

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1070 of 2013

1. Shri Ram Dubey (Since Died) Through legal representatives

1A. Satyam Dubey S/o Late Shri Ram Sharma (wrongly mentioned in impugned order is Shri Ram Sharma instead of Shri Ram Dubey) Aged About 40 Years, R/o Sadar Road, Nayapara, Rajim, Civil and Revenue Distt. Raipur Chhattisgarh (Owner of the vehicle)

1B. Smt. Jyoti Sharma D/o Late Shri Ram Dubey, w/o Rajprasanna Sharma, aged about 38 Years R/o House No. 25, Anand Nagar, Raipur, Civil and Revenue District : Raipur, Chhattisgarh

---- Appellants/Defendants

Versus

1. Md. Rafique, S/o Abdul Ajj, Aged About 34 Years R/o Sadar Road, Nawapara, Rajim, Tah. Abhanpur, Civil and Revenue Distt. Raipur, Chhattisgarh (Claimant before the Tribunal)

2. Majruram (Since Died) S/o Kheduram Sahu Aged About 55 Years R/o Kurra, Post- Patewa, Tah. Raipur, Civil and Revenue District : Raipur, Chhattisgarh (Driver before the Tribunal)

3. Regional Manager, The Oriental Insu.Company, Raipur, Thru- Oriental Insurance Company, Behind Old Bus Stand, Dhamtari, Civil and Revenue Distt. Dhamtari, Chhattisgarh (Insurer)

-----Respondents

For Appellants	: Shri Kunal Das, Advocate
For Respondents- 1 and 2	: None appears
For Respondent- 3/Insurance Company	: 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
20.07.2020

1. The appellants who are legal heirs of Owner of the offending vehicle (substituted in his place before the Tribunal) have filed this appeal under Section 173 of the Motor Vehicles Act,1988 challenging the impugned award dated 31.07.2013, passed by the Additional Motor Accident Claims Tribunal (FTC) Dhamtari (for short, 'Claims Tribunal'), in Claim Case-87 of

2013, wherein learned Claims Tribunal allowed the claim application in part and awarded Rs.2,43,375/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 15.02.1997, at about 4.30 pm, respondent-1/Claimant along with Mubarak Ali was travelling on Motorcycle bearing No.MP24 ED-8115 (for short, 'Motorcycle') and going to Raipur from Nawapara. While so, when they reached near Telephone office at Nawapara, one Tractor bearing No.MP23G 5235 (hereafter, referred to as 'offending vehicle') coming from Raipur side dashed the Motorcycle, on which respondent-1 was travelling. In the said accident, Mubarak Ali died on the spot and respondent-1 suffered grievous injuries over his body including fracture of hip bone. He took treatment at MMI Hospital, Raipur from 15.02.1997 to 03.03.1997.

3. Respondent-1 thereafter, filed an application under Section 166 and 140 of the Motor Vehicle Act, 1988, pleading therein that due to the injuries suffered by him in motor accident, he became permanently disabled and is unable to make his movements and unable to do his business of animal bone and skin, which he was doing prior to the accident and claimed Rs.27,75,000/- as compensation.

4. Initially, NA-2A, LR of owner of offending vehicle and respondent-3/NA-3/Insurance Company of offending vehicle submitted reply to claim application denying adverse pleadings made in the claim application. Insurance Company pleaded that on the date of accident, respondent-2/NA1/driver of offending vehicle was not possessing valid and effective driving license, there was breach of conditions of Insurance Policy.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, allowed the claim application in part and decided the claim application filed by the legal heirs of deceased Mubarak Ali as well as the claim application filed by respondent-1/ injured by a common award. In case of Claim application-142 of 2002 (injury case), filed by respondent-1/injured, awarded Rs.2,50,000/- as compensation. Award passed in Claim Case -132 of 2002 (death case of Mubarak Ali) and Claim Case-142 of 2002 (injury case) were put to challenge before this court by Owner of offending vehicle in-MA667 and MA668 of 2003. This court dismissed MA-668 of 2003 filed in case of death of Mubarak Ali and allowed MA-667 of 2003 partly filed against respondent-1 herein and remitted back the case for deciding the claim case afresh after giving opportunity of hearing and leading further evidence to both the parties and to file additional documents and to examine doctor in support of disability. After remand of the case, it was registered as Claim Case-83 of 2013 and learned Claims Tribunal after hearing the respective parties has passed a fresh award to the tune of Rs.2,43,375/-, considering the Disability Certificate Ex.P4, to the extent of 50% but for the purpose of assessing the loss of income towards permanent disability, assessed the same as 30%.

6. Shri Kunal Das, learned counsel for the appellants would argue that learned Claims Tribunal erred in exonerating the Insurance Company from its liability and have misread the evidence of RTO Clerk, who was examined before learned Claims Tribunal as NAW-1, and further evidence of NA-2A, legal representative of original owner of offending vehicle. He

further contended that learned Claims Tribunal has not considered that on the date of accident driver of offending vehicle was possessing valid and effective driving license. It is also contended that learned Claims Tribunal erred in accepting the Disability Certificate issued by Dr VK Pandey, because, it was not issued by the Medical Board. Doctor who issued Disability Certificate was not a treating doctor and he issued the certificate without proper examination of injured as is evident from his evidence.

7. No one appears on behalf of respondent-1/claimant.

8. Per contra, Shri Deepak Gupta, learned counsel for respondent-3 Insurance Company submits that learned Claims Tribunal has rightly considered the order of remand passed by High Court in earlier proceedings ie MA-667 of 2013. He submits that the High Court has remitted the case only to assess the quantum of compensation in Claim Case-142 of 2002 and therefore, learned Claims Tribunal has decided the claim of respondent-1 within the four corners of the remand order.

9. The question of breach of conditions of Insurance Policy has been decided against the owner and driver of offending vehicle in the earlier appeal filed by the owner of offending vehicle, which was not put to challenge before any other superior Court and therefore, the finding recorded with regard to the breach of conditions of Insurance Policy has become final.

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

11. So far as the submission made by learned counsel for the appellant with regard to exoneration of Insurance Company from its liability and fastening the same upon the owner of offending vehicle to satisfy the amount of compensation is concerned, appellant has filed Annexure A5, which is a copy of order dated 17.01.2012 passed by the High Court of Chhattisgarh in MA-667 and 668 of 2003. Perusal of para-10 of the order would show that the High Court has considered and upheld the finding recorded by learned Claims Tribunal with regard to the exoneration of Insurance Company on the ground that the driver of offending vehicle was not holding a valid and effective driving license to drive the offending vehicle on the date of accident.

12. The order passed in MA-667 of 2003 was not put to challenge by owner of offending vehicle before any superior court and the finding related to that aspect became final. Learned Claims Tribunal has rightly not gone into the issue with regard to the breach of conditions of Insurance Policy, and we do not find any infirmity in not considering the issue of valid license and evidence produced by the appellant/owner in this regard before the learned Claims Tribunal.

13. Now, the 2nd ground raised by learned counsel for the appellants that learned Claims Tribunal erred in accepting the Disability Certificate issued by Dr VK Pandey is concerned, we have perused copy of Disability Certificate placed on record, Ex.P4. It has been issued in the Format as provided under the MP Motor Vehicle Rules, 1994. Form No.MPMVR-76 (Comp 'B'). Rule 220(3)(i) (for short, 'Form-76') also mentions about the Form under which the injury certificate is to be issued.

14. On perusal of above Form-76, it is apparent that there is requirement of an injured to have taken treatment as in-patient in that hospital and thereafter treated in OPD from such and such date in that hospital. Form-76 is reproduced herein below:

**FORM M.P.M.V.R-76 (Comp. 'B')
[(See Rule 220(3)(1))]**

Original
No. A.
No.
.....Hospital.
Date.....

I certify that I have this day.....
examined.....who states he was accidentally injured
on.....and was admitted to this Hospital
on.....and discharge on.....and treated in the
O.P.D. from.....to.....

In my opinion, the injury or injuries which he has suffered by
reason of the accident involve.....

- (a) permanent privation of the sight of either eye or the hearing of the
either ear or privation of any member of joint;
- (b) destruction or permanent impairing of the power of any member o
joint; or
- (c) permanent dis-figuration of the head or face.

Medical Officer Incharge
Signature or thumb
Impression of the applicant.

15. In the case at hand, as per the documents placed on record by respondent-1/claimant, ie the Discharge Ticket(Ex.P11), which is of the MMI Hospital Raipur, shows the date of admission on 15.02.1997 and date of discharge on 03.03.1997. From the above document, it is apparent that respondent-1 took treatment at MMI Hospital, Raipur and not at the PHC Kurud, which issued the Disability Certificate (Ex.P4), by

Dr VK Pandey. Dr VK Pandey was examined as AW3, who had stated that respondent-1 has took treatment at MMI Hospital, Raipur from 15.02.1997 to 03.03.1997 as in-patient and on 27.11.1999 as Out-patient at Primary Health Centre, Kurud. In his cross-examination, he submits that on the date of issuance of certificate, there was no X-ray machine at PHC Kurud. There is no mention in Ex.P4 that X-ray of injured part was taken. He also stated that in Disability Certificate he has not mentioned process and procedure adopted by him in assessing the disability of respondent-1/injured.

16. Perusal of Disability Certificate Ex.P4 would further show that the percentage of disability which has been shown under the prescribed column in Form-76 as 50% permanent disability of eye, or hearing or permanently privation of any member or joint. The pleadings and evidence as well as material available on record do not show any such injury suffered by the appellant. The patient appeared in OPD on 27.11.1999 as per evidence of doctor and as per the date mentioned in the certificate issued on the same day when injured appeared for the first time at Primary Health Centre, Kurud.

17. The treating doctor could be the best witness to prove the disability of injured, or for issuance of Disability Certificate or it should be issued by the Medical Board, after examining the injured, after taking X-ray to arrive at a conclusion about the status of the fracture injury on the date of issuance of Disability Certificate. But the same procedure is not adopted in this case. Therefore, in our considered opinion, learned Claims Tribunal erred in accepting the Disability Certificate issued by Dr VK Pandey, AW3.

The doctor AW3 could not have issued the Disability Certificate in Form-76 as it is a format for the Hospital and Doctor where injured took treatment.

18. In view of nature of evidence stated by Dr VK Pandey, AW3, the contents of Disability Certificate Ex.P4 and also considering that the authority who can issue the Disability Certificate under Form-76. We are of the view that Certificate Ex.P4 is not admissible in evidence to prove the permanent disability of claimant. As per the requirement of Form-76 for assessing Disability Certificate under it, the injured should have taken treatment as in-patient and also as out-patient and then only Medical Officer In-charge of that hospital will be in a position to issue certificate under that form. The evidence placed on record by respondent-1/claimant to prove his disability as permanent disability suffered by him in the motor accident is not acceptable because of the reasons stated above. We hold that respondent-1 failed to prove any permanent disability suffered by him in the motor accident by placing cogent and reliable piece of evidence, even after remand of the case to the Claims Tribunal in earlier round of litigation.

19. Even if the injured respondent could not able to prove his permanent disability by placing cogent and reliable piece of evidence, as held by this Court in preceding paragraph, but then also, respondent-1 is entitled for just and proper amount of compensation looking to the nature of injury suffered by him, supported by medical documents on record. Medical documents placed on record would show that immediately after the accident respondent-1 was admitted to the MMI Hospital Raipur and in the Discharge ticket Ex.P11, it is mentioned fracture of Pelvis, Blunt injury

abdomen, bony tenderness pelvic compression and Laprotomy surgery conducted on 19.02.1997. The other document Ex.P9 issued by the MMI Hospital, Raipur shows the details of injuries and treatment given to respondent-1 and it was sent to the Station House Office, Police Station Gobra Nayapara, which reads as under:

“The Station In-charge
Gobra Naya Para Police Station
Raipur District.

Mohammad Rafique 40yrs/Male was admitted in M.M.I. Raipur on 15/2/97 vide Reg. No. 12208 at 8.00PM with an alleged road traffic accident on the same day.

His general condition was stable. He had not passed urine since the accident. He had pain and tenderness over lower lumbar spine and pelvis and abdomen with no neuro-vascular involvement of the lower extremities and no external injury around the genitalia.

He had an abrasion over dorsal aspect of proximal part of left forearm and LW 1 inch long in the first web space of right hand and contusion of left thigh.

His X-Ray revealed :
Fracture of both pubic rami bilateral, with no spinal injury.

His CT Scan of Abdomen and Pelvis showed fracture of right ilium posteriorly involving the right sacroiliac joint.

Exploratory laprotomy was done by Dr. S. Dutta on 19/2/97 and no visceral injury was found except retro peritoneal clot. Patient was discharged on 4/3/97 with final diagnosis of fracture pelvis (both pubic rami bilateral and ilium right) with blunt injury abdomen and left thigh.”

20. On perusal of aforementioned document, it appears that respondent-1 suffered fracture of both pubic rami bilateral, with no spinal

injury at the age of 40 years and definitely the injury will have long term effect on him, which could not be ignored even if the disability has not been proved by him. Apart from the above injury, respondent-1 has also undergone laprotomy surgery on 19.02.1997.

21. In view of above injuries suffered by respondent-1, we find it appropriate to award Rs.40,000/- towards the injuries suffered by him. He will also be entitled for Rs.34,000/- towards proved medical expenses already incurred by him for his treatment. Rs.10,000/- towards pain and suffering, Rs.10,000/- towards transportation and special diet, Rs.2,000/- towards the attendant as respondent took treatment as In-patient for about 18 days (15.02.1997 to 02.03.1997).

22. So far as to assess the loss of income during the period of treatment, we perused the evidence placed on record by respondent- 1 to prove his income. Ex.P1, which is the Income Tax Return of respondent-1 for the year 1996-97. Perusal of this document would show that whitener has been used for correction in the document and on the correction part, there is no signature of the receiving Clerk. Under the name itself, there is correction and the corrected part shows the name as 'Shabbir' ie 'Muhammed Shabbir'. After correction, it is written as 'Rafique'. Under the column of the State, initially it was written 'MP' and by striking off, it has been written as 'CG'. The period for which the income tax return has been submitted is of 1996-97 and at that time, State of Chhattisgarh (CG) was not originated and was not in existence as it was carved out only on 01.11.2000. Further, the Seal of the bank appears to be of the year 1991. Under these facts, which is appearing from the documents, the Income

Tax Return which was filed as Ex.P1, in the opinion of this Court, cannot be taken as admissible piece of evidence. Another certificate Ex.P2, which was issued by a Chartered Accountant showing income of respondent-1 as Rs.42,750/- is not admissible in absence of evidence of the author of document, ie Chartered Accountant.

23. For the aforementioned reasons, we hold that income of respondent-1 during the period of treatment can be taken on the basis of Notional Income ie Rs.3,000/- per month.

24. Respondent-1 took treatment as In-patient for a period of 18 days (from 15.02.1997 to 02.03.1997), and looking to the nature of injuries suffered by him and his occupation, he may not have worked for a period of three months. Therefore, we find it appropriate to award Rs.9,000/- (3000 x 3) towards loss of income during the period of treatment.

25. Now, respondent-1 will be entitled for a total sum of **Rs.1,05,000/-** (40000 + 34000 + 10000 + 10000 + 2000 + 9000), instead of 2,43,375/-. The amount of compensation will carry interest @ 6% per annum as ordered by learned Claims Tribunal from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal will remain intact.

26. Appeal is allowed in part and the impugned award is modified as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge