

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 732 of 2015**

- Uttra Bai Shonkar, W/o Lallu Ram Shonkar, Aged About 32 Years, Caste-Shonkar, R/o Village- Beltukari Shilghat, (Semara) Thana- Bhakhara, Tahsil-Bhakhara, Distt. Dhamtari Chhattisgarh

---- Appellant**Versus**

1. Tribhuwan Kumar Gayakwad, S/o Narendra Kumar Gayakwad, Aged About 22 Years, Caste-Satnami, R/o Village- Satnami Para, Bhakhara, Thana- Bhakhara, Distt. Dhamtari Chhattisgarh (Driver of offending vehicle Motorcycle No.CG05 H-7030)
2. Narendra Kumar Gayakwad, S/o Guharam Gayakwad Aged About 44 Years, Caste-Satnami, R/o Village- Satnami Para, Bhakhara, Thana- Bhakhara, Distt. Dhamtari Chhattisgarh (Owner of offending vehicle Motorcycle No.CG05 H-7030)
3. The Oriental Insurance Company Limited S/o Aadarsh Bal Manchhir Road, Amar Takij Ke Pichhe, Dhamtari, Tahsil- Dhamtari, Distt. Dhamtari Chhattisgarh

---- Respondent

For Appellant	:	Shri AL Singraul, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent- 3	:	Shri RN Pusty, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board
(Proceeding through Video Conferencing)

01.09.2021

1. Challenge in this appeal is to the award dated 24.03.2015, passed by Additional Motor Claims Tribunal, Dhamtari (for short, 'Claims Tribunal') in Claim Case-112 of 2014, whereby learned Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total sum of Rs.56,600/- as compensation with interest @ 6% per annum from the date of filing of claim application till its realization in an injury case.

2. Facts relevant for disposal of this appeal are that on 02.08.2012 at about 1.30 pm, claimant/appellant was traveling on Motorcycle along with her husband and going to village Paragaon (Nayapara Rajim). While so, when they reached near Sirve turn, one other Motorcycle driven by NA1 bearing

No.CG05 H-7030 rashly and negligently, dashed Motorcycle driven by claimant's husband and caused accident. In the said accident, she suffered grievous injuries on her person, resulting in fracture of left Tibia bone, apart from other injuries.

3. Appellant/claimant filed application before Claims Tribunal seeking compensation of Rs.11,10,000/- mentioning therein that on the date of accident, she was able bodied person, earning Rs.100/- per day, but due to fracture injury on her left leg, she became permanently disabled and unable to earn for her livelihood.

4. NA1 and NA2, Driver and Owner of offending vehicle did not appear before the Tribunal even after service of notice and they were proceeded *ex parte*.

5. NA3/Insurance Company submitted reply to claim application resisting the claim. It was further pleaded that accident was between two Motorcycles, as such, there was contributory negligence on the part of drivers of both the vehicles. NA1 was not possessed with valid and effective driving license on the date of accident, as such there was breach of policy conditions.

6. Learned Claims Tribunal, on appreciation of pleadings and evidence brought on record by respective parties, held that claimant suffered grievous injuries on her person due to rash and negligent driving of Motorcycle by NA1. Permanent disability, contributory negligence and breach of policy conditions were not found to be proved. Tribunal

awarded Rs.56,600/- as total compensation including Rs.31,600/- towards medical expenses.

7. Shri AL Singraul, learned counsel for the appellant would submit that Tribunal erred in awarding meagre amount of compensation. He submits that Tribunal has not considered Ex.P8 Disability Certificate placed on record and proved by AW3 Dr Vinod Pandey in appropriate manner and erroneously, recorded a finding that appellant did not suffer permanent disability. In alternate, he submits that even if this Court comes to the conclusion that finding recorded by the Tribunal with regard to permanent disability is correct, then also Tribunal ought to have awarded reasonable amount of compensation on the head of grievous injuries. Tribunal awarded consolidated sum of Rs.25,000/- on the head of pain and sufferings, special diet, attendant, which is much less in facts and circumstances of case. Learned Claims Tribunal ought to have awarded separate amount of compensation on each head like pain and sufferings, loss of amenities and joy in life due to grievous injuries suffered by appellant, special diet, and loss of income during the period of treatment.

8. It is further argued by learned counsel for the appellant that learned Claims Tribunal exonerated Insurance Company on the ground that driver was not possessed with valid and effective driving license on the date of accident, in such circumstances, Tribunal ought to have issued direction to Insurance Company to first deposit entire amount of compensation and thereafter, to recover the same from owner of offending vehicle. Hence, he prays for a direction against Insurance Company to first pay and thereafter to recover the amount from owner,

so that appellants/claimants can be benefited with amount of compensation within time.

9. Shri Ratan Pusty, learned counsel for respondent-3/Insurance company opposing submissions made by learned counsel for appellant, would submit that learned Claims Tribunal evaluated evidence with regard to permanent disability placed on record by the appellant. On perusal of Ex.P8 Disability Certificate would show that there is 40% physical impairment and it is temporary disability. AW3 Dr Vinod Pandey, who signed Disability Certificate in his evidence admitted that appellant was required to appear before Medical Board for re-examination after one year but she did not appear before Medical Board, hence, learned Claims Tribunal justified in recording the fact that disability to the extent of 40% was temporary. It is further argued that Tribunal allowed entire medial bills placed on record of Rs.31,600/- and further awarded consolidated amount of Rs.25,000/- on other heads for which appellant is entitled for, hence, amount of compensation awarded by Tribunal does not call for any interference.

10. I have heard learned counsel for parties and perused record of claim case.

11. Perusal of record would show that appellant appeared before the District Medical Board, Dhamtari, where after her examination, issued Ex.P8 Disability Certificate. Perusal of this Certificate would show that nature of disability mentioned as temporary disability. Appellant examined A3 Dr Vinod Pandey to prove ExP8 Disability Certificate, who in his

evidence before Tribunal has admitted that Disability Certificate is issued for a period of one year. After one year, injured named therein was required to appear for re-evaluation of percentage of disability suffered by him/her in motor accident, but the appellant did not appear before Medical Board. He has not mentioned the procedure by which the percentage of disability has been calculated. From aforementioned documentary, as well as oral evidence placed on record by appellant, in opinion of this Court, Claims Tribunal has not committed any error in recording a finding that appellant failed to prove her permanent disability. But at the same time, it is not in dispute that appellant/claimant suffered grievous injuries on her left leg.

12. Award of compensation in personal injury case has been considered by Hon'ble Supreme Court in case of **R.D. Hattangadi vs M/s Pest Control (India) Pvt. Ltd. and others** reported in AIR 1995 SC 755, and held that victim of motor accident is required to be compensated appropriately, so that victim/Lrs can be brought to the stage which they were prior to date of accident.

13. Taking into consideration above ruling of Hon'ble Supreme Court and nature of injuries, I find it appropriate that appellant is entitled for compensation of **Rs.20,000/-** towards grievous injuries suffered by her. Looking to nature of injuries, fracture of right tibia, after operation, inter locking nail has been affixed, she might not have worked for a period of two months. Appellant was working as laborer and accident was of year 2013, hence, I find it appropriate to award loss of income for a period of two months for the appellant ie **Rs.8,000/-** (4000 x 2).

14. In the facts of the case, I find it appropriate to award **Rs.10,000/-** towards pain and sufferings, **Rs.5,000/-** towards loss of amenities and joy in life during the period of treatment and thereafter, in view of fracture injury suffered by her on her left leg, **Rs.3,000/-**, towards conveyance expenses, **Rs.3,000/-** towards special diet. Apart from aforementioned compensation, appellant is further entitled for **Rs.31,600/-** towards medical expenses as awarded by Claims Tribunal.

15. Now, appellant claimant shall be entitled for total sum of **Rs.80,600/-** (20000 + 8000 + 10000 + 5000+ 3000 + 3000 + 31600 as compensation instead Rs.56,600/- as awarded by the Tribunal.

16. Aforementioned amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions of award shall remain intact.

17. So far as submission of learned counsel for the appellant with respect to direction to be issued to Insurance Company, to first deposit entire amount of compensation and thereafter, to recover the same from owner of offending vehicle is concerned, it is not in dispute that offending vehicle was insured with respondent-3. Risk of appellant/claimant is covered being 3rd party, but exoneration of Insurance Company is only on the ground that driver of offending vehicle is not possessed with valid and effective driving license. The finding recorded by learned Claims Tribunal with regard to exoneration of Insurance Company in the facts of case, does not call for any interference.

18. In view of judgment passed by Hon'ble Supreme Court in **Shamanna and another Vs Divisional Manager, Oriental Insurance Company Limited and others**, (2018) 9 SCC 650 I find it appropriate to direct respondent-3 Insurance Company to first deposit entire amount of compensation with Claims Tribunal and thereafter to get the same recovered from owner and driver of offending vehicle in accordance with law. It is ordered accordingly.

19. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma