

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 153 of 2015**

- Dhanraj Kaushik S/o Ramjhul Kaushik, about 30 years, R/o Vill. Rajpur, Post Udiyakhurd, P.S. & Tah. Lohara, Civil and Rev. Dist. Kabirdham C.G.

-----Appellant**VERSUS**

1. Shyamlal Jaiswal S/o Shri Jaikishan Jaiswal, R/o Daihandeeh Udiyakhurd Tahsil Lohara Civil and Revenue District Kabirdham C.G.
2. Kamlesh Kumar Patel S/o Shri B.R. Patel, R/o Village Daihandeeh Udiyakhurd, Tahsil Lohara Civil and Revenue District Kabirdham C.G.
3. Branch Manager, through The Oriental Insurance Co. Ltd. Near L.I.C. Office, Railway Station, Rajnandgaon, Civil and Revenue District Rajnandgaon, C.G.
4. Mohammed Siddiqui, S/o Shri Abdul Majid, R/o Village House No. 100 of Takiyapar, Beside House of Parshad Gani Bhai, Durg, P.S. Durg Civil and Revenue District Durg C.G.
5. Rakesh Singh S/o Late Gyan Singh R/o J.G. Nagar, in front of Shiv Mandir, Shravan Kirana Store, Ward No. 22, Camp-2, P.S. Bhilai Chawani, Civil and Revenue District Durg C.G.

----Respondents

For Appellant	:	Mr. Keshav Dewangan, Advocate.
For Respondent 1 & 2	:	Mr. Dharmesh Shrivastava, Advocate.
For Respondent 3	:	Mrs. Chitra Shrivastava, Advocate

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

Judgment on Board**Per Parth Prateem Sahu, J.****01/09/2020**

1. Challenge in this appeal is to the award dated 15-10-2014 passed by learned Additional Motor Accident Claims Tribunal, Kabirdham district Kabirdham in claim case no. 69/14 wherein learned Claims Tribunal allowed the claim application in part and awarded Rs. 4,07,000/- as compensation in an injury case.
2. Facts relevant for disposal of this appeal are that on 27-05-2012, appellant

along with Gangaram, Ashwani, Naresh, Sarif Khan, Makhan Sinha, Mahesh Sahu, Ratan Patel and Chain Patel went to attend Group Meeting (Seminar) organized by Sapphire Multitrade Pvt. Ltd. on Tata Spacio bearing registration no. CG 09 5105 (hereinafter "offending vehicle") to Raipur. While returning from Raipur, driver of offending vehicle, at about 09:15 p.m., while driving his vehicle rashly and negligently dashed the stationary truck bearing registration no. CG 04G 7546 from its back side. In the aforementioned accident Makhan Sinha, Narmada Lal Parkhi and Sarif Khan died. Appellant and other occupants of the vehicle suffered grievous injuries. Accident was reported to concerned Police Station based upon which crime bearing no. 376/12 was registered against Non-applicant 5/ Respondent 5.

3. Appellant has filed an application under Section 166 of the Motor Vehicles Act seeking compensation of Rs. 13,35,000/- pleading therein that after accident he was taken to district hospital Durg from where he was shifted to Appollo BSR hospital, Bhilai. Upon diagnosis, it was found that the appellant suffered lacerated wound over right side of his head, wound on the side of the right eye, chest and his eyesight of right eye was also affected. Appellant had to undergone operation of his head. Even after taking treatment at Appollo BSR hospital, he lost eye-sight of his right eye, his left eye has also suffered some ailment and is not as healthy as it was prior to the date of accident. Appellant took treatment for his eyes at L.V. Prasad eye Institute (LVPEI), Hyderabad, thereafter, he took treatment at Shankara Eye Centre, Coimbatore, Tamilnadu, where he was informed that loss of eye-sight of his right eye is permanent and the eye-sight will never be recovered. It was also pleaded that he had incurred expenditure on medical treatment and tests of his own. Prior to the date of accident, appellant was engaged in agricultural activities. He is having about 28 Acres of irrigated land succeeded by him from his ancestors. He himself

used to drive the tractor for agriculture activities and he was having the effective driving licence for that purpose. Due to accidental injuries suffered by him, he could not able to supervise the agricultural works and further could not able to sprinkle pesticides to which he suffered 70% loss of agricultural production amounting to Rs. 1 Lac. Apart from agricultural work, appellant was engaged in sell of the pesticides of Sapphire Multitrade Pvt. Ltd., from which also he was earning Rs. 1,20,000/- to Rs. 1,70,000/- per annum but due to the accidental injuries suffered by him, he is unable to do the same.

4. Respondent 1 and 2/ Non-applicant 1 and 2 driver and owner of the offending vehicle filed reply to the claim application pleading therein that Respondent 1/ Non-applicant 1 owner of the offending vehicle and Respondent 2/ Non-applicant 2 was driving the offending vehicle with valid and effective driving licence, rash and negligent driving by Respondent 2/ Non-applicant 2 was denied, they have denied the pleading with regard to nature of injury suffered by the appellant and corresponding treatment taken by him and other expenditure incurred during the course of treatment. They have further pleaded that on the date of accident, offending vehicle was insured with Respondent 3/ Non-applicant 3- Insurance Company and the liability, if any, for payment of amount of compensation would be upon the Insurance Company.
5. Non-applicant 3/ Respondent 3-Insurance Company also submitted reply to the claim application and while denying the adverse pleadings made in the claim application pleaded that the offending vehicle dashed with the stationary truck from its rear side which was parked on the road without there being any indicators and the negligence is on the part of the driver of the truck and in alternate it was pleaded that there was contributory negligence on the part of the driver of the offending vehicle. It was pleaded that the claimant has not filed any disability certificate in support of his

pleading that the appellant suffered permanent disability on account of accidental injuries suffered by him. They have also denied the income pleaded in the claim application and further pleaded that there was breach of conditions of insurance policy because on the date of accident, offending vehicle was being used as commercial vehicle (Taxi) whereas the Insurance Company issued the policy as Private Car Package Policy, the owner and driver of the offending vehicle will be liable to pay the amount of compensation.

6. Upon appreciation, of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that the appellant suffered 30% permanent disability due to loss of eye-sight of right eye, assessing income of the appellant as Rs. 4,000/- per month awarded Rs. 2,30,400/- as loss of income, Rs. 1,69,000/- towards medical expenditure of Appollo BSR hospital and further awarding Rs. 8,000/- towards the medical expenses of Sankara Eye Hospital, awarded total Rs. 4,07,000/- as compensation.
7. Mr. Keshav Dewangan, learned counsel for the appellant submits that the Claims Tribunal erred in awarding meagre amount of compensation. Tribunal has assessed income of the appellant as Rs. 4,000/- per month only, whereas the income, as per the document placed on record, is much more than the income assessed by the Tribunal. He further points out that the learned Claims Tribunal has not awarded any amount towards loss of income during the period of treatment, amount of compensation towards attendant, special diet, pain and sufferings, loss of amenities and joy in life. He submits that the amount of compensation to be suitably enhanced in the facts of the case.
8. Mr. Dharmesh Shrivastava, learned counsel for Respondent 1 and 2, and Mrs. Chitra Shrivastava, learned counsel for Respondent 3 while

supporting the award passed by the Claims Tribunal submit that in the facts and circumstances of the case and looking to the nature of injury learned Claims Tribunal has awarded the entire amount of medical expenses as claimed, awarded loss of income due to permanent disability. They submitted that the total amount of compensation awarded to the appellant is just and proper which does not call for any interference.

9. We have learned counsel for the respective parties and also perused the record minutely.
10. Perusal of the claim application would show that the appellant in his claim application has pleaded about the nature of injury suffered by him, part of the body and also the procedure of treatment given to him at Appollo BSR hospital. Apart from this, it was also pleaded that the appellant suffered loss of eye-sight of his right eye and his eye-sight of left eye was also affected. The nature of treatment given by L.V. Prasad hospital, Hyderabad and Shankara Hospital at Coimbatore i.e. *Humphrey Visual Fields (HVF)-Both eyes; VEP one of both eyes and right eye Tarsoraphy Surgery* respectively.
11. Upon going through the medical documents placed on record i.e. Discharge Summary (Ext. A-1) of Appollo hospital would show that the appellant was admitted as in-patient on 28-05-2012 at about 05:43 a.m., discharged on 12-06-2012. The final bill of Appollo hospital would show that the hospital has raised the bill (Ext. A-18) to the tune of Rs. 1,69,058/- and receipts have been given of the deposits of the bills *vide* ext. A-17. The appellant has filed Ext. A-37 and A-38 towards payment of amount of Rs. 200/- and Rs. 1,200/- to L.V. Prasad hospital and Discharge Summary of Shankara hospital as Ext. A-42 and the bills raised by the Shankara Hospital from Ext. A-43 to Ext. A-50. Ext. A-42 Discharge summary would show that the appellant undergone *Tarsoraphy Surgery* of right eye. The

medical report issued by the Shankara hospital filed as Ext. A-51, disability certificate was issued by Doctor of District Medical Board, Kabirdham as Ext. A-55 mentioning/ assessing the permanent disability to the extent of 30% due to loss of eye-sight.

12. From the aforementioned documents placed on record with regard to the medical treatment, it is apparent that the appellant has suffered grievous injury as mentioned in the claim application. The Claims Tribunal has awarded amount of Rs. 1,69,000/- as medical expenditure of Appollo hospital and Rs. 8,000/- towards the medical expenditure of Shankara hospital. Appellant has incurred expenditure of Rs. 1,400/- at L.V. Prasad hospital and Rs. 885/- (Ext. A-43), Rs. 4,000/- (Ext. A-44), Rs. 150/- (Ext. A-45), Rs. 3,500/- (Ext. A-46), Rs. 76/- (Ext. A-47), Rs. 199/- (Ext. A-48) and Rs. 7,500/- (Ext. A-50). Total amount of the expenditure incurred by the appellant at Shankara Hospital comes to Rs. 16,310/- whereas the Tribunal as awarded only Rs. 8,000/-, balance amount of the said bills and amount expended by the appellant at L.V. Prasad hospital is to be awarded to the appellant as compensation against the actual expenditure incurred by him towards medical treatment. Appellant, in support of his income, has placed on record the payout statement issued by the Sapphire Multitrade Pvt. Ltd. showing the earnings from the period from 01-10-2011 to 04-12-2011 and from 05-12-2011 to 30-01-2012 wherein the earnings from the Sapphire Multitrade Pvt. Ltd. has been shown as Rs. 16,833.50 and Rs. 19,770.53/- respectively. The appellant has also filed the Kistbandi Khatoni showing the agricultural land recorded in his name and his family members as also the Khasra to prove the area of the agricultural land recorded in his and his family members' name.

13. Taking into consideration the overall aspects, particularly, the payout statement issued by Sapphire Multitrade Pvt. Ltd. would show that the appellant is also having source of income other than the agricultural

income for the month from November 2011. Net earning of the appellant has been shown as Rs. 13,466.80/- (Rs.16833.50-Rs.3366.70) for the month of December 2011 and for January 2012, it has been mentioned as Rs. 17,793.48/- (Rs.19770.53-Rs.1977.05). These documents i.e. Ext. 56 and Ext. 57 were not disputed and also not considered by the Claims Tribunal for assessing the income of the appellant.

14. We have assessed the income of an ordinary labour who met with an accident and suffered injuries or lost their life as Rs. 4,000/- per month. Taking into consideration the facts and circumstances of the case as well as the pleadings therein and evidence placed on record by the appellant, we find it appropriate to hold the income of the appellant, on the date of accident, as Rs. 5,000/- per month instead of Rs. 4,000/- per month. Learned Claims Tribunal has not awarded any amount towards pain and sufferings. From the first discharge ticket issued by Appollo hospital would show that the appellant took treatment as in-patient from 28-05-2012 to 12-06-2012, wherein he was found loss of consciousness due to head injury in road traffic accident and procedure of treatment is also mentioned as:

“Right Frontal Craniotomy & Evacuation of the EDH. Was done by Dr. S.K. Gupta on 28/05/2012 at 10:30
OT Finding: Patient was put in the supine position.
-Patient was painted & Draped, Incision was marked.
-Right Frontal Craniotomy was made & EDH was evacuated
Haemostosis was achieved.
-Bone Flap was fixed back & Scalp was closed in layers after putting drain.”

15. Looking to the nature of injury, period of treatment and the procedure of treatment given to the appellant, we find it appropriate to award Rs. 25,000/- towards pain and sufferings. Learned Claims Tribunal though assessed 30% permanent disability due to loss of eye-sight of his right eye but had not awarded any amount towards loss of amenities and joy in life.

Appellant, on the date of accident, was aged about 32 years, he will have to live his whole life with the disability suffered by him on account of motor vehicle accidental injuries.

16. In the aforementioned facts of the case, we find it appropriate to award Rs. 20,000/- towards loss of amenities and joy in life. Appellant took treatment as in-patient from 28-05-2012 to 12-06-2012 (about 17 days) at Appollo hospital and after discharging from the hospital, appellant had to take bed rest for some days. Hence, in the facts of the case, we find it appropriate to award loss of income during the treatment period of two months as Rs. 10,000/- (Rs.5000x2). No amount has been awarded towards the transportation. Appellant is resident of village at Raipur, he took treatment at Appollo hospital, Bhilai, thereafter, at L.V. Prasad Hospital, Hyderabad and then Shankara Hospital at Coimbatore, he might have expended a handful of money in transportation for his treatment purpose along with one attendant.
17. Taking into consideration the entire facts and circumstances of the case, place of treatment taken by the appellant time to time, we find it appropriate to award Rs. 20,000/- towards transportation expenditure, special diet and lodging and boarding, learned Claims Tribunal has not awarded any amount towards attendant. Looking to the nature of treatment and place of treatment taken by the appellant, we find it appropriate to award Rs. 5,000/- towards the attendant in the facts of the case.
18. In view of the above, the amount of compensation to be awarded to the claimant(s) requires re-computation which is worked out as under.
19. The income of the appellant is taken as Rs. 5,000/- per month i.e. Rs. 60,000/- per annum. Learned Claims Tribunal has awarded compensation assessing 30% loss of income, which was not challegned by the

respondents, accordingly, loss of income comes to Rs. 18,000/- (30% of Rs.60,000/-). Appellant, on the date of accident was aged about 32 years, hence, by applying the multiplier of 16, total loss of earning will come to Rs. 2,88,000/-. Apart from the above, the appellant is also entitled for medical expenses of Rs. 1,69,000/- as awarded by the Claims Tribunal plus Rs. 1,400/- at L.V. Prasad plus Rs. 16,310/- at Shankara hospital. Rs. 25,000/- towards pain and sufferings, Rs. 20,000/- towards loss of amenities and joy in life, Rs. 10,000/- towards loss of income during the period of treatment, Rs. 20,000/- towards transportation, special diet and lodging and boarding of his family members, which makes the total amount of compensation to be awarded to Rs. 5,54,710/-.

20. Now the appellant-claimant will be entitled for total sum of **Rs. 5,54,710/-** [Rs.2,88,000+Rs.1,69,000+Rs.1,400+Rs.16,310+Rs.25,000+Rs.20,000+Rs.10,000+Rs.20,000+Rs.5,000] instead of Rs.4,07,000/- as awarded by the Claims Tribunal. The aforementioned amount of compensation shall carry interest @ 7% p.a. from the date of filing of claim application till its realization. Any amount already paid to the claimant(s) shall be adjusted. Other conditions imposed by the Claims Tribunal will remain intact.
21. Appeal is allowed in part and the impugned awarded passed by the Claims Tribunal stands modified to the extent as indicated herein-above.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge