

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1026 of 2014

Smt. Sukwara Bai W/o Dhaniram Aged About 42 Years, Caste : Satnami,
 R/o Ompur Colony, Qtr. No. M/285, Rajgamar, P.S. Rajgamar, Tah.
 Korba, Revenue & Civil Distt. Korba C.G.

---- Appellant/Claimant

Versus

1. Kishor Kumar Namdeo S/o Rameshwar Lal Chhipiya Aged About 29 Years R/o Sivni Champa, P.S. Champa, Distt. Janjgir-Champa C.G.
2. Tiharu Ram Sahu S/o Dhansai Sahu Aged About 41 Years R/o Birgahni, Gandhi Chowk, Behind Gayatri Mandir, P.S. Janjgir, Distt. Janjgir-Champa C.G., Present R/o Kartala, Tah. Kartala, Distt. Korba C.G.
3. National Insu. Co. Ltd. R/o.13, Minu Complex, Main Road, Kosabadi, Korba, Tah. and Distt. Korba C.G.

--- Respondents

For Appellant	:	Mr. Pawan Kumar Kashyap, Advocate on behalf of Mr. Pushpendra Kumar Patel, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Mr. Dashrath Gupta, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J
Judgment on Board

Per Parth Prateem Sahu, J

24/09/2020

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Korba, Distt. Korba (CG), (for short, 'the Tribunal) vide award dated 26.08.2014 passed in Claim Case No.307/2011.
2. Facts relevant for disposal of this appeal are that on 13.02.2012 at about 02:15 PM (Noon), appellant alongwith her son Rajpal was going to

Champa from Korba on Jeep bearing registration No.CG12/ZK/0131 (for short, 'offending vehicle'). On the way, non-applicant No.1 drove the offending vehicle in rash and negligent manner, went on the wrong side of road and dashed against Scorpio vehicle bearing registration No.CG11/C/9168, (for short, 'Scorpio'), which was coming from the opposite direction. As a result, claimant received grievous injuries on various parts of her body including fracture injury in her left leg. She was taken to the Hospital at Korba. Accident was reported to Police Station –Urga based upon which crime bearing no.192/2011 for the offence under Sections 279, 337, 338 & 304(A) of the IPC was registered against driver of offending vehicle.

3. Appellant/Claimant has filed an application under Section 166 of the Act of 1988 before the Tribunal seeking total compensation of Rs.9,61,000/- on the ground that in the motor accident, she suffered fracture injury over her left leg tailbone, apart from other injuries and became permanently disabled. Prior to the date of accident, she was working as 'Tailor' and thereby earning Rs. 5,000/- per month, but on account of permanent disability, she is not able to do the work, which she was doing prior to accident.
4. Non-applicant No.1/respondent No.1 -driver of offending vehicle, submitted reply to application and denied the entire pleadings made therein. It was pleaded that claimant was not travelling in his vehicle and application has been filed on the basis of false and fabricated grounds. It was further pleaded that accident occurred on account of rash and negligent driving of Scorpio by its driver, amount of compensation claimed by the claimant is on higher side. On the date of accident, driver

was possessing valid and effective driving license to drive offending vehicle. Vehicle was insured with non-applicant No.3/Insurance Company, hence, if the claimant is found to be entitled to get compensation then, liability to make payment of amount of compensation would be of Insurance company.

5. Non-applicant No.2/respondent No.2 -owner of offending vehicle submitted reply and while denying the claim, pleaded that offending vehicle owned by him was not involved in any manner in the accident. Non-applicant No.1 was not driving the offending vehicle in rash and negligent manner. It was also pleaded that on the date of accident, offending vehicle was insured with respondent No.3/Insurance Company, hence, liability, if any, to make payment of amount of compensation would be of Insurance Company.
6. Respondent No.3/Insurance Company also filed its reply and while denying the claim pleaded that no accident took place from the offending vehicle. On the date of accident, driver of offending vehicle was not possessing valid and effective driving license to drive the vehicle, even there was no valid permit with the vehicle. It was further pleaded that there was breach of condition of Insurance Policy as on the date of accident, offending vehicle was being used as 'passenger vehicle' and further that accident took-place due to rash and negligent driving of driver of Scorpio, hence, owner, driver & Insurance Company of Scorpio are responsible and liable to make payment of amount of compensation to claimant. Lastly it was pleaded that accident occurred due to negligence of drivers of both vehicles involved in the accident.

7. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that driver of offending vehicle, driving his vehicle in rash and negligent manner dashed the Scorpio and caused accident, in which, claimant suffered grievous injuries. The Tribunal allowed application in part, awarded a sum of Rs.39,000/- as compensation alongwith interest @ 6% p.a by assessing income of claimant at Rs.3000- per month, exonerated the Insurance Company from its liability on the ground of breach of condition of Insurance Policy and fastened liability upon Non-applicant Nos.1 and 2/ driver and owner of offending vehicle.
8. Mr. Pawan Kumar Kashyap, the learned counsel for the appellant submits that the Tribunal erred in not awarding any amount towards permanent disability and fracture injuries though in the aforesaid motor accident, claimant suffered fracture injuries over her 'Coccyx / Tailbone' and '5th rib', become permanently disabled, due to which, she is now unable to perform her work of 'tailoring' and other routine household works. He further submits that the Tribunal has awarded very meager amount towards pain and sufferings and loss of income during the period of treatment. On the aforesaid grounds, he prays that the amount of compensation awarded to claimant be enhanced suitably by modifying the impugned award.
9. Per contra, Mr. Dashrath Gupta, learned counsel for respondent No.3/Insurance Company supports the impugned award and submits that the Tribunal upon considering the materials available on record, held that the claimant has not been able to prove permanent disability by placing cogent and reliable piece of evidence, she examined Dr. S Chandani

as AW-3 only to prove her injuries. In absence of any admissible piece of documentary evidence with regard to the permanent disability, the Tribunal has rightly not awarded any amount of compensation towards permanent disability. In absence of any proof of income, the Tribunal assessed income on notional basis at Rs.3,000/- and awarded just and proper amount of compensation, which does not call for any interference.

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

11. From the pleadings and evidence (documentary and oral) placed on record by appellant/claimant and also the findings recorded by the Tribunal that claimant suffered injuries on 'Coccyx / Tailbone' & '5th rib' reveals that claimant suffered grievous injuries over her person in motor accident. To prove her injuries, she has examined (AW-3) Dr. S Chandani, who very specifically stated in her evidence that claimant suffered fracture injuries on 'Coccyx / Tailbone' & on '5th rib'. The finding recorded by the Tribunal that claimant suffered injuries on 'Coccyx / Tailbone' & '5th rib' neither challenged by owner or driver of offending vehicle nor Insurance Company.

12. In view of above, we affirmed the finding recorded by the Tribunal that claimant suffered injuries on 'Coccyx / Tailbone' & '5th rib', but the Tribunal has not awarded any amount of compensation towards the said injuries. The appellant may not be entitled to any amount of compensation under the head "permanent disability" for want of evidence, but she has been able to prove her injuries by examining Dr. S Chandani as AW-3, hence, she is entitled for amount of compensation towards the injuries suffered by her in motor accident in question. Looking to the nature of injuries,

we find it appropriate to award Rs.25,000/- towards grievous injuries suffered by appellant/claimant.

13. The Tribunal has awarded Rs.10,000/- towards pain and sufferings, which in the given facts and circumstance of the case is on lower side, we find it appropriate to award Rs.25,000/- to the claimant towards pain and sufferings.

14. Considering the fact that the appellant, who is a lady, has suffered injury on her back bone, due to which, she may not be able to discharge her duties towards her family and also the work which she was doing prior to the date of accident ie 'tailoring', we hold that appellant may not be able to discharge her duties for a period of four months instead of three months as held by the Tribunal.

15. The Tribunal assessed income of appellant as Rs.3,000/- per month and awarded loss of income for three months ie 9,000/- (3000×3), which is on lower side. The date of accident is of 13.02.2011, taking into consideration wage structure, cost of living and also the work which is required to be done by a housewife, who has to work for her family in all capacity from early morning to late night apart for any other work, which she does for earning, we find it appropriate to assess income of appellant as Rs.4,000/- per month, which makes loss of income during the period of treatment as Rs.16000/- (4000×4).

16. Apart from the above, appellant will also be entitled for lump-sum amount of Rs.20,000/- towards medical expenses, travelling, attendant and special diet, as awarded by the Tribunal.

17. Now appellant/claimant will be entitled for a total sum of **Rs.86,000/-** (25000+25000+16000+20000) instead of **Rs.39,000/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

Sd/-

(P.R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-