

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 183 of 2016

- Shyamlal Patel S/o Sadram Patel, Aged About 43 Years R/o Baghbahara, Tahsil Baghbahara, Civil And Revenue District Mahasamund Chhattisgarh.....Claimant

---- Appellant

Versus

1. Rishabh Jain S/o Kirtikumar Jain, Aged About 28 Years R/o Village Tendullotha, Ward No. 12, Baghbahara, Tahsil Baghbahara, Civil And Revenue District Mahasamund Chhattisgarh.....Owner Of The Offending Vehicle
2. United India Insurance Company Limited, Through Its Branch Manager, Micro Office Mahasamund District Mahasamund Chhattisgarh.....Insurer Of The Offending Vehicle

---- Respondents/Non-Applicants

For Appellant	: Shri Vikram Dixit, Advocate
For Respondent- 1	: None appears
For Respondent-2	: Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

22.09.2021

1) Challenge in this appeal is to the award dated 12.05.2015 passed by the 2nd Additional Motor Accident Claims Tribunal, Mahasamund, Chhattisgarh (for short, 'Claims Tribunal') in Claim Case No.H-77/2014, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, calculated compensation of Rs.83,500/-, after deducting 50% towards contributory negligence, awarded Rs.41,750/- with interest @ 8% in an injury case.

2) Facts relevant for disposal of this appeal are that on 02.03.2010, claimant was returning from official duty to Nagar Panchayat, Baghbahra. On the way, he met with his friends Mastram, and Dasharu and started talking with them. At that relevant time, one Motorcycle bearing

No.CG06F-1353 (for short, 'offending vehicle') coming from opposite direction, dashed his Motorcycle and caused accident. In the accident, he suffered grievous injuries over his left leg. He took treatment initially in hospital at Baghbahra and thereafter, at Agrasen Hospital, Raipur.

3) Claimant/appellant filed application seeking compensation of Rs.7,10,000/-, pleading therein that in accident, he suffered grievous injuries on his left leg. On account of fracture injury over his left leg, he suffered permanent disability.

4) NA1, Driver/Owner of offending vehicle submitted reply to claim application, denied fact of accident on account of his rash and negligent driving. It was further pleaded that accident was on account of negligence on the part of claimant himself, who met with accident while driving his Motorcycle. He was possessed with valid and effective driving license and offending vehicle was insured with NA2/Insurance Company.

5) NA2/Insurance Company submitted its reply to claim application resisting the claim and further pleaded that NA1 was not having valid and effective driving licence.

6) Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, held that claimant suffered motor accidental injuries on account of contributory negligence on the part of drivers of both Motorcycles ie claimant and NA1. Both of them are contributory negligent to the extent of 50%. Breach of policy conditions was not found to be proved, calculated total compensation of Rs.83,500/-

and after deducting 50% towards contributory negligence on the part of claimant himself, awarded total sum of Rs.40,750/- as compensation.

7) Shri Vikram Dixit, learned counsel for the appellant would submit that learned claims Tribunal erred in recording finding that appellant was contributory negligent in the accident to the extent of 50%, considering the proceedings and judgment passed in Criminal case. He further submits that though appellant and NA1 submitted written report to concerned Police Station separately for the same accident, and crime was registered against each other, they arrived at a settlement because appellant is a Government servant. Learned Tribunal ought to have considered the evidence and pleadings of claim case for deciding the issue of contributory negligence. He further contended that Claims Tribunal awarded meagre sum of compensation on pecuniary and non-pecuniary damages. Appellant took treatment as inpatient from 07.03.2010 to 17.03.2010 at Agrasen Hospital, Raipur, where he underwent surgery of his left Tibia and Fibula bone but Claims Tribunal over looking the nature of injuries, period and procedure of treatment, awarded only Rs.5,000/- towards pain and sufferings, which is on lower side. No amount is awarded towards conveyance expenses, and loss of amenities and joy of life during the period of treatment. He submits that appeal be allowed and amount of compensation be suitably enhanced.

8) Shri Dashrath Gupta, learned counsel for Insurance Company would submit that learned Tribunal appreciating the evidence and pleadings available on record, rightly came to the conclusion that appellant and NA1 equally contributed to accident, which does not call for any interference.

He further pointed out that in claim application, appellant pleaded that at the time of accident, he was talking with his two friends namely, Mastram and Dasharu, but none of them was examined as witness. Only appellant got examined as witness before Claims Tribunal on behalf of claimants. It is also contended that in claim case, respondent-1 took plea that it was appellant who was contributory negligent and also placed on record copy of judgment passed in Criminal Case and further, there is admission on the part of appellant that appellant as well as NA1/respondent-1 has filed criminal case against each other and in that case, they arrived at a settlement amongst them. Tribunal awarded just and proper amount of compensation which does not call for any interference.

9) I have heard learned counsel for the parties and also perused record of claim case.

10) So far as submission of learned counsel for the appellant that Tribunal erred in recording a finding that appellant is also contributory negligent to the extent of 50% is erroneous is concerned, perusal of record would show that claimant in claim application, pleaded that at the time of accident, appellant while sitting on Motorcycle, was talking with his two friends Mastram and Dasharu, NA1 came and dashed his Motorcycle, whereas, in FIR Ex.P2 registered on the same day, by one Rajkumar Patel, it is mentioned that when claimant was travelling on Motorcycle, other Motorcycle coming from opposite direction dashed Motorcycle of appellant. Copy of FIR is placed on record by appellant himself to prove his pleading and accident. Taking into consideration FIR and claim application showing the manner in which accident took place, and further

considering that appellant has not examined any witness, though at the time of accident, he was talking with Mastram and Dasharu, I do not find any error in finding recorded by Tribunal that both drivers of Motorcycles, appellant and NA1/respondent-1 were contributory negligent in the accident to the extent of 50%, more so, when it is the case of appellant himself that after accident, appellant as well as respondent-1 lodged criminal case against each other and they entered into settlement.

11) In view of above submission of learned counsel for the appellant that finding of contributory negligence is erroneous is not sustainable and it is hereby repelled.

12) So far as second submission that Claims Tribunal not awarded appropriate amount of compensation on different heads and further non-award of compensation on some heads is concerned, perusal of Discharge Ticket Ex.P8 would show that appellant after accident, took treatment at Agrasen Hospital, Raipur from 07.03.2013 to 17.03.2013. After accident, he travelled to Raipur from Baghbahra in injured condition for his treatment. Tribunal not awarded any amount towards conveyance. Appellant travelled from Baghbahra to Raipur and again he has to return back to his home, hence, I find it appropriate to award **Rs.5,000/-** towards conveyance expenses.

13) Tribunal even after recording the date of accident, period of treatment in hospital, has not awarded any amount towards attendant, though the evidence shows that appellant has taken treatment away from his residence at Raipur. Hence, I find it appropriate to award **Rs.3,000/-**

towards attendant and his/her diet. Ex.P8 Discharge ticket would show that appellant underwent surgery of left leg, compound fracture on left leg over Tibia and Fibula bone. The amount of compensation awarded by Claims Tribunal of Rs.5,000/- is also on lower side comparing to the nature of injuries period and procedure of treatment. Taking note of evidence available on record with regard to treatment, nature of injuries, I find it appropriate to award **Rs.10,000/-** for pain and sufferings, instead of Rs.5,000/-. Discharge Ticket further shows that on account of injuries, claimant was in hospital from 07.03.2010 till 17.03.2010 hence considering nature of injuries, period of treatment and details mentioned in Discharge Ticket, I find it appropriate to award further sum of **Rs.5,000/-** towards loss of amenities and joy in life due to motor accidental injuries for period of treatment and recovery.

14) Apart from above, appellant will further be entitled for Rs.56,400/- towards medical treatment, Rs.3,000/- for further treatment, Rs.14,059/- for bills and exhibit available on record, Rs.5,000/- towards special diet, as awarded by the Tribunal.

15) Now, total compensation will come to Rs.1,01,459/- (56400 + 3000 + 14059 + 5000 + 5000 + 3000 + 10000 + 5000). As it is held that appellant is also contributory negligent for the accident to the extent of 50%, he is entitled for 50% of total amount of compensation ie **Rs.50,729.50ps**.

16) Now, appellant/claimant will be entitled for **Rs.50.730/-** (rounded off) as compensation instead of Rs.40,750/- as awarded by the Tribunal.

17) Aforementioned amount of compensation shall carry interest @ 8% from the date of filing of claim application till its realization. Other conditions imposed by the Tribunal shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
JUDGE

padma