

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 613 of 2013**

- Santlal son of Shatrughan, aged about 31 years, resident of Village-Chhediya, Police Station- Gurur, Civil and Revenue District Durg C.G.

-----Appellant**VERSUS**

1. Mohanlal son of Thakurram Sahu, aged about 22 years, resident of Tikrapara, Shiv Chowk, Gurur, Police Station-Gurur, Civil and Revenue District Durg C.G.
2. Bhaiyaram Sinha son of Bahoran Sinha, resident of bus-Stand, Guru, District Durg C.G.
3. Future General Insurance Company Ltd. through the Branch manager, Branch Office Beside Dhuppad Petrom Pump, Maruti Business Park, Raipur, P.S. Raipur, Civil and Revenue District-Raipur C.G.

-----Respondents/ non-applicants

For Appellant	:	Mr. Shikar Bakhtiyar, Advocate on behalf of Mr. B.P. Singh, Advocate.
For Respondent 3	:	Mr. Rohitashva Singh, 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.****08/06/2020**

1. The appellant-claimant has filed this appeal seeking enhancement of the impugned award dated 09-04-2013 passed by Additional Motor Accident Claims Tribunal, Balod, District Durg Chhattisgarh, in claim case No. 05/2012, wherein learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 22,000/- as compensation in an injury case.
2. Facts of the case in nutshell are that on 19-10-2011, appellant-claimant was traveling on Scooter bearing Registration No. CG07 E 2560 and going to Balod from Gurur, one Tata Pick-Up bearing Registration No. CG05 D 0787 (hereinafter referred to as "offending vehicle") driven by Respondent-1/Non-applicant-1 dashed the Scooter of the appellant in which he suffered fracture injury on his both legs. He suffered fracture injury on his right femur bone and dislocation of his left knee. The appellant was taken to Government Hospital Gurur from where

he was shifted to Christian Hospital at Dhamtari.

3. The appellant filed claim application mentioning therein that he is 31 years old man working as Driver with the Marketing Society and earning Rs. 3,100/- per month from his work, due to permanent disability suffered by him on account of motor accidental injuries, he is now unable to do any work; he has to incur expenditure towards medical expenses and expenditure towards medicines as his right thigh was operated. The appellant claimed Rs. 7,35,000/- as compensation against Respondent-1 to 3/ Non-applicant 1 to 3.
4. Respondent 1 and 2/ Non-applicant 1 and 2, who are the driver and owner of the offending vehicle submitted reply to the claim application pleading therein that the amount claimed by the claimant is highly exaggerated; on the date of accident, non-applicant-1 was having valid and effective Driving Licence to drive the vehicle and the offending vehicle was insured with Non-applicant-3, liability for payment of compensation, if any, would be on Insurance Company.
5. Respondent 3/ Non-applicant 3 -Insurance Company also submitted reply to the claim application and denied the fact of accident and also the permanent disability suffered by the appellant in the accident. It was also pleaded that the owner and the Insurance Company of the other vehicle are also necessary party and there is contributory negligence on the part of the appellant too. There was no valid and effective Driving License with Respondent 1/ Non-applicant 1, as also non-availability of fitness and permit of the offending vehicle, leading to violation of conditions of insurance policy and pleaded that the Insurance Company is not liable to pay any amount of compensation.
6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties had arrived at a finding that the appellant failed to prove the permanent disability suffered by him, that the appellant suffered grievous injury. It was further recorded that on the date of accident, appellant was aged about 31 years and earning Rs. 3,100/- per month, and awarded Rs.

10,500/- towards medical bill and conveyance expenditure, Rs. 8,500/- towards expenses on medicine and Rs. 3,000/- towards physical and mental pains and suffering, totaling Rs. 22,000/- as compensation alongwith an amount of Rs. 1,000/- as advocate's fees.

7. Learned counsel for the appellant submits that the appellant got himself examined by Member of District Medical Board who issued Ext. P-1 i.e. the Disability Certificate reveals 50% of the temporary disability with an endorsement of "*likely to improve*" but the injury is not improved. It is further contended that the appellant has examined Dr. Vinod Kumar Pandey as witness AW-2, who issued Disability Certificate to prove the said certificate, but the Claims Tribunal without any reason has disbelieved the certificate and not awarded any amount of compensation on the head of permanent disability. It is also contended that the Claims Tribunal has not taken into consideration the major injury suffered by the appellant and not awarded any amount towards attendant cost and special diet and further, loss of income during the period of treatment. It is also argued that looking to the nature of the injury suffered by the appellant, the Claims Tribunal ought to have awarded some more amount towards pains and suffering.
8. Per contra learned counsel appearing for Respondent 3/ Insurance Company submits that the learned Claims Tribunal upon appreciation of evidence/statement of the Doctor/ AW-2 has found that the appellant failed to prove the permanent disability suffered by him which is based on the material and evidence placed on record. He further submits that the Disability Certificate reveals about the temporary disability likely to improve, however, Ext.P-1 contains the endorsement as "Not For Medico Legal Purpose" to which the learned Claims Tribunal has correctly taken note of. It is contended that looking to the facts and circumstances of the case, the Claims Tribunal has awarded the entire bill placed on record with regard to the medical expenditure. The award is just and proper and does not call for any interference.

9. We have heard learned counsel for the respective parties and also perused the record.

10. It is not in dispute that the appellant suffered fracture injury over the right femur bone along with other injuries, the Doctor/AW-2 while examining the appellant for the purpose of issuance of certificate has found that the femur cept of right leg of the appellant was fractured from center. Looking to the nature of injury and part of the body fractured, definitely the appellant has suffered grievous injury to which the learned Claims Tribunal has rightly held. But, at the same time, the Claims Tribunal has not considered that due to grievous injury suffered by the appellant on his right femur bone, he may not be able to work for certain period of time. Learned Claims Tribunal, in our considered view, has committed error in not awarding any amount towards loss of income during treatment time. Though, there is no documentary evidence on record issued by the Doctor with respect to the period of treatment like discharge ticket etc. testifying the time period of treatment and even then looking to the documentary evidence available on record evincing the fracture of right femur bone of the appellant, we deem it fit and proper to hold that the appellant might not be able to perform his work for a period of 3 months, therefore, the appellant is entitled for an amount of compensation towards the loss of income during his treatment period accordingly.

11. The learned Claims Tribunal has assessed the income of the appellant as Rs. 3,100/- per month, therefore, loss of income, during the treatment period i.e. 3 months, will come to Rs. 9,300/-. The Claims Tribunal has not awarded amount of compensation on account of special diet and awarded meagre amount of compensation of Rs. 3,000/- only towards the physical and mental pains and suffering. Looking to the nature of injury suffered by the appellant and the part of body, we consider it appropriate to award Rs. 10,000/- towards physical and mental pains and suffering, patient attendant. The learned Claims Tribunal erred in not awarding any amount towards the special diet to which this Court assesses the amount as Rs. 1,000/-

12. Now the appellant-claimant will be entitled for a total sum of Rs. 9,300/- towards loss of income during treatment period, Rs. 10,500/- towards medical bills and conveyance expenses, Rs. 8,500/- towards expenditure incurred for purchase of medicines, Rs. 10,000/- towards pains and suffering and attendant cost and Rs. 1,000/- towards special diet. Thus, the appellant-claimant is entitled for total amount of **Rs. 39,300/-** [Rs.9,300+Rs.10,500+Rs.8,500+Rs.10,000+Rs.1,000] as compensation instead of Rs. 22,000/- as awarded by the Learned Claims Tribunal. The enhanced amount of compensation will carry interest @ 6% p.a. from the date of filing of claim application till its realization. Apart from the above amount of compensation, the appellant-claimant will also be entitled for a sum of Rs. 1,000/- towards Advocate's fee as awarded by the learned Claims Tribunal.

13. In view of the above, the appeal stands allowed in part and 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