

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 539 of 2013**

{Arising out of order dated 05.03.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No.234/2010}

- Sadhram Visvakarma S/o Late Ramphal Visvakarma Aged About 49 Years R/o Kharkaina, Thana- Hirri Mince, Revenue/civil Distt. Bilaspur (C.G.)

---- Appellant**Versus**

1. Safiuddin And Ors. S/o Sahiuddin Musalman Aged About 37 Years R/o Chaitma Bastoll, Thana- Pali, Civil Distt. Korba (C.G.)
2. Vitesh Arora S/o R.L. Arora R/o Indu Chauk, Jarhabhata, Thana- Civil Line, Civil Distt. Bilaspur (C.G.)
3. Branch Manager, The Oriental Insurance Co. Ltd., Branch Office Rama Traid Center, 1st Floor, In Front of Rajeev Plaza, Bus Stand Road, Civil Distt. Bilaspur (C.G.)

---- Respondents

For Appellant	: Shri Samir Singh, Advocate
For Respondents No.2	: Shri P. Dutta, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, Judge****22.05.2020**

1. Challenge in this appeal is to the award dated 15.03.2013 passed by the learned 1st Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No. 234/2010 whereby the learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.1,38,800/- as compensation.

2. The facts of the case in nutshell is that on 18/02/2010 when Appellant was travelling on his bicycle and going to village Kharkena, at that time, one Tanker bearing registration No. CG/010/A-1391 dashed the bicycle of the Appellant. In the aforementioned accident, the Appellant suffered grievous injuries over his person including the injury over his right thigh and right ribs. He was taken to the hospital where he has to undergo operation. Even after taking treatment, the injuries suffered by the claimant did not cure fully and he suffered permanent disability. The accident was reported to concerned Police Station, based on which, Crime No.28/2010 was registered against the driver of the Tanker.
3. The Appellant filed a claim application before the learned Claims Tribunal claiming Rs.3,30,000/- as compensation by mentioning that on the date of accident, he was earning Rs.200-250/- per day, but after the date of the accident, he is unable to do the work, which he was doing earlier as he suffered permanent disability.
4. Non-Applicants No.1 & 2 did not choose to appear before the learned Claims Tribunal and were proceeded *ex parte*.
5. Non-Applicant No.3/Insurance Company submitted reply to claim application and stated that there was violation of conditions of insurance policy and the amount claimed by the Appellant was highly exaggerated.
6. The learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, arrived at a finding that the Appellant suffered permanent disability and awarded a total sum of Rs.1,38,800/- as compensation.
7. Learned counsel for the Appellant submits that learned Claims Tribunal though have assessed the permanent disability to the extent of 40%, but

has not awarded any amount towards the future prospects in view of the disability suffered by the Appellant. He further submits that the learned Claims Tribunal has erred in taking the income of the Appellant only Rs.3,000/- per month, whereas Appellant has claimed that he was earning Rs.200-250/- per day, which is more than Rs. 6,000/- per month. It is further contended that learned Claims Tribunal has not awarded proper amount of compensation towards pain and suffering ignoring the fact that Appellant suffered fracture injuries over his thigh and undergone surgery.

8. Per contra, learned counsel for the Respondent No.3 submits that the learned Claims Tribunal after analyzing the entire facts and circumstances of the case has awarded just and reasonable amount of compensation to the claimant. He further submits that as the Appellant has failed to prove the income, the learned Claims Tribunal rightly assessed the income of Appellant on notional basis.
9. The quantum of award is under challenge in this case. It is not in dispute that the Appellant suffered fracture injury on his right femur bone and he undergone operation. In support of his claim with respect to the disability on account of injuries as mentioned above suffered by him. The Appellant has examined Dr. I.S. Bhatia (AW-2), who has issued the disability certificate. Dr. I.S. Bhatia (AW-2) has stated in his evidence that the Appellant suffered fracture injury over his right femur bone, which was operated, but the said bone could not be united and thereby the Appellant suffered 45% moderate disability. The evidence of AW2 was accepted by the Tribunal and held that the Appellant suffered 45% disability leading to 30% of loss of earning capacity cannot be said to be erroneous.

10. To appreciate the submission made by learned counsel for the Appellant with respect to assessment of income of the Appellant which the learned Claims Tribunal has assessed as Rs.3,000/- per month, in our opinion, the income assessed by the learned Claims Tribunal is on lower side. It is true that the claimant has failed to prove income as pleaded in their claim application, but then in the facts and circumstances of case, income of claimant is to be assessed on notional basis keeping in mind the prevailing wage rate. The date of accident was 18.02.2010, therefore, looking to minimum wage rate prevailing in the Districts and State, it will be proper to hold the engagement of claimant in labour work and his income to be assessed to Rs.4,000/- per month. We hold the income of Appellant as Rs. 4,000/- p.m.

11. Taking into consideration the loss of earning capacity held by the learned Claims Tribunal as 30%, applying multiplier of 11 as on the date of accident the age of the claimant has been shown as 50 years. The total amount towards loss income will be Rs. 1,58,400/- ($4000 \times 30 \times 12 \times 11 / 100$). The learned Claims Tribunal has awarded Rs.5,000/- for pains sufferings. Looking to the nature of injury, part of the body as well as the fact that the Appellant undergone operation we find it appropriate to award Rs.10,000/-, towards pains and suffering instead of Rs.5,000/-. The learned Claims Tribunal awarded all medical bills which are proved and have also awarded the amounts towards Rs.5,000/- for special diet which in our view is just and proper. Now the Appellant will be entitled for Rs.10,000/- for medical expenses Rs.10,000/- for pains and suffering, Rs.5,000/- for special diet and Rs.1,58,400/- towards loss of income. Now the Appellant will be entitle for total amount of compensation as Rs.1,83,400/- instead of

Rs.1,38,800/-. The amount of award shall carry interest @ 7% from the date of filing claim application till its realisation.

12. In view of the above the appeal is allowed in part and the impugned award is modified as indicated above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge