

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1137 of 2013**

- Tuniram S/o Motilal aged 40 years R/o Tendumuda Police Station and Post Tahsil Marwahi, District Bilaspur C.G.

-----Appellant**VERSUS**

1. Capton Roop Singh S/o Shri Jetha Singh Aria No. 11 Security Camp- OPM Amlai District Shadol M.P. **-----Owner**
2. Jasveer Singh S/o Shri Balwant Singh, aged about 47 years, R/o OPM Amlai District Shadol M.P. **-----Driver**
3. The New India Insurance Company Ltd. Shadol M.P.

-----Respondents

For Appellant	:	Mr. Anand Mohan Tiwari, Advocate.
For Respondent No. 3	:	Mr. N.K. Malviya, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****30/06/2020**

1. The appellant-claimant has filed this appeal questioning the impugned award dated 26-08-2013 passed in Claim Case No. 94/2011 by Upper Motor Accident Claims Tribunal, Pendra Road, Bilaspur C.G., whereby learned Claims Tribunal allowed the application in part and awarded a total sum of Rs. 11,200/- as compensation in an injury case.
2. Facts relevant for disposal of this appeal are that, on 14-05-2008 at about 09:30 in the morning when appellant was standing at intersection of village Kotmi on Pendra-Marwahi road, one four wheeler Mahindra Max bearing Registration No. MP 18D 0339 (hereinafter referred to as "offending vehicle") driven by Respondent 2/ Non-applicant 2 dashed the appellant in which, he suffered grievous injuries over his leg, shoulder, chest and other parts of body. The appellant was taken to C.H.C. Pendra for his treatment. The accident was reported to concerned police station based upon which crime number 120/08 was registered for offences under Section 279, 337 and 338 of IPC. The appellant-

claimant filed claim application seeking compensation for Rs. 3,90,000/- mentioning therein that in the aforementioned accident, he suffered fracture injury over left shoulder with permanent disability and he is unable to do work of Mason which he was doing prior to the accident.

3. Respondent 1 and 2/ Non-applicant 1 and 2 submitted their joint reply to the claim application and while denying the pleadings made in the claim application stated that the claimant/ injured was not doing any work prior to the accident, there was no accident from the vehicle owned and driven by Respondent 1 and 2 respectively, the injury shown to be suffered by the claimant was the injury suffered to him prior to alleged accident. It was further pleaded that on the date of accident, Respondent 2/ Non-applicant 2 driver of the offending vehicle was possessing valid and effective driving licence. The offending vehicle was insured with Respondent 3/ Non-applicant 3-Insurance Company, the liability, if any, would be on Insurance Company to satisfy the amount of compensation.
4. Respondent 3/ Non-applicant 3-Insurance Company submitted reply accepting the admitted fact and denying all other pleadings made in the claim application that the claimant was not working as Mason but only to seek higher amount of compensation, said pleading has been made in the claim application, no document with regard to agricultural land has been placed on record, appellant himself drove his motor vehicle negligently and further there was breach of conditions of insurance policy.
5. The learned Claims Tribunal, on appreciation of pleadings and evidence of the respective parties, has held that Respondent 2/ Non-applicant 2 while driving the offending vehicle rashly and negligently dashed the appellant, in which claimant did not suffer any permanent disability but grievous injury. Respondent 2/ Non-applicant 2-Driver of the offending vehicle was possessing valid and effective driving licence. Offending vehicle was insured with Respondent 3/ Non-applicant 3 and there is no violation of conditions of insurance policy amongst others; assessed the age of the claimant as 37 years and the income as pleaded in the claim application has not been found to be proved and awarded a sum of Rs.

11,200/- as compensation i.e. Rs. 5,200/- towards loss of income during the period of treatment for two months, Rs. 1,000/- towards medical expenses and Rs. 5,000/- towards pain and sufferings.

6. Learned counsel for the appellant submits that learned Claims Tribunal erred in no considering the entire facts and evidence placed on record by the appellant before it, in its entirety and arrived at a wrong finding that the appellant did not suffer any permanent disability, awarding the loss of income during the treatment period only for 2 months whereas the appellant in his pleadings and evidence specifically mentioned that he could not able to work for a period of 6 months due to plaster over his shoulder. It is further pointed out that the learned Claims Tribunal erred in disbelieving the disability certificate produced on record by the appellant-claimant issued by the Medical Board. He also submits that the learned Claims Tribunal erred in no awarding any amount towards conveyance and such other heads. The monthly income assessed as Rs. 2,600/- per month without considering that the appellant being a Mason comes under category of skilled labour.
7. No one appeared on behalf of the Respondent 1 and 2, though, it is shown in the list as Old Cases Targeted for Hearing and Disposal.
8. We have heard learned counsel for the appellant and perused the record.
9. The sole question involved in this case is whether the learned Claims Tribunal was justified in disbelieving the permanent disability certificate and arriving at a finding that the appellant had not suffered any permanent disability and further that whether the amount of compensation awarded to the claimant is just and proper in the facts and circumstances of the case. The pleadings made in the claim application with regard to the injury is that the appellant suffered injuries over his leg, chest, shoulder and plaster over left shoulder due to fracture. Claimant in support of his pleadings has filed MLC report dated 14-05-2008 prepared by the Medical Officer of Community Health Centre, Pendra Road, District Bilaspur, in which the Doctor had found four injuries, i.e. fracture on left

clavicle bone, laceration wound over right knee, laceration wound over right great toe, abrasion over waist left side. The X-ray report has been placed on record as Ext. P-16, in which fracture of clavicle left M/3rd has been found. Looking to the MLC report in which clinically fracture of left clavicle bone is mentioned. There is no reason to disbelief the fracture injury suffered by the appellant along with other lacerated wound injury was on account of the accident. The appellant in his claim application has mentioned that there was plaster over the shoulder for a period of six months, in support of his injury and treatment as pleaded, claimant has filed copies of the medical prescriptions as Ext. P-1, P-3 to P-8. From the aforementioned medical prescriptions, it appears that the claimant was lastly examined on 18-08-2008, wherein the same Doctor and medical Officer of Community Health Centre, examined the appellant and advised him for bed rest for two months, whereas accident was of 14-05-2008. Looking to the medical document placed on record as Ext. P-8, which is prescription of Doctor, dated 18-08-2008 i.e. after two months from the date of accident, we do not find any reason to disbelief this prescription placed on record by the claimant. More so since, the claim petition has been filed only on 14-11-2011. The aforementioned document, medical prescription of the Doctor, advising him to bed rest for two months and also specifically mentioned SOS, we are of the view that the appellant could not be able to do any work at least for this period till October, 2008, he suffered loss of income for a period of five months.

10. The learned Claims Tribunal while awarding the amount of compensation towards the loss of income during the period of treatment considered that the claimant has taken treatment for about one month as out-patient and held that he will be entitled for loss of income during the treatment period for one month and further that he may not be able to work for further period of one month and awarded loss of income of two months by assessing the income of the appellant as Rs. 2,600/- per month. Learned Claims Tribunal has also arrived at a finding that the appellant failed to prove that he was working as Mason. In support of his occupation and engagement of work, appellant apart from his evidence has also

examined one Anup Singh as witness AW-2. Anup Singh in his evidence at paragraph 4 specifically stated that due to injury suffered by the appellant, he is not able to do work of Mason (Rajmistry). This witness was examined by the learned counsel representing Non-applicant 1 and 2, as also the learned counsel representing Non-applicant 3. In paragraph 8 of this evidence, this witness stated that the appellant prior to the accident was working as labour. One Vishwanath was examined as AW-3 and in his cross examination, he admits that earlier the appellant was working as Mason and with regard to the question to be made about the income of the labour, stated that their wages was Rs. 100/- per day. In view of the aforementioned evidence placed on record on behalf of the claimant himself of AW-2 and AW-3, we do not find any reason to find any perversity in the finding recorded by the learned Claims Tribunal that the claimant failed to prove the income of the appellant. From the material available on record, it appears that prior to the date of accident, the appellant was aged about 37 years an abled body person and would have earned livelihood for his family.

11. In the aforementioned facts and circumstances of the case, taking into consideration the price index prevailing at that relevant time as well as the evidence placed on record, the income of the appellant can be taken as Rs. 3,000/- per month. The learned Claims Tribunal has awarded Rs. 5,000/- for pain and sufferings looking to the injuries suffered by the appellant i.e. fracture injury over his clavicle bone and laceration wound over right knee and right great toe, which in the opinion of this Court appears to be on lower side. To award the amount on the head of pain and sufferings, it is the nature of injury and part of body over which the claimant suffered injury is required to be taken into consideration, which in the opinion of this Court will be Rs. 10,000/- instead of Rs. 5,000/-. The learned Claims Tribunal has further awarded a sum of Rs. 1,000/- towards expenditure incurred on medicines in absence of any documentary proof placed on record by the learned counsel for the appellant, we do not find any reason to interfere with the said portion of the award of compensation. The learned Claims Tribunal has not awarded any amount towards the conveyance

and special diet, even when from the document placed on record by the appellant in support of his case shows the medical prescription of 14-05-2008, 15-05-2008, 21-05-2008, 08-06-2008, 23-06-2008 and 18-10-2008. Looking to the injury suffered on his shoulder, might have incurred expenditure in conveyance to travel from his residence to hospital and vice versa.

12. In the aforementioned facts and circumstances of the case, looking to the nature of injury, period of treatment for about five months, wherein on 18-08-2010, Doctor suggested Bed rest for two months, we find it appropriate to award Rs. 5,000/- towards conveyance and special diet. Now, the appellant-claimant will be entitled for Rs. 15,000/- towards loss of income during the treatment period, Rs. 1,000/- towards Medicine, Rs. 10,000/- towards pain and sufferings and Rs. 5,000/- towards conveyance and special diet. The appellant-claimant will be entitled for a sum of **Rs. 31,000/-** instead of Rs. 11,200/- as compensation. The aforementioned amount will carry interest @ 7.5% as awarded by the learned by the learned Claims Tribunal. The liability to satisfy the amount of compensation will be upon Respondents/ Non-applicants jointly and severally.

13. Consequently, the appeal is allowed in part. The impugned award passed by the learned Claims Tribunal is modified to the extent as indicated hereinabove.

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

Sd/-
(Parth Prateem Sahu)
Judge