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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 865 of 2015**

- Tikam Dhruw son of Shri Mehattar Dhruw, aged about 46 years, Resident of Village-Pendra, Police Station & Tahsil-Chhura, District Gariyaband, C.G.

----Appellant**VERSUS**

1. Narottam Kumar Kuldeep son of Aasharam Kuldeep, aged about 22 years, Resident of Village-Shobha, Tahsil Mainpur, District Gariyaband, C.G.

-----Driver

2. Onkar Shah son of late Trilok Shah, aged about 55 years, resident of Village-Chhura, Police Station & Tahsil Chhura, District Gariyaband C.G.

-----Owner

3. The Branch Manager, through the Oriental Insurance Company Limited, Chawla Complex, Sai nagar, Devendra Nagar Road, Raipur, Police Station and District Raipur C.G.

----Respondents

For Appellant	:	Mr. S.P. Sahu, Advocate
For Respondent No. 3	:	Mr. Raj Awasthi, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****09/11/2020**

1. Appellant-claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 13.05.2015 passed by Additional Motor Accident Claims Tribunal, Gariyaband, C.G. (for short "Claims Tribunal") in claim case no. 18/2014 whereby learned Claims Tribunal partly allowed the application and awarded compensation of Rs. 27,428/- in an injury case.
2. Facts of the case relevant for disposal of this appeal are that on 06.01.2014 appellant was traveling as pillion rider on a motor cycle driven by Rekhrum.

When they reached near Kharkhara-Sivni turn, one Scorpio four-wheeler bearing registration no. CG 06A 8811 (hereinafter referred to as “offending vehicle”) coming from Chhura, driven by non-applicant 1, rashly and negligently, dashed the motor cycle driven by Rekham and caused accident. In the aforementioned accident, appellant suffered grievous injuries over his eyebrow, knee and other parts of body. He suffered fracture injury over his right leg. He was initially taken to government hospital, Chhura, from where he was referred to government hospital, Raipur. He took treatment as in-patient from 06.01.2014 to 21.01.2014. After discharged from government hospital Raipur, he further took treatment in Private hospital.

3. Appellant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 21,54,000/- on different heads pleading therein that on account of motor accidental injuries suffered by him, he became permanently disabled and is unable to do the work of labourer. Prior to the date of accident, he was earning Rs. 6,000/- per month.
4. Non-applicant 1 and 2, driver and owner of the offending vehicle submitted reply to the claim application, denying the adverse pleadings made therein. It was pleaded that non-applicant 1 was careful in driving the offending vehicle, the amount of compensation claimed is highly exaggerated. Offending vehicle was insured with non-applicant 3. Driver of the offending vehicle was possessed with valid and effective driving licence, as such, liability to pay the amount of compensation is upon the Insurance Company.
5. Non-applicant 3/ Insurance Company submitted reply to the claim application denying the pleadings made therein, it was further pleaded that on the date of accident, driver of the offending vehicle was not possessed with valid and effective driving licence, as such, there was breach of policy conditions.

Vehicle was insured as Private Vehicle but it was being used as Commercial vehicle. The accident was result of rash and negligent driving of motor cycle by claimant and not by non-applicant 1.

6. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties, arrived at a finding that the appellant suffered motor accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant 1. Permanent disability and breach of policy conditions were not found to be proved and awarded Rs. 27,428/- as total compensation.
7. Mr. S.P. Sahu, learned counsel for the appellant submits that the Claims Tribunal erred in not considering the documents placed on record, particularly, the disability certificate Ext. P-15 and P-16, wherein the doctor, who examined the appellant, has very specifically mentioned the percentage of permanent disability suffered by the appellant as 40%. He further contended that the Claims Tribunal overlooking the date of accident ie. 06.01.2014, has assessed income of the appellant as Rs. 3,000/- per month which is on lower side. The amount of compensation awarded on other heads is also on lower side. In alternate, he submits that the Claims Tribunal ought to have considered the injuries suffered by the appellant to be grievous in nature and should have awarded compensation under the head 'grievous injury'. He further contended that the Claims Tribunal overlooking the period of treatment as in-patient, part of the body affected/ permanent disability, had awarded loss of income for a period of 2 months only, which is on lower side, Claims Tribunal should have considered the period of 5 months for which the appellant could not have engaged himself in the work of labourer.
8. Per contra, Mr. Raj Awashti, learned counsel for the Insurance Company

submits that the Claims Tribunal, based upon the pleadings and evidence available on record has rightly arrived at a conclusion that the appellant failed to prove permanent disability suffered by him. He further submitted that the amount of compensation awarded by the Claims Tribunal is just and proper which does not call for any interference.

9. I have heard learned counsel for the respective parties and also perused the record.
10. So far as, the ground raised by the learned counsel for the appellant with regard to non-award of any amount of compensation on the head of permanent disability is concerned, perusal of disability certificate placed on record as Ext. P-15 and P-16 by the appellant would show that validity period indicated in both these certificates is of 6 months only. If the District Medical Board, looking to the progress of injuries, has advised for review of injury/ disability suffered by the appellant/ claimant after a period of six months, then the said certificate cannot be accepted as evidence for holding that the appellant suffered permanent disability. Claims Tribunal in paragraphs 13 and 14 of the award has discussed in detailed the evidence with regard to permanent disability available on record ie. certificate issued by the Medical Board, evidence of doctor, and held that the appellant failed to prove that he has suffered permanent disability.
11. Upon perusal of the documents and findings recorded by the Claims Tribunal, I am of the view that the Claims Tribunal has not erred in arriving at a finding that the appellant-claimant failed to prove that he suffered permanent disability by placing clinching and admissible piece of evidence on record. The submission made by the learned counsel for the appellant that even if the appellant failed to prove the permanent disability by producing clinching

piece of evidence, but the appellant has placed on record the prescription of the hospital where he took treatment ie. Dr. B.R. Ambedkar Memorial Hospital, Raipur, wherein nature of injury suffered by the appellant has been shown to be fracture of *tibia fibula M/3, L/3, Rt*, appellant underwent operation and fracture bone was affixed with interlocking but no amount is awarded for severe injuries.

12. From perusal of medical prescription, X-ray report available on record from Ext. P-9 to P-14, it is apparent that injury suffered by the appellant is grievous in nature, but the Claims Tribunal has not awarded any amount towards grievous injuries suffered by the appellant. In the opinion of this Court, in view of the documents Ext. P-9 to P-14 and evidence of doctor, I find it appropriate to award Rs. 25,000/- towards grievous injuries suffered by the appellant. Learned Claims Tribunal, for the purpose of calculating the amount of compensation, has assessed income of the appellant as Rs. 3,000/- per month only.

Undisputedly, the accident took place on 06.01.2014. Appellant has been shown to be working as labourer. Appellant has not brought on record any clinching and admissible piece of evidence to prove his income. In absence of any admissible piece of evidence, income of the injured/deceased has to be assessed on notional basis keeping in mind the nature of occupation, wage structure, price index and cost of living prevailing on the date of accident. Upon considering the aforementioned factors, I find it appropriate to assess the income of the appellant as Rs. 4,500/- per month. Learned Claims Tribunal has awarded Rs. 6,000/- towards loss of income, which in the opinion of this Court, appears to be on lower side. Appellant was working as labourer, he took treatment as in-patient for a period of 16 days at Raipur. Appellant underwent surgery of his fracture injuries and treatment

has been done through interlocking process. Looking to the nature of injury, part of body over which fracture injuries caused and nature of occupation, in the opinion of this Court, appellant might not be able to do his work for a period of atleast 4 months for which he is entitled to get Rs. 18,000/- (Rs.4500x4) instead of Rs. 6,000/- as awarded by the Claims Tribunal. Claims Tribunal has awarded consolidated amount of Rs. 6,000/- towards special diet, transportation and attendant. Appellant is resident of village Pendra, police station Chhura, District Gariyaband; after the accidental injuries suffered by him, he was referred to Dr.B.R. Ambedkar hospital, Raipur, where he took treatment for 16 days as in-patient. Taking into consideration, the nature of injury, period of treatment, place of treatment and distance between residential place to hospital, I find it appropriate to award lump sum amount of Rs. 15,000/- towards special diet, attendant and transportation charges. Apart from the above, appellant is also entitled for a sum of Rs. 15,000/- towards pain and sufferings and Rs. 500/- towards medical bills.

13. Now the appellant/ claimant will be entitled for a sum of **Rs. 73,500/-** (Rs.25,000 +Rs.18,000 +Rs.15,000 +Rs.15,000 +Rs.500) as total compensation instead of Rs. 27,428/- as awarded by the Claims Tribunal. The aforesaid amount of total compensation shall carry interest @ 9% pa from the date of filing of claim application till its realization.
14. In the result, appeal is allowed in part and the impugned award is hereby modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge