lower part of the same leg.

13. Appellant-claimant has also filed disability certificate as

Ex.P-79 and perusal of which would show that nature of disability mentioned therein is temporary. To prove this disability certificate, appellant-claimant has examined Dr. Vinod Pandey (AW-3), who has stated in his evidence that nature of disability to the extent of 50% mentioned in the disability certificate (Ex.P-79) issued to claimant-appellant is 'temporary'. He has further stated that the claimant is unable to perform the work of Mason. However, this statement of Dr. Vinod Pandey (AW-3) appears to be contradictory to the contents of disability certificate (Ex.P-79) wherein it is clearly mentioned that claimant has suffered temporary disability. Appellant-claimant did not appear again before the Medical Board concerned to examine as to whether the disability suffered by him is increased or rectified. In these circumstances, we are unable to accept this submission of learned counsel for appellant that appellant-claimant has suffered permanent disability to the extent of 30% and consequently, loss of income. Accordingly, this submission is hereby repelled.

14. The Claims Tribunal based on the documentary evidence available on record has assessed/calculated the total expenses incurred by claimant on his medical treatment at Rs.1,31,910/-, but awarded only a sum of Rs.3,000/ to claimant towards mental pain and agony. The Claims Tribunal has not awarded any amount towards pecuniary loss on account of special diet, attendant, transportation etc. and non-pecuniary damages like loss of amenities in life, pain and sufferings, injuries etc. By bringing medical documents on record, the appellant has been

able to prove that apart from other injuries, he has suffered two fracture injuries in his right leg i.e. fracture of femur bone and tibia bone. After the accident, appellant remained admitted in hospital for 19 days and during this period, he underwent surgery for the fracture injuries. In such a situation, we find it appropriate to award a lump sum amount of Rs.25,000/- to claimant-appellant towards pain and sufferings.

15. Looking to the nature of injuries and part of the body where appellant had suffered injuries, he might have required attendant during the period of his treatment and also for performing his daily activities after the discharge from the hospital atleast for a period of two months. Accordingly, we award a sum of Rs.8,000/- (4000x2) towards attendant for a period of two months.
16. Documents available on record show that after discharge from the hospital, the appellant had visited the hospitals on number of occasions and he must have taken special diet during the period of treatment and also thereafter for his speedy recovery. Accordingly, we award Rs.10,000/- towards transportation and special diet.
17. Looking to the nature of injuries and also nature of occupation in which the appellant was engaged on the date of accident and also period of treatment, we find it appropriate to award compensation under the head 'loss of income during the period of treatment' i.e. for a period of 5 months. As per pleadings made in claim application, on the date of accident, the appellant was working as a Mason. The accident occurred on 14.2.2013,

therefore, taking into consideration the nature of occupation, price index and wage structure prevailing in the year 2013 in the State of Chhattisgarh, we deem it appropriate to fix monthly income of claimant-appellant as Rs.5,000/-. As such, appellant-claimant is entitled for a total sum of Rs.25,000/- (5000x5) under the head 'loss of income during treatment period'.

18. Looking to the injuries and its grievousness and further considering the nature of treatment given by the doctors to appellant-claimant, we find it appropriate to award a sum of Rs.25,000/- to the appellant for the grievous injuries suffered by him.
19. We have held above that as per disability certificate Ex.P-79, the claimant-appellant has suffered only temporary disability, but looking to the nature of injuries as mentioned in discharge ticket (Ex.A-77) i.e. segmental segmental fracture of shaft right femur with commuted fracture of right tibia upper 1/3rd with intra articular extension with lower pole fracture of patella (right), which may have the effect on future life of appellant and he may not be able to perform many activities like an ordinary man, we find it appropriate to award a sum of Rs.25,000/- towards loss of amenities and joy in life.
20. Apart from above, the claimant-appellant will also be entitled for the sum of Rs.1,31,910/- towards medical expenses as awarded by the Claims Tribunal.

21. On the basis of above discussions, the compensation awarded is recomputed as under;-

Sr.	Heads		Amount Awarded
1.	Medical Expenses	:	Rs.1,31,910/- (as awarded by Claims Tribunal)
2.	For grievous injuries	:	Rs.25,000/-
3.	Loss of income during treatment period.	:	Rs.25,000/-
4.	For Pain & Sufferings	:	Rs.25,000/-
5.	For Transportation & Special Diet		Rs.10,000/-
6.	For attendant	:	Rs.8,000/-
7.	For loss of amenities and joy in life	:	Rs.25,000/-
	Total	:	Rs.2,49,910

22. Thus, the total amount of compensation for which claimant/appellant is entitled to receive comes to Rs.2,49,910/-. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till realization. Any amount already paid to claimants/appellant as compensation shall be adjusted from the total amount of compensation as calculated above.

23. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-