

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 769 of 2013

- Iffco Tokio General Insurance Company Limited, 3rd Floor, Shop No. 345-347, Lal Ganga Shop Complex, G.E. Road, Raipur, Tah. And Distt. Raipur, Chhattisgarh

---- Appellant

Versus

1. Poonam Singh, S/o Ghasia Ram Kanwar Aged About 39 Years R/o village Khalari, P.S. Dongargarh, Tah. Dongargarh, Distt. Rajnandgaon, Chhattisgarh (Claimant)
2. Sandeep Krishnan S/o Vijay Krishnan Aged About 35 Years
3. Padamnathan Satyan S/o Late E. Padamnathan Aged About 61 Years
Both R/o House No. 865, Kailash Nagar, Bhilai, P.S. Jamul, District : Durg, Chhattisgarh

----Respondents

For Appellant	: Shri K Rohan, Advocate
For Respondent-1	: Shri Shalvik Tiwari, Advocate
For Respondents- 2 and 3	: None appears

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

Per Parth Prateem Sahu, J.
11.06.2020

1. Appellant/Insurance Company has challenged the impugned award dated 10.05.2013 passed in Claim Case-36 of 2010 by the Additional Motor Accident Claims Tribunal, Dongargarh, Rajnandgaon, Chhattisgarh (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the claim case in part and awarded a total sum of Rs.11,22,929/- as compensation in an injury and permanent disability case.

2. Facts of the case in a nutshell are that, on 02.07.2010, respondent-1/claimant went along with one Arun Mandavi to village Malaidabari on Hero Honda Motorcycle bearing No.CG 06-6729. While returning from

the village, that Motorcycle was knocked down by one Maruti Car bearing No.MH 31-CR-1961 (wrongly mentioned in award as -HH) (for short, 'offending vehicle'). In the aforementioned accident, respondent-1 suffered grievous injuries over his person, including fracture injury over his right leg, left rib and further grievous injury on his head. He was immediately taken to the hospital at Rajnandgaon, from where he was shifted to Sector-9 Hospital, Bhilai. Thereafter, he took treatment at Apollo BSR Hospital, Bhilai and suffered permanent disability.

3. During the course of treatment, claimant filed application before the competent Claims Tribunal, claiming Rs.16,00,000/- as compensation, mentioning therein that due to injuries and permanent disability suffered by him, he is unable to perform his work of Mason.

4. NA-1 and 2, driver and owner of offending vehicle resisted the claim application of respondent-1 and pleaded that the amount claimed is highly exaggerated. It was also pleaded that accident was on account of rash and negligent driving of the driver of Motorcycle; and on the date of accident NA-1 driver of offending vehicle was possessing valid and effective driving license, liability if any, would be upon NA-3/Insurance Company.

5. Appellant/Insurance Company/NA-3 also submitted its reply and denied the pleading with regard to the manner of the accident shown to have occurred. It was also pleaded that claimant has not suffered any grievous injury on his person, leading to permanent disability. Claimant drove his Motorcycle rashly and negligently and caused the accident.

6. Learned Claims Tribunal based on pleadings and evidence of respective parties, formulated as many as 6 issues for consideration and after recording oral and documentary evidence by respective parties, arrived at a finding that accident took place on account of rash and negligent driving of offending vehicle; in motor accident claimant suffered injuries causing permanent disability and there is no violation of conditions of Insurance Policy; and awarded a sum of Rs.11,22,929/- to the claimant as compensation, including medical expenses. Liability to pay amount of compensation was fastened upon appellant/Insurance Company.

7. Shri K Rohan, learned counsel for the appellant/Insurance Company submits that learned Clams Tribunal erred in awarding compensation taking into consideration two Disability Certificates Ex.P-1 and Ex.P-126 to the extent of 70%, overlooking the fact that the disability caused on only one leg ie right leg and the percentage of disability shown in the certificate cannot be taken to be disability for the whole body.

8. Learned counsel for the appellant though made submission that compensation of Rs.11,22,292/- is on higher side, but accepted the submission with respect to the award of compensation taking into consideration 70% permanent disability, but not made any specific submissions with regard to the award of compensation on other heads.

9. Per contra, Shri Shalvik Tiwari, learned counsel for respondent-1/claimant submits that the award passed by learned Claims Tribunal at that relevant period of time was just and proper looking to the oral and documentary evidence placed on record showing the nature of injury,

expenditure incurred on medical treatment at various hospitals. He further points out that he has filed an additional document along with the covering memo today itself showing that due to the injuries suffered by the claimant in the accident on 02.07.2010, his right leg was subsequently amputated due to infection over fracture injury suffered by him. He further points out that he has filed photograph of the claimant showing his amputated right leg and also Discharge Summary of Shri Balaji Hospital, Raipur dated 10.06.2019 showing that amputation was done by Dr Santosh Kumar on 06.06.2019.

10. Learned counsel for the appellant/Insurance Company opposes the submission made by learned counsel for respondent-1/claimant that claimant suffered amputation of his right leg on account of accidental injuries suffered by him on 02.07.2010. He further submits that documents filed by the claimant cannot be taken into consideration.

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

12. Perusal of record would show that Ex.P-210 FIR was lodged on 02.07.2010 ie on the date of accident itself by one Basant Kumar Sahu, in which NA-1 Sandeep Krishnan, driver of offending vehicle has been shown as accused. Ex.P-211 is MLC Report of claimant showing injuries suffered by him on his right leg. Claimant initially took treatment at Sector-9 Hospital, Bhilai and thereafter, from 05.07.2010, he was shifted to BSR Apollo Hospital, Bhilai, where he took treatment continuously till 28.07.2010 as per Ex.P-285. Exs.P-96, 97 and 98 are Patient Discharge

Summary of Apollo BSR Hospitals showing date of admission on 31.08.2010 and date of discharge on 09.10.2010. History of patient illness as mentioned is extracted herein below:

"HISTORY OF PRESENT ILLNESS:

* CASE OF HIGH VELOCITY RTA 2 MONTH BACK WHEN PATIENT HAD HEAD INJURY & COMPOUND, COMMUNUTED & SEGMENTAL FRACTURE OF FEMUR AND TIBIA OF RIGHT SIDE WITH DORSALIS PEDIS ARTERY INJURY

* PATIENT WAS INITIALLY ADMITTED AT A PUBLIC SECTOR HOSPITAL FOR 5 DAYS FROM WHERE HE REFERRED TO APOLLO BSR HOSPITAL.

* WOUNDS WERE FOUND INFECTED & PATIENT WAS DISORIENTED & IRRITABLE DUE TO HEAD INJURY. THEN PATIENT DEVELOPED SEVERE SEPSIS & ABSCESS AT BOTH FRACTURE SITES FOR WHICH I & D WAS DONE & KEPT IN ICU.

* ORGANISM GROWN FROM WOUND SITE WERE KLEBISSELLA PNEUMONIEA & ACINTOBACTOR

* PATIENT TREATED CONSERVATIVELY & THEN SEND HOME BECAUSE OF IMMUNOCOMPROMISED STATUS & POOR GC, HE WAS NOT FIT FOR ANY SURGERY, AFTER HEALING OF WOUND & ACHIEVEMENT OF BETTER GC PATIENT READMITTED FOR ORTHOPEDI SURGERY.

* ON ADMISSION RIGHT KNEE FOUND STIFF IN EXTENSION, RISK OF REINFECTION & PROBABILITY FAILURE OF SURGERY & NEED OF MULTIPLE STAGE SURGERY WAS EXPLAINED.

* OPEN REDUCTION, PLATING & BONE GRAFTING OF FEMUR & TIBIA DONE.

* LATER ON PATIENT DEVELOPED INFECTION AT BOTH SITE & ON CULTURE ORGANISM FOUND WAS SAME WHICH WAS THERE AT TIME OF -1ST ADMISSION (IE KLEBISSELLA PNEUMONIE) & SENSITIVITY IS ALSO SAME.

* NOW NEED OF ILLIZAROV'S RING FIXATOR IS REQUIRED HENCE PATIENT IS BEING REFERED TO SPECIALIZED CENTRE FOR SAME SURGERY."

13. Course in the hospital has been shown as below:

"-ADMITTED ON 31/08/10

-OPERATED ON 03/09/10 & 21/09/10

-DISCHARGE ON REQUEST GIVEN ON 09/10/10"

14. It appears from Ex.P-96 that date of discharge has been shown as 10.09.2010, and further, considering the course in the hospital, discharge on request was given on 09.10.2010, meaning thereby that date of discharge mentioned in Ex.P-96 is wrongly mentioned as 10.09.2010, instead of 09.10.2010.

15. Injured claimant has filed several documents from Ex.P1 to Ex.P-305 to prove his case with regard to the accident, nature of injuries, treatment taken and also expenditure incurred by the claimant.

16. To appreciate the submission made by learned counsel for the appellant/Insurance Company that learned Claims Tribunal erred in awarding amount of compensation towards permanent disability is concerned, upon taking into consideration percentage of disability mentioned in Disability Certificate and by accepting evidence of Dr Santosh Kumar, as also the discharge summary (Ex.P-96 & 97) and Discharge Card Ex.P-129 issued by Gayatri Hospital, it is evident that claimant suffered fracture of Femur and Tibia of right side with dorsalis pedis artery injury and wounds were found infected & patient was disoriented & irritable due to head injury. He also suffered severe sepsis & abscess at both fracture sites. It is also mentioned in Ex.P-96 that claimant's 1st discharge by the Hospital was for the reason that he was not fit for any surgery and after healing of the wound he was admitted again to the hospital. Discharge Card (Ex.P-129) issued by Gayatri Hospital also shows of infection over the fracture injury.

17. The award of compensation on account of disability is to be considered looking to the impact of such permanent disability on earning capacity of the injured. Merely percentage of disability as mentioned in the Disability Certificate will itself not lead to award of compensation towards loss of income at the same percentage of disability as mentioned in the Disability Certificate.

18. Shri K Rohan, learned counsel for the appellant relies the judgment in the matters of **Rajkumar Vs Ajay Kumar and another** reported in 2011 (1) SCC 343; and judgment dated 10.06.2020 passed in Civil Appeal No.2551 of 2020 (Sri Anthony @ Anthony Swamy Vs The Managing Director, KSRTC), in support of his submission that the percentage of disability mentioned in the Disability Certificate will itself not to be relevant to award compensation assessing permanent disability of injured as it is.

19. If we analyse nature of injury suffered by the claimant, treatment taken by him and further the status of injury suffered and finally the affect of injury in nature of work he was engaged, so far as the nature of injury is concerned, that has been specifically shown in the medical documents as referred above, and it was found that Femur and Tibia bones were fractured, where infection also developed. It is also mentioned in Ex.P-96 Patient-Discharge Summary that claimant had undergone multiple operations.

20. Coming to the nature of work in which claimant was said to be engaged prior to the date of accident, was of Mason. Work of Mason

requires functioning of whole body, mainly, both hands and legs. Mason has to do the work by postures like standing, bending, sitting etc., and therefore, in the opinion of this Court, disability of claimant/respondent-1, who was working as Mason prior to the accident, is to be considered in the light of work he was engaged.

21. In the case law of **Rajkumar** (supra) Hon'ble Supreme Court has considered mode of assessment of loss of income due to permanent disability to be suffered by any person and held thus :

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent

disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in *Arvind Kumar Mishra v. New India Assurance Co.Ltd.* - 2010(10) SCALE 298 and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* - 2010 (8) SCALE 567).

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

22. In another judgment in the matter of **Nagarajappa Vs Divisional Manager, Oriental Insurance Company Limited** reported in 2011 (13) SCC 323, Hon'ble Supreme Court has considered loss of income due to permanent disability and held thus:

“9.On perusal of the doctor's evidence with respect to the nature of injuries suffered by the appellant, the appellant was found, inter alia, to be suffering from the following disabilities as a result of the accident- "gross deformity of the left forearm, wrist and hand, wasting and weakness of the muscles of the left upper limb and shortening of the left upper limb by 1 c.m." As a result, the doctor stated that the appellant could not work as a coolie and could not also do any other manual work. The doctor assessed permanent residual physical disability of the upper limb at 68% and 22-23% of the whole body.

10. The appellant is working as a manual labourer, for which he requires the use of both his hands. The fact that the accident has left him with one useless hand will severely affect his ability to perform his work as a coolie or any other manual work, and this has also been certified by the doctor. Thus, while awarding compensation it has to be kept in mind that the appellant is to do manual work for the rest of his life without full use of his left hand, and this is bound to affect the quality of his work and also his ability to find work considering his disability. Hence, while computing loss of future income, disability should be taken to be 68% and not 20%, as was done by the Tribunal and the High Court. Our view is supported from the ratio in Raj Kumar (supra) and from the fact that the appellant is severely hampered and perhaps forever handicapped from performing his occupation as a coolie.”

23. Hon'ble Supreme Court in the aforementioned two case laws held that it is not only the percentage of disability and functional disability mentioned in the medical certificate will be sufficient to assess loss of income, but also the nature of work and employment of injured is relevant for assessing the amount of compensation towards loss of income due to permanent disability.

24. In the case at hand, claimant/respondent-1 suffered permanent disability on his right leg to the extent of 70% as mentioned in Ex.P-126, Disability Certificate issued by Dr Prakash Bhalerao, Member, District Medical Board, who was examined as AW-1. To prove his disability, claimant also examined himself as AW-1 and in his evidence, he stated that he took treatment from Sector-9 Hospital, Bhilai, Apollo BSR Hospital and Gayatri Hospital. He also stated that due to permanent disability suffered by him to the extent of 70%, he is unable to do any of his work. Dr Prakash Bhale Rao in his evidence has stated that infection was found

in the right Femur of claimant. He also stated that claimant suffered fibrous ankylosis on his right Tibia and Fibula. He further stated that looking to the state and condition of claimant, percentage of disability is for the whole body. This witness was cross-examined intensively by the counsel appearing for Insurance Company before learned Claims Tribunal as well as NA-1 and 2. In his cross-examination at para-5, he stated that due to fibrous ankylosis in knee joint, there is no possibility of recovery of permanent disability.

25. Taking into consideration the aforementioned medical evidence in the form of documents placed on record by respondent-1/claimant and evidence of disability suffered by him as shown in Ex.P-126 Disability Certificate which was proved by Dr Prakash Bhale Rao as also the work of Mason in which he was engaged prior to his accident, we do not find any error in the finding recorded by learned Claims Tribunal that claimant suffered 70% of loss of income due to permanent disability on his right leg.

26. Though the document which has been filed by learned counsel for respondent- 1/claimant along with covering memo has not been placed on record earlier, but perusal of which shows that right leg of claimant was amputated above knee and in his discharge summary issued by Shri Balaji Hospitals, Raipur shows that amputation was done by Dr Santosh Kumar on 06.06.2019, ie during the pendency of appeal. Discharge Summary of Shri Balaji Hospital mentions the non-union of Femur and Tibia, infected implant failure, Osteomyelitis Femur and Tibia, unable to walk and injury 10 years back patient operated multiple times at different

hospitals. Though these documents have not been placed along with appropriate application for additional evidence on record, but looking to nature of injuries suffered by claimant as shown in the medical documents placed on record, particularly Ex.P-96, 97 and Ex.P-126 issued by Gayatri Hospitals, amputation of the same leg and place on which claimant suffered injury in the motor accident, the documents also show that injury became infected for the reasons mentioned there in and in the Discharge Summary of Balaji Hospitals, where claimant undergone surgery also mentioned the reason for amputating his right leg the document cannot be ignored if not read as evidence in the proceedings of this nature.

27. In view of aforementioned material available on record; the nature of injury; treatment taken by respondent- 1/claimant at several hospitals; wounds were found infected, developed sepsis and abscess at both fractures as mentioned in Ex.P-97; evidence of doctor (AW1) stating that looking to the nature of injury, disability was for whole body as also looking to his nature of work of Mason, we do not find any error in the impugned award passed by learned Claims Tribunal, calling interference of this Court.

28. Appeal being devoid of any substance, it is liable to be and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge