

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 603 of 2013**

- Sanjay Kumar Verma, S/o Vijay Kumar Verma, aged about 38 years, Occupation - Service, R/o Mayapur, Beside Electricity Office, Ambikapur, P.S. and Tahsil Ambikapur, Civil and Revenue District Surguja (C.G.)

---- Appellant**Versus**

1. Prabhasarojni Namdeo, W/o Shri Rajendra Prasad Namdeo, Vehicle Owner, R/o Ghasiyapara, Sitapur, P.S. & Tahsil Sitapur, Civil & Revenue District Surguja (CG).
2. Tajedar, S/o Imdad Khan, aged about 19 years, Vehicle Driver, R/o Karabel, Tempopara, P.S. & Tahsil Sitapur, Civil and Revenue District Surguja (C.G.)
3. New India Insurance Company Limited, through the Branch Manager, New India Insurance Company Limited, Transport Nagar, Korba, Police Station Korba, Civil & Revenue District Korba (C.G.)

---- Respondents

For Appellant	:	Miss. Sharmila Singhai, Advocate
For Respondent No.3	:	Mr. Raj Awasthy, Advocate.

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

Order On Board**Per Parth Prateem Sahu, J****08/06/2020**

1. Appellant- Claimant has filed this miscellaneous appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act

of 1988') challenging the award dated 12.3.2013 passed by learned 2nd Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja (henceforth 'the Claims Tribunal') in Claim Case No.85/11 by which the Claims Tribunal allowed claim application in part, awarded a total sum of Rs.40,000/- as compensation in an injury case.

2. Facts of case, in brief, are that on 22.5.2007 at about 3.00 p.m. in the afternoon, appellant was going on his Hero Honda Passion motorcycle bearing No.CG15/7547 to Surguja Kshetriya Grahmin Bank, Ambikapur Branch for depositing money. On the way, near a garage ahead of Reliance Petrol Pump, the driver of one silver colour Maruti Omni Van bearing No.CG15B-2483, coming from the opposite direction at a high speed, lost control over his vehicle due to his rash and negligent driving and hit motorcycle of appellant as a result he sustained grievous injuries on various parts of body including fracture of femur bone of right leg and became unconscious. After the accident, one Shri Tarachand Gupta, an acquaintance of claimant, took claimant/appellant firstly to Gramin Bank, Ambikapur Branch where claimant had deposited the money and then said Tarachand Gupta took him to Sriram Hospital of Dr. Sanjay Tripathi, who had given primary treatment to appellant and thereafter referred claimant/appellant to Raipur for better treatment. Appellant was treated in Heritage Hospital, Raipur from 23.5.2007 to 09.06.2007 and during this period, knee of appellant was operated twice by the doctors and knee

grafting was also done.

3. Claimant/appellant filed claim application before the Claims Tribunal seeking a sum of Rs.19,00,000/- as compensation on the ground that even after five months of accident he has not fully recovered; he remained bedridden for about seven months after the accident; he has suffered permanent disability to the extent of 59% due to injuries sustained in the accident and now he is dependant upon his family members to perform his day-to-day work. It was also pleaded that appellant had incurred total expenditure of about Rs.19 Lakhs in his treatment, which includes expenses incurred in travelling, special diet etc.
4. During pendency of claim application, an application for amendment was filed to incorporate the facts that after filing of claim application, the claimant underwent two more surgeries on 22.6.2009 & 28.8.2009 respectively, incurred total expenses of Rs.3,35,880/-, out of which only an amount of Rs.1,49,089=87 paise has been reimbursed to him by his employer Bank, therefore, he is entitled to get remaining amount of Rs.2,86,790/-. This amendment application was allowed by the Claims Tribunal and claimant was permitted to carry out the aforesaid amendments in claim application.
5. Non-applicant Nos.1 & 2/respondents No.1 & 2 herein filed reply to claim application and pleaded that claimant/appellant met with accident due to his own negligence. The claim made by claimant is nothing but an afterthought and based on false & frivolous grounds. The owner & Insurer of motorcycle involved

in accident have not been arrayed as party to claim application. There was no valid & effective driving license with claimant/applicant. Claimant/appellant being an employee of Rural Bank (government servant) is not entitled to get any compensation towards medical expenses for the reason that the entire expenses incurred by him in his treatment has already been reimbursed by his employer-Bank. There was valid permit in respect of offending vehicle, it was insured with non-applicant No.3, and even non-applicant No.2, driver of offending vehicle, was having valid & effective driving license. They cannot be saddled with liability to make payment of any compensation.

6. Non-applicant No.3/respondent No.3-Insurance Company also filed its reply to claim application and while denying the entire claim of claimant, pleaded that on the date of accident, the driver of offending vehicle was not having valid & effective driving license and as such, there was violation of essential conditions of insurance policy, the insurance company is not liable to indemnify the insured. It was pleaded that claimant had not suffered any permanent / temporary disability in the accident. It was also pleaded that claim application itself is liable to be dismissed for non-joinder of necessary parties i.e. owner and insurer of motorcycle.
7. Upon appreciation of pleadings and evidence brought on record by the respective parties, the Claims Tribunal held that the accident took place due to rash and negligent driving by the

driver of offending vehicle i.e. non-applicant No.2, and while holding that there was no violation of terms and conditions of insurance policy, awarded a total sum of Rs.40,000/- as compensation to claimant/appellant for the injuries sustained by him in accident and fastened liability upon insurance company to make payment of compensation.

8. Miss Singhai, learned counsel for claimant-appellant submits that the Claims Tribunal erred in awarding meagre amount as compensation, particularly in view of permanent disability which the appellant has suffered to the extent of 59%. She submits that claimant-appellant sustained fracture injury in femur bone of his right leg resulting in permanent disability to the extent of 59%, which was duly proved by exhibiting disability certificate (Ex.P-1) issued by the District Medical Board, Ambikapur and examining Dr. J.K.. Bhutani (AW-2) in this regard, but no compensation under the head of 'permanent disability' has been awarded by the Claims Tribunal.

She submits that appellant produced original medical bills showing the amount of expenses incurred by him on his treatment, but the Claims Tribunal has not granted any compensation under the head of medical expenses. She also submits that for undergoing 2nd & 3rd surgery, claimant/appellant had to be on leave for a period of 125 days, which is evident from certificate dated 21.02.2011 (Ex.P-10) issued by the General Manager, Surguja Kshetriya Grahmin Bank, as such, he was entitled for compensation under the head of 'loss of

leave', but the Claims Tribunal has not awarded any amount under this head. The Claims Tribunal has not awarded any amount towards conveyance, attendant, special diet etc. though the claimant had produced oral and documentary evidence on record with regard to his period of treatment and the places where he was treated i.e. Raipur, Nagpur & Pune, which is far from his place of residence i.e. Ambikapur.

She further submits that claimant/appellant is a cricket player and represent his Bank in regional/ national level cricket tournaments, which is evident from Ex.P-13 to P-15. However, due to permanent disability suffered by him in the accident, the appellant would not be able to play cricket in future for the reason that after the accident, he will not able to walk, run or bend his knee as a normal person throughout his life. In such a situation, the appellant is entitled to get compensation under the head 'loss of amenities and enjoyment of future life', but no amount has been awarded by the Claims Tribunal under this head.

She further contended that amount of Rs.20,000/- awarded under the head 'mental & physical agony', is also wholly disproportionate to the nature of injuries sustained by appellant in the accident and the same deserves to be enhanced suitably.

9. Per contra, learned counsel for respondent Insurance Company submits that appellant suffered fracture injury on his right femur bone for which he took treatment at Heritage

Hospital, Raipur. As per pleadings of appellant himself, he had recovered from said injury and joined his duties in the month of December, 2007. In the given facts and circumstances of case, the Claims Tribunal has rightly arrived at a conclusion that appellant had suffered only grievous injuries in the accident and not permanent disability to the extent of 59%, as mentioned in Ex.P-1.

It is also contended that appellant is an employee of Surguja Kshetriya Gramin Bank, Ambikapur, as such, he is entitled for reimbursement of medical expenses incurred by him in his treatment. The Claims Tribunal after considering the entire material on record, particularly evidence of one Suresh Prasad Soni (AW-3), has held that appellant failed to prove as to which medical bills or other bills exhibited in this case has been placed before the department for reimbursement. He is unable to specify that which of the bills has been reimbursed and which of the bills was not reimbursed. It is pointed out that the Claims Tribunal after analysing the entire facts and circumstances of case as also evidence, oral and documentary both, has rightly awarded compensation of Rs.40,000/- to the claimant, which does not call for interference in this appeal.

10. We have heard learned counsel for both sides and perused the records.
11. As per pleadings made in claim application, the accident took place on 22.5.2004 at 3.20 p.m.; initially injured-claimant took treatment from Dr. Sanjay Tripathi at Shri Ram Hospital,

Ambikapur. However, looking to seriousness of injuries, claimant/ appellant was referred to Raipur for further treatment where he took treatment from 23.5.2007 to 9.6.2007 and during this period, his knee was operated by Dr. Sanjay Pandey & Dr. Shailendra Upadhyay in Heritage Hospital, Raipur and grafting of knee bone was also done. On account of accident, the claimant had to remain on bed for about 7 months and during this period, he was totally dependent on other family members for routine works. However, due to financial crisis, he joined his duties on 26.12.2007. As a result of accident, not only his right leg shortened by one inch, but he cannot move his leg from near knee beyond 10 degree. According to doctors, applicant has suffered permanent disability, which would persist throughout his life. Due to shortening of leg and restriction in leg movement only upto 10 degree, he is unable to do his daily routine works and unable to drive two wheeler or four wheeler. In pursuance of order dated 19.1.2011, the claimant incorporated pleadings in claim application that during pendency of claim application, the claimant again suffered fracture injury on his right knee as a result he had to undergo two more surgeries of knee on 22.6.2009 & 28.8.2009 and thereby he had incurred total expenses of Rs.3,35,880/- (79585+164756).

12. In support of aforesaid fact, appellant had filed discharge ticket dated 9.6.2007 (Ex.P-312-C) of Heritage Hospital, Raipur. In this discharge ticket against the column 'Diagnosis' it is

mentioned that "Diabetes (potential) with compound commuted (Gastilo Grade-3) fracture supracondylar & I/C Femur LT with bone loss". It shows that operation was conducted by a team of two Surgeons on 25.5.2007 and knee movement has been mentioned from zero degree to forty degree. Ex.P-313C is medical prescription of Dr. Sanjay Pandey, Heritage Hospital, Raipur in which it is mentioned that "...knee 0° to 30° passively (has reduced by approx 10° 0° to 30° approx).

13. From the above mentioned documents it appears that appellant has suffered grievous injury on his right femur bone as a result movement of knee is restricted. Appellant has also placed on record document dated 20.6.2009 (Ex.314-C) issued by the Centre for Joint Replacement Surgery, Pune. In this document it is mentioned that appellant has suffered post traumatic right stiff knee with 3-4 cm shortening. It is also mentioned that appellant desired for lengthening of leg only. Document Ex.P-244C is consolidated bill of treatment of appellant from 27.8.2009 to 8.9.2009 for a sum of Rs.1,16,174/- issued by Sancheti Institute for Orthopaedics & Rehabilitation, Pune. This consolidated bill is with regard to medicines, ward charges, physiotherapy, investigations, surgery including implants and professional charges.

14. Appellant himself has categorically pleaded in his pleadings that after the accident, he again suffered fracture injury in his right knee. Appellant in his statement on affidavit under Order 18 Rule 4 of CPC has stated that for removing the steel plate

inserted in his right leg and for improvement in condition of his leg, he took treatment from Sancheti Institute for Orthopaedics & Rehabilitation, Pune where he underwent surgery on 22.6.2009. After operation, during course of treatment in the said hospital, he again suffered fracture in his right knee, his leg was again operated on 28.8.2009 and a titanium plate was re-implanted.

15. Sequence of events, as pleaded in claim application, and the medical documents placed on record, as discussed above, reveals that appellant suffered grievous injury on his right leg and after recovery, he joined his duties. Even if we take into account the case pleaded by appellant as it is, he joined his duty in the month of December, 2007 and thereafter he took treatment in the year 2009 in hospitals at Raipur & Pune. Appellant has not mentioned anything in his pleadings or evidence as to why he did not again approach Heritage Hospital, Raipur, even if implant is required to be removed. Pleading of amended portion of claim application only shows that during pendency of claim application, appellant suffered fracture injury. He has not pleaded in very specific term as to how he again suffered fracture injury but for in his examination-in-chief he has stated that after removal of implant in the hospital at Pune, he again sustained fracture injury in his leg during the course of treatment. In the cross-examination the appellant stated that at the time of physiotherapy exercise, he suffered fracture. He also admitted that he has not filed any

document showing that he was referred to Nagpur (MS) for better treatment.

16. In view of the above, the appellant will not be entitled for the expenses incurred by him in undergoing surgeries in Pune because as per version of appellant himself, after removal of implant inserted in his right leg, in the course of treatment he was undergoing physiotherapy exercise in Sancheti Hospital, Pune and in that process, he again suffered fracture in his right leg. This apart, said operation was done only on 28.8.2009 i.e. after a lapse of about two years from the date of accident. Appellant has not raised specific plea in claim application stating the reason of post-accident fracture sustained by him, which appears to be suppression of material fact from the Claims Tribunal. More so, when the appellant was performing his duty for more than one & half year when he underwent surgery on 22.6.2009 & 28.8.2009.

17. Other issue raised by learned counsel for appellant is that the Claims Tribunal has not awarded any amount towards permanent disability though he suffered 59% permanent physical impairment. Appellant has filed disability certificate dated 30.5.2009 (Ex.P-1) issued by the Medical Board. He has examined Dr. J.K. Bhutani (AW-2), who has stated in his statement due to injuries suffered by appellant on his right leg, he found stiffness and shortening of his right leg and found 59% disability. In the cross-examination he has admitted that percentage of disability has been shown with respect to right

leg only. He further clarifies that the disability certificate does not show the disability on other parts of the body. The Claims Tribunal considering the evidence of Dr. J.K. Bhutani (AW-2) recorded a finding that as the disability has not been shown for the whole body, disablement has not been found to be proved but held that the appellant suffered grievous injuries. The Claims Tribunal in Para-15 of the award has recorded that from the document Ex.P-1, disability of right knee to the extent of 59% is proved, but for awarding amount of compensation it has not considered disability suffered by appellant on the ground that disability is not for whole body. This finding recorded by the Claims Tribunal, in our opinion, is not correct. Assessment of disability affecting whole body is for the purpose of calculating the amount of loss of income due to disability but if any person has suffered disability on any part of body then it can be considered applying the ratio for awarding compensation on heads of non-pecuniary damages, to which the Claims Tribunal has completely lost sight. Looking to the nature of injuries, treatment and disability certificate issued by the doctor for some part of the body i.e. knee of right leg, which was found to be injured and treated at Heritage Hospital, Raipur showing stiffness in knee, shortening of leg and restriction of movement, in our opinion, the appellant will be entitled for the loss of amenities and enjoyment in his life.

18. The Claims Tribunal has awarded a sum of Rs.20,000/- towards mental & physical agony, taking into consideration that

the appellant suffered 59% disability on his right leg. The Claims Tribunal further awarded a sum of Rs.15,000/- towards special diet, attendant & conveyance expenses; a sum of Rs.5,000/- towards pains & sufferings and thereby a total sum of Rs.40,000/-. To appreciate the submission made by learned counsel for the appellant that the Claims Tribunal erred in not awarding amount of medical expenses, salary towards loss of leave, as mentioned in Ex.P-10, and other expenditure incurred by appellant towards travelling from Ambikapur to Raipur, Nagpur, Pune and back.

Learned counsel also submits that appellant has to stay in hotels at the time of his examination and consulting with doctors for which he has also submitted bills and also the railway as well air tickets but the Claims Tribunal has not awarded any amount for the same.

19. Looking to the period of treatment in Heritage Hospital, Raipur, as is evident from Ex.P-312 & 313, appellant may be entitled for some amount towards transportation and also conveyance but only to the extent which is correspondingly supported by medical prescription for that period or medical bills. Documents available on record as Ex.P-163-C shows that cash receipt of Heritage Hospital, Raipur dated 11.7.2007. Similarly, cash receipt dated 2.9.2007. Other medical prescriptions filed as Ex.P-166 to P-177C are receipts of Holy Cross Hospital, Ambikapur showing payments made for physiotherapy. Ex.P-180 is bill of Shivam Travels dated 22.5.2007 i.e. date of

accident, for travelling from Ambikapur to Raipur and return. Similarly, the bill of Shivam Travels of 10.7.2007 from Ambikapur to Raipur and return. An employee, who is entitled for medical reimbursement, is entitled for reimbursement of actual medical bills, if the same are supported with documents correlating with the date of medical prescriptions, and not the amount incurred towards transportation, lodging & boarding etc. In case at hand, the appellant had produced various bills showing expenses incurred by him under various heads in the course of his treatment. However, the Claims Tribunal disbelieved all those bills of expenses by assigning reason. Going through the reason assigned by the Claims Tribunal for disbelieving various bills of expenses produced by appellant in support of his claim, we find no infirmity in it warranting interference.

20. In view of above discussion, we are of the view that amount awarded by the Claims Tribunal is not just and proper as in some of the heads, which were taken into consideration for award of amount of compensation to appellant, are on lower side and in some of the heads for which appellant is entitled for award of compensation, no compensation has been awarded. Therefore, we propose to recompute the amount of compensation to be awarded to claimant/appellant.

21. Looking to the nature of injury, period of treatment and the fact that accident occurred on 23.5.2008 and appellant could join his duties only in the month of December, 2007, we deem it

appropriate to award a sum of Rs.25,000/- towards pains and sufferings.

22. Appellant has suffered permanent disability to the extent of 59%, as mentioned in disability certificate issued by the District Medical Board, which was proved by the doctor (AW-2) stating that on account of stiffness or restriction in movement of knee and shortening of length of right leg, claimant has suffered permanent disability to the extent of 59% and a certificate to that effect has been issued to him. Looking to the nature of permanent disability suffered by appellant; young age of appellant and long period of his life for which he has to live with said disability, we find it appropriate to award Rs.40,000/- for mental pain & agony due to permanent disability.

23. Appellant has enclosed documents showing that he used to take part in sport activities within department sports events. After the accident, appellant may not be in a position to do many activities like an ordinary man and also unable to join family for such occasions. Therefore, we find it appropriate to award Rs.40,000/- towards loss of amenities and joy in life.

24. Looking to the period of hospitalization, nature of injury, part of body in which appellant suffered injury and resting period of appellant for a period of three months, we find it appropriate to award a sum of Rs.9,000/- towards attendant (at the rate of Rs.3,000/- per month). Considering the fact that appellant took treatment at Ambikapur & Raipur, we find it appropriate to award Rs.20,000/- towards transportation and conveyance for

the period during treatment and thereafter.

25. For the foregoing reasons, the appeal is allowed in part and now the claimant/appellant will be entitled for a total amount of Rs.1,34,000/- (25000 + 40000 + 40000 + 9000+ 25000) as compensation instead of Rs.40,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry interest @ 6% per annum from the date of filing of application till realization.

26. The impugned award is modified to the extent indicated above.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-