NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 810 of 2015

Branch Manager, National Insurance Company Limited, Branch Office, Station Road, Gill Complex, Durg, Tahsil and District Durg, Chhattisgarh, Through its Divisional Manager, Divisional Office, B-1, Taha Complex, Rind Road-1, Priyadarshini Nagar, Bilaspur, District Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Riyaj Khan, S/o Late Ramjan Khan, aged 38 years, R/o Kaysthabadi, Lane No.2, Shikshak Nagar, Durg, P.S., Tah. and District Durg, Chhattisgarh.
2. Gaurav Pande, S/o Vijay Kumar Pande, aged 23 years, R/o MIG/1/592, HUDCO, Bhilai, Tah. and District Durg, Chhattisgarh**.**

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate
For Respondent No.1 : Shri Yogesh Pandey, Advocate
For Respondent No.2 : None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

27.10.2020

1. Appellant/non-applicant No.2/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 27.02.2015 passed by the Fourth Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.0001755 of 2013 whereby learned Claims Tribunal allowed the claim application filed under Section 166 of the M.V. Act in part and awarded Rs.3,45,074/- as compensation in an injury case.

2. Brief facts relevant for disposal of this appeal, are that, on 28.05.2012, respondent No.1/claimant was travelling on a motorcycle bearing No.CG-07/LD/2827 along with his friend Alim Khan and going to Bhilai. On the way, one another motorcycle bearing No.CG-07/LT/2820 driven by non-applicant No.1 rashly and negligently dashed the motorcycle from its front side. In the aforementioned accident, respondent No.1/claimant suffered grievous injuries over his person. He suffered fracture injuries over his right femur and fracture on three fingers of leg. He was taken to Jawahar Lal Nehru Hospital, Sector-9, Bhilai. After giving primary treatment, he was admitted to Orthopedic Ward of the Hospital, where he took treatment as inpatient from 28.05.2012 to 12.06.2012. During the course of treatment, his right leg got operated and rod was implanted.

3. Claimant/respondent No.1 filed an application under Section 166 of the M.V. Act before competent Claims Tribunal seeking compensation of Rs.14,39,000/- pleading therein that on account of motor accidental injuries suffered by him, he became permanently disabled to perform his work of AC Repairing and Refrigeration, which he was doing prior to the date of accident; adding that, from his occupation, he was earning Rs.17,000/- per month.

4. Non-applicant No.1/respondent No.2 submitted reply to claim application and denied the pleadings mentioned therein. It was pleaded that accident was as a result of negligence on the part of

claimant himself, he was having valid and effective driving licence, hence, claimant is not entitled for any amount of compensation from him. It was further pleaded that if Claims Tribunal comes to the conclusion that claimant is entitled for any sum of compensation, then the liability would be upon non-applicant No.2/Insurance Company.

5. Appellant/non-applicant No.2/Insurance Company submitted reply to claim application denying the facts as pleaded therein. it was pleaded that proceedings drawn by the Police appears to be suspicious, the motorcycle on which claimant was travelling was running on wrong side by its driver and claimant was sitting/riding on the motorcycle driven by the person who was not having valid and effective driving licence.

6. Upon appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that claimant suffered motor accidental injuries on account of rash and negligent driving of motorcycle bearing No.CG-07/LT/2820 by non-applicant No.1, claimant has suffered 15% permanent disability, negligence on the part of claimant has not been found to be proved, violation of policy conditions by non-applicant No.1 was not found to be proved and awarded Rs.3,45,074/- as compensation.

7. Shri Dashrath Gupta, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal erred in not considering that respondent No.2 was not possessing valid and

effective driving licence. Learned Claims Tribunal also erred in recording a finding that respondent No.1 suffered 15% permanent disability relying on the disability certificate issued by a single doctor; as per spot-map, motorcycle on which respondent No.1 was riding was running on wrong side. Adding 50% towards future prospects is exorbitant in view of law laid down by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**.

8. Per contra, Shri Yogesh Pandey, learned counsel for respondent No.1 submits that claimant is pillion rider of one of the motorcycle out of two motorcycles involved in the accident, no negligence can be attributed to the claimant/respondent No.1 who was a pillion rider, respondent No.1 suffered grievous injuries of fracture on his right femur and waist, he suffered permanent disability to the extent of 21% as assessed by Dr. Akhilesh Yadav (AW-2), who is Orthopedic Surgeon in District Hospital, Durg. Disability certificate is placed on record as Ex.P/74. He further submits that learned Claims Tribunal taking into consideration the part of body in which claimant suffered permanent disability has rightly assessed the loss of earning capacity as 15%, which does not call for any interference. It is contended that impugned award passed by learned Claims Tribunal is strictly in accordance with law.

9. I have heard learned counsel appearing for the respective parties and perused the record carefully.

10. To appreciate the submission made by learned counsel for the appellant/Insurance Company with regard to permanent disability towards loss of income assessed by learned Claims Tribunal as 15% is concerned, perusal of medical documents placed on record as Ex.P/12 to Ex.P/57 would show that respondent No.1 suffered compound fracture to shaft femur right, avulsion fracture p.p. of 1st toe, commuted fracture neck of 2nd, 3rd, 4th M7 right and operation of femur bone and interlocking was done on 06.06.2012 vide Ex.P/23. The claimant thereafter appeared before Dr. Akhilesh Yadav, who upon his examination found 21% permanent disability. Dr. Akhilesh Yadav was examined as AW-2 to prove the disability certificate (Ex.P/74) issued by him, in which, he stated that certificate issued by him is his personal opinion. He stated that muscles of right thigh was weakened, there was obstruction in movement of right hip joint, knee and foot.

11. Claimant in his application has stated that his occupation was of AC and Fridge repairing. In support of his plea, he has filed Shop and Establishment Registration Certificate in the name of New Golden Refrigeration, in which, name of Riyaz Khan i.e. claimant is also mentioned along with Shri Alim Khan to be the owner of shop mentioned therein. The registration certificate is dated 25.01.2010. In absence of any dispute raised with regard to this document, the nature of occupation of claimant can be accepted to be AC and Fridge mechanic. The work of AC mechanic is to install and repair AC

units, which is required to be installed inside unit and outside unit. Outside units of Split AC is installed on roof or the window of room or outer side of the wall, for which, the person engaged doing the said work has to be physically fit in all respects.

12. In view of disability certificate (Ex.P/74) and evidence of Dr. Akhilesh Yadav (AW-2) and from the medical documents placed on record regarding his treatment as well as looking to the nature of injuries suffered by him, disability found by Dr. Akhilesh Yadav (AW-2) in his disability certificate cannot be said to be absolutely false. Disability certificate has been issued none other than a Government Doctor who is Orthopedic Specialist posted at District Hospital, Durg. Upon considering the entire medical documents available on record showing the nature of injuries, treatment and also considering disability certificate (Ex.P/74) as well as evidence of Dr. Akhilesh Yadav (AW-2), submission of learned counsel for the appellant/Insurance Company that disability certificate cannot be taken into consideration, in the opinion of this Court, is not sustainable.

13. Percentage of loss of earning capacity taken by learned Claims Tribunal to the extent of 15% also appears to be just and proper, looking to the nature of his occupation, respondent No.1 might have to take assistance of other person for some work for installation of AC unit, hence, the submission of learned counsel for the appellant/Insurance Company that loss of income assessed by

learned Claims Tribunal to the extent of 15% to be erroneous is also not sustainable. The loss of income based on permanent disability is to be assessed taking into consideration the nature of occupation of claimant, percentage of disability mentioned in disability certificate issued by the doctor part of the body suffered disability. The earning capacity of a person engaged in different works like disability suffered on the leg by labourer, rikshaw puller will be having loss of earning capacity more than that of a person doing some other work.

14. For the foregoing reasons, I am not inclined to interfere with the finding recorded by learned Claims Tribunal holding the loss of earning capacity of claimant/respondent No.1 to the extent of 15%.

15. So far as the submission made by learned counsel for the appellant/Insurance Company that learned Claims Tribunal erred in adding 50% towards loss of future prospects, which definitely is on higher side. The addition of future prospects in the income of injured/deceased has been considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and held that there will be an addition of 40% of the established income in case a person is less than 40 years and not in permanent employment or in self-employment towards future prospects. In the case at hand, claimant/respondent No.1 was aged about 36 years on the date of accident and is a self-employed person, hence, the percentage of future prospects to be added in the income would be 40% and not 50%. Addition of 50% towards future prospects in the income of the claimant/respondent

No.1 is hereby set aside and it is held that there will an addition of 40% of the established income towards future prospects.

16. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimant/respondent No.1 requires re-consideration and re-computation, which is as under :

The monthly income of claimant has been assessed as Rs.7,000/- per month and Rs.84,000/- per annum. By adding 40% of the income towards future prospects, the total annual income of claimant will come to Rs.1,17,600/- (84,000 x 40% = 33,600 and 84,000 + 33,600). As discussed, it has been held that the loss of earning capacity of the claimant will be 15% on account of permanent disability, which comes to Rs.17,640/- per annum. At the time of accident, deceased was aged about 36 years, therefore, in view of ratio laid down in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, multiplier of 15 would be applicable in the present case. After applying multiplier of 15, total loss of income of claimant comes to Rs.2,64,600/- (17,640 x 15). In addition, claimant is also entitled for a sum of Rs.51,574/- towards medical expenses, Rs.3,000/- towards mental pain and agony, Rs.2,000/- towards special diet, Rs.3,000/- towards transportation expenses and Rs.2,000/- towards attendant, which makes the total compensation of Rs.3,26,174/- (2,64,600 + 51,574 + 3,000 + 2,000 + 3,000 + 2,000).

17. Now, the claimant/respondent No.1 is entitled for total compensation of Rs.3,26,174/- instead of Rs.3,45,074/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

18. In the result, the appeal is allowed in part and impugned award is modified to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh