

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 114 of 2014

- Nirmal Kumar Soni, S/o Dr. S.S. Soni, Aged About 42 Years, R/o Rajkishor Nagar, Surajmukhi 57, P.S. Sarkanda, Distt. Bilaspur, Chhattisgarh

---- Appellant/Claimant

Versus

1. Santosh Singh, S/o Shankar Singh, Aged About 37 Years R/o village Karra Gatora, P.S. And Tah. Masturi, Distt. Bilaspur, Chhattisgarh (Driver of the offending vehicle No.CG 10 A 6234)
2. Amjad Ali, S/o Saiyyad Ahmad Ali Aged About 40 Years, R/o 36/720, Purana Power House, Torwa, Thana- Torwa, Tah. And Distt. Bilaspur, Chhattisgarh (Owner of the offending vehicle No.CG 10 A 6234)
3. Shriram General Insu. Co. Ltd. Thru- Divisional Manager, Divisional Office- 1000-E-8, Riko Industrial Area, Sitapura Jaipur Rajasthan, Thru- Divisional Manager, Shriram Transport Finance Co.Ltd., Front of Rajiv Plaza, Bus Stand, P.S. Tarbahar, District : Bilaspur, Chhattisgarh (Insurer of the offending vehicle No.CG 10 A 6234)

----Respondents

For Appellant	: Shri Prabhat Saxena, Advocate
For Respondents-1 and 2	: None appears
For Respondent-3	: Shri Deepak Gupta, Advocate

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

Per Parth Prateem Sahu, J.
25.08.2020

1. Challenge in this appeal is to the impugned award dated 18.07.2013 passed in Clam Case- 119 of 2010 by the Chief Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal'), wherein learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.97,233/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 09.03.2010 when appellant/claimant Nirmal Kumar Soni, resident of Rajkishore Nagar, Bilaspur was travelling on his Motorcycle and going to Korba. On the way,

one Truck bearing No.CG 10 A-6234 (hereafter, referred to as 'offending vehicle') driven by NA1 dashed the Motorcycle near village Mopka. In the said accident, appellant suffered grievous injuries over his person including fracture injuries and he was taken to CIMS Hospital, Bilaspur and from there, to Dr Kanduja Hospital, Orthopaedic Specialist for treatment.

3. After taking treatment, injured appellant filed application under Section 166 of the Motor Vehicle Act, 1988 seeking compensation of Rs.5,50,000/- pleading therein that in the accident, he suffered fracture injury over his Tibia and Fibula bones, for the purpose of treating the fracture injuries, he undergone major operation, he also suffered fracture injury over his Pelvis, and on account of aforementioned injuries, he became permanently disabled. He incurred expenditure of Rs.60,000/- towards medical expenses including expenditure on other heads also.

4. The claim of the appellant was resisted by NA1 and NA2, who are driver and owner of the offending vehicle. They have denied the fact of accident and further pleaded that on the date of accident NA1 was possessing valid and effective driving license and the offending vehicle was insured with NA3/Insurance Company.

5. Insurance Company/NA3 submitted its reply denying the fact of accident as it was pleaded in the claim application, adding to it that the appellant/claimant has not suffered any permanent disability; the accident was on account of negligence on the part of claimant himself, there was no valid and effective driving license with NA1, driver of offending vehicle,

there was breach of conditions of Insurance Policy. The owner and Insurance Company of Motorcycle have not been arrayed as party non-applicants in claim case, there was contributory negligence on the part of claimant also.

6. Learned Claims Tribunal on appreciation of pleadings and evidence available on record by respective parties, held that claimant suffered injuries on account of rash and negligent driving of offending vehicle by its driver/NA1 rashly and negligently; permanent disability was not found to be proved; there was no breach of conditions of Insurance Policy; and awarded a total sum of Rs.97,233/- as compensation along with interest.

7. Shri Prabhat Saxena, learned counsel for the appellant submits that the learned Claims Tribunal erred in not considering the Ex.P7 Disability Certificate which was also proved by AW2 Dr SS Bhatia, who issued the certificate. The learned Claims Tribunal has not awarded the entire amount of medical expenditure incurred by the appellant but awarded only meager amount of Rs.47,233/- only. It is further contended that learned Claims Tribunal erred in awarding very small amount of compensation towards pain and suffering, towards permanent disability, for special diet, and for future treatment. Learned counsel further submits that looking to the nature of injury and part of the body on which appellant suffered disability ie like fracture of his pelvis, learned Claims Tribunal ought to have calculated the amount of compensation by applying appropriate multiplier system.

8. Per contra, Shri Deepak Gupta, learned counsel for the respondent/Insurance Company submits that learned Claims Tribunal considered the entire documentary and oral evidence placed on record by the claimants to support his claim and awarded just amount of compensation. He submitted that the doctor who issued the Disability Certificate (Ex.P6) in his evidence has stated that the appellant suffered disability to the extent of 25%, of mild nature and further clarified that it will not be considered as disability of grievous nature. Therefore, the appellant cannot claim any further amount on the head of disability.

9. We have heard learned counsel for the respective parties and also perused the record. So far as awarding amount for entire medical bills by the learned Claims Tribunal is concerned, upon putting a specific query to learned counsel for the appellant that, which are the medical bills, learned Claims Tribunal failed to consider while awarding compensation, learned counsel could not able to point out any such bills produced before the learned Claims Tribunal and exhibited. In view of above, the submission made by learned counsel for the appellant that learned Claims Tribunal erred in not awarding compensation for entire medical expenses is not sustainable and is hereby repelled.

10. Other ground raised by learned counsel for the appellant is that the amount on the head of disability has been awarded on lower side. Perusal of Ex.P29 Discharge Ticket issued from the hospital of Dr Khanduja is placed on record, in which it is mentioned that the claimant got himself admitted on 09.03.2010 and took treatment as In-patient till 16.03.2010. It is also mentioned about diagnosis of compound comminuted fracture of

Tibia and Fibula left. The bill of the hospital charges are placed on record as Ex.P25 in which it is mentioned about the operation and implant charges along with other, which shows the pleadings and evidence made by the appellant that he underwent operation; rods and screws were implanted for fixing his bone, to be correct. The appellant also placed on record the document issued by the District Medical Board, Bilaspur wherein it is mentioned that he suffered mild disability of 25% on his left leg and on the date of examination by the Medical Board also, there was discharge of sinus and ankylosis ankle. The appellant was examined by the Medical Board on 14.11.2011 whereas the accident is of 09.03.2010 meaning thereby, till that date, injuries suffered by the appellant could not be cured fully.

11. Learned Claims Tribunal taking into consideration the evidence of appellant wherein it is stated that he is a Government servant and working as Stenographer in Water Resource Department, rightly not awarded any amount on account of loss of income due to disability. But the appellant is entitled for non-pecuniary damages due to disability suffered by him on his body. The appellant on the date of accident was aged about 42 years. He suffered injury on his left leg and also suffered injury on his pelvis. Looking to the nature of injury and the evidence with regard to disability of the appellant by producing Disability Certificate Ex.P6 as also the evidence of AW2 Dr SS Bhatia, we find it appropriate to enhance the amount of compensation towards disability from Rs.20,000/- to Rs.40,000/-. The appellant may not be able to move his left leg like fully able bodied person, he may not be able to do his physical activities as an

ordinary man for whole of his life and therefore, we deem it fit and proper to award Rs.15,000/- towards loss of amenities and joy in life. Learned Claims Tribunal has not awarded any amount towards transportation during treatment period, for which we award Rs.3,000/- as compensation on the head of transportation.

12. Now, the appellant/claimant will be entitled for Rs.40,000/- towards the disability, Rs.3,000/- for transportation, Rs.15,000/- for loss of amenities and joy in life, Rs.47,233/- for medical expenses, Rs.20,000/- for pain and suffering, Rs.3,000/- for attendant, Rs.2,000/- for special diet and Rs.5,000/- towards the future medical expenses.

13. Now, the injured claimant will be entitled for a total sum of **Rs.1,35,233/-** (40000 + 3000 + 15000 + 47233 + 20000 + 3000 + 2000 + 5000) as compensation in place of Rs.97,233/- as awarded by learned Claims Tribunal.

14. Above amount of compensation will carry 6% interest from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal shall remain intact.

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

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge