NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1144 of 2014

- Branch Manager, HDFC ERGO General Insurance Company Limited Inversal Business Park, B- 403, Chandibadi Aramroad Chandibadi Andheri East, Mumbai Maharashtra, Thru- Branch Office- HDFC Ergo General Insu.Co.Ltd., Devendra Nagar Road, Near Railway Crossing, Raipur, P.S. Devendra Nagar, Civil and Revenue Distt. Raipur, Chhattisgarh (Insurer)

---- Appellant

Versus

1. Hemkumar, S/o Mangaldas Ratre Aged About 30 Years R/o village Jevra, P.S. Sarangarh, Tah. Sarangarh, Civil and Revenue Distt. Raigarh, Chhattisgarh (Claimant)
2. Tirathram Sharma S/o Devidas Sharma Aged About 34 Years, profession – Driver, R/o Awasiya Distt. Banda U.P., At Present- Linfox Company Hinjodi, P.S. Hinjodi, Distt. Pune Maharashtra, Civil and Revenue District : Pune, Maharashtra
3. Linfox Logistic India Pvt. Ltd., Shop No. 182, Bittal Complex, Hindjewadi, Main Road, Taluka Mulsi, Pune, P.S. Hinjodi, Civil and Revenue Distt. Pune M.H., District : Pune, Maharashtra (Owner of vehicle No.MH-14-AS-9914)

----Respondents

For Appellant/Insurance Company : Shri NK Thakur, Advocate

For Respondents-1 to 3 : None appears

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

Per Parth Prateem Sahu, J.
28.09.2020

1. Insurance Company/NA3 has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 08.09.2014 passed by the Additional Motor Accidents Claims Tribunal, Sarangarh, District Raigarh (for short, 'Claims Tribunal') in Claim Case-18 of 2011 whereby learned Claims Tribunal allowed the claim application in part and awarded Rs.1,50,697/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 23.08.2010 at about 9.00 pm when claimant / respondent-1 was travelling on bicycle along with one Manoj and going to answer nature call, at that relevant time, Truck-Trailor bearing No. MH-14 AS 9914 (for short, 'offending vehicle') driven by NA-1 rashly and negligently, dashed the bicycle from its back.

3. In the aforementioned accident, appellant fell down and suffered grievous injuries over his right leg. Upon examination in hospital, diagnosed fracture over the right leg. Accident was reported to concerned Police Station upon which Crime No.317 of 2010 was registered against NA-1. Injured/ appellant filed application under section 166 of the Act of 1988 pleading that due to fracture injury suffered by him in the motor accident, he became permanently disabled. Prior to the date of accident, he was earning Rs.6,000/- per month as labourer and claimed Rs.4,50,000/- as compensation.

4. NA-1 & NA-2 driver and owner of offending vehicle did not appear before learned Claims Tribunal even after service of notice through paper publication and wee proceeded ex-parte.

5. NA-3 / Appellant herein, Insurance Company submitted reply to the claim application and denied the entire pleadings of claim application. It was pleaded that claimant himself was negligent for the accident, accident was on account of contributory negligence of the claimant himself. Claimant has not suffered any permanent disability, there was no valid and effective driving license with NA-1, driver of the offending vehicle.

6. Learned Claims Tribunal on appreciation of pleadings and evidence held that claimant suffered accidental injuries on account of rash and negligent driving of offending vehicle by NA-1 and became permanently disabled. Contributory negligence was not found to be proved. Appellant suffered 40% permanent disability and awarded Rs.1,50,697/- as compensation. Breach of conditions of Insurance Policy was also not found to be proved.

7. Shri N.K.Thakur, learned counsel for the appellant/Insurance Company submits that the Claims Tribunal has not granted proper opportunity to defend the case by examining any Employee of the RTO Office and the right for producing evidence/witness was closed by the Tribunal. He submits that specific plea was taken that on the date of accident driver of offending vehicle was not possessing valid and effective driving license for which verification report of the driving license was also produced but the Claims Tribunal has not given opportunity of examining employee of the RTO office.

8. To appreciate the above submission of learned counsel for the appellant, we have perused the record of claim case. Perusal of the order sheet would show that the application under Order 16 Rule 1 read with Section 151 of the CPC was filed by the appellant/ Insurance Company to examine RTO, Nagpur as their witness. The said application was allowed by the Claims Tribunal vide its order dated 23.04.2014. Thereafter, the case was listed on 15.05.2014, on which date, the Insurance Company has filed certain documents along with application under Rule 225 of the Chhattisgarh Motor Vehicle Rules, 1994 (hereinafter referred as 'Rules of

1994') read with Section 151 CPC. On 05.07.2014, learned Claims Tribunal allowed the application filed by the appellant Insurance Company under Rule 225 of the Rules of 1994. Documents placed along with it have been taken on record and he sought time to produce the witness mentioning that though notice/summons issued for examination of witness i.e. RTO, Nagpur, he is not present and next date was given on 11.08.2014. On that date, witness Adinath Srihari, LDC of RTO Office Nagpur was present in pursuance to the notice / summons issued to him.

9. Learned counsel for the appellant / NA-3 therein pleaded before learned claims tribunal that he does not want to examine the witness of the RTO office, Nagpur and learned counsel appearing for the Insurance Company submitted that they want to examine the officer of the Insurance Company. Next date for examination of witnesses of Insurance Company was fixed for 26.8.2014. On that date, the Officer of the Insurance Company was not present for recording the evidence. The submission of learned counsel for the appellant that the Claims Tribunal has not afforded opportunity to prove the extract of the license placed on record cannot be accepted in the facts of the case. The application filed by the Insurance Company under Rule 225 was allowed and documents enclosed along with it were taken on record. Thereafter, when the employee of RTO, Nagpur appeared as witnesses of the Insurance Company, Company pleaded that they do not want to examine the witness of RTO, Nagpur. In these facts of the case, when the appellant Insurance Company itself has left the witness unexamined who was present before the Tribunal, now, in appeal it cannot take a ground that the Claims Tribunal has not afforded

opportunity to defend the case and to examine the witness of RTO to prove license.

10. For the foregoing reason, we do not find any force in the submission made by learned counsel for the appellant / Insurance Company that opportunity has not been afforded to them to prove that driver of offending vehicle was not possessed of valid and effective driving license, it is hereby repelled.

11. So far as the cross objection filed by respondent1/claimant raising a ground that learned Claims Tribunal has not awarded just amount of compensation, we have considered the pleadings made in the cross objection and records of claim case.

12. Respondent1/Claimant has pleaded that learned Claims Tribunal erred in assessing 20% permanent disability instead of 40% as mentioned in the permanent Disability Certificate Ex.P2C, issued by the Medical Board, entire medical bill was not awarded, no compensation was awarded towards loss of income for the period of treatment, and no amount towards future prospects was awarded. Upon going through impugned award passed by the learned Claims Tribunal would show that income of claimant is assessed as Rs.3,000/- per month, has taken note of Disability Certificate and held that permanent disability mentioned in the certificate Ex.P2C is only with respect to his right leg and not for the whole body and considered 20% loss of income due to permanent disability. After assessing the amount of loss of income due to permanent disability,

awarded Rs.8,297/- towards medical bills, Rs.10,000/- towards attendant & special diet and Rs.10,000/- for pains and suffering.

13. Respondent-1 /claimant in his evidence stated that he was 32 years of age, accident took place on 23.8.2010. On the date of accident, he was 30 years, able bodied person working at Crusher Machine and also doing work of labour in village. Due to permanent disability, he is not able to do any work. He incurred expenditure of Rs.1,00,000/- towards treatment. In his cross examination, he stated that since last 15-16 years he is working in crusher machine and was earning Rs.150-200/- per day. He used to work 26 days in a month in crusher machine.

14. Perusal of Disability Certificate would show that the medical board found 40% permanent disability, mentioning not likely to improve and reassessment is not recommended. But there is no evidence on record to show that 40% permanent disability mentioned in the certificate is for the whole body. Ex.P4 is MLC report of the claimant in which it is mentioned that lacerated wound on right foot committed exposed muscle and bone. Dr Sharad Awasthi was examined as AW1 to prove the injury and Disability Certificate. In his evidence, this witness has stated that on account of crush injury suffered by the claimant on his right leg and foot, he was admitted on 23.8.2010, he was operated on the same day and discharged on 03.11.2010 on the request of claimant himself. Dr Sharad Awasthi issued Disability Certificate on 08.06.2013 where claimant appeared before the Medical Board Raigarh, Medical Board found 40% permanent disability on account of crush injury over ankle and foot. Learned Claims Tribunal has not considered the evidence of medical expert and reduced

percentage of disability for assessing percentage of loss earning capacity of the injured.

15. True it is that loss of earning capacity on all occasions may not be same as mentioned in the Disability Certificate and may vary looking to nature of occupation of claimant, part of the body on which he/she suffered permanent disability. Hon'ble Supreme Court in case of **Rajkumar Vs. Ajay Kumar** reported in **(2011) 1 SCC 343** has considered the manner in which the loss of income in cases of permanent disability is to be computed and the parameters to be considered for the same.

16. In the instant case, the Claims Tribunal has not considered part of the body on which permanent disability suffered by the claimant, who was working as labourer in a stone crusher, further, Claims Tribunal has not assessed income of the claimant taking into consideration the date of accident, age of the claimant, occupation on which he was engaged i.e. labourer, price index and wage structure. Learned Claims Tribunal has not awarded any amount towards loss of amenities and joy in life, discomfort and loss of income during the period of treatment.

17. For the foregoing reasons, the amount of compensation to be awarded to the claimant requires re-computation.

18. So far as percentage of loss of earning capacity due to permanent disability is concerned, looking to the nature of occupation of labourer and part of body i.e. ankle and foot on which claimant suffered 40% permanent disability, we are of the view that percentage of loss of earning capacity

can be assessed at **30%** instead of 20% as assessed by the Claims Tribunal.

19. Perusal of impugned award reveals that Claims Tribunal has assessed income of the deceased as Rs.3,000/- per month only, which in our opinion, is on lower side. Looking to the date of accident i.e. 23.8.2010, nature of engagement of claimant and wage structure prevailing on the date of accident, we find it appropriate to assess income of claimant as Rs.4,000/- p.m. and Rs.48,000/- per annum (4000 x 12).

20. By adding 40% towards future prospects on the established income of the claimant and he being less than 40 years of age, yearly income of claimant comes to Rs.67,200/- {48000 + (48000 x 40/100)}. Upon multiplying total yearly income with multiplier of 17, total loss of income comes to Rs.11,42,400/-. Claimant suffered 30% loss of income due to permanent disability. Now, upon calculating loss of income @ 30%, compensation towards loss of income would come to Rs.3,42,720/- (1142400 x 30/100).

21. Apart from above, claimant will be entitled for medical expenses as calculated by learned Claims Tribunal on the basis of medical bills submitted by him amounting to Rs.8,297/-, attendant and special diet and transportation Rs.15,000/-, pain and suffering Rs.20,000/-, loss of amenities in life and joy Rs.25,000/-, and loss of income during the period of treatment for four months which comes to Rs.16,000/- (4000 x 4).

22. Now, respondent-1 /claimant will be entitled for a total sum of **Rs.4,27,017/-** (342720 + 8297 + 15000 + 20000 + 25000 + 16000) as

compensation instead of Rs.1,50,697/- as awarded by learned Claims Tribunal. Appellant insurance company is directed to deposit entire amount of compensation with interest within a period of two months.

23. Aforementioned amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

24. Cross appeal filed by the claimant is allowed in part and impugned award is modified to the extent as indicated above.

25. In the result, appeal filed by the Insurance Company is dismissed and cross-appeal filed by the claimant is allowed in part in the above terms.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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