

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 19 of 2015**

- Sunaram Yadav S/o Shri Suklal Yadav, aged about 50 years, R/o Jangalpara Nagari, Thana & Tahsil- Dhamtari C.G.

-----Appellant/Claimant**VERSUS**

1. Aabid Raza S/o Shri Jarif Khan, aged about 20 years, R/o Jangalpara Nagari, Thana & Tahsil- Nagari, Civil & Revenue Distt. Dhamtari C.G.

-----Driver

2. Mohd. Bilal S/o Mohd. Sikander R/o Ward No. 05, House No. 4786 Deendayal Upadhyay Nagar Raipur, Thana-Deendayal Upadhyay Nagar Civil & Revenue Distt. Raipur C.G.

-----Owner

3. Divisional Manager, Royal Sunderam Allianz Insurance Company Limited, Chawla Complex Minjai Floor, Sai Nagar, Devendra Nagar Raipur Distt. Raipur C.G.

-----Respondents

For Appellant	: Mr. Sumit Shrivastava, Advocate
For Respondents	: None

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J.****07/01/2021**

1. Challenge in this appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") is to the award dated 15.12.2014 passed by learned Chief Motor Accident Claims Tribunal, Dhamtari, Dist. Dhamtari in claim case no. 154/2012 whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988, awarded Rs. 81,140/- as total compensation in an injury case.
2. Facts relevant for disposal of this appeal are that, on 10.04.2012, appellant/ claimant was traveling from village Banrod to Nagri on a Maruti Van bearing registration no. CG04HA1171 (henceforth "offending vehicle"), driven by non-applicant 1, owned by non-applicant 2. When they reached near village Palwadi, offending vehicle met with an accident with a tree

standing on road side due to rash and negligent driving of non-applicant 1/ driver of offending vehicle. In the aforementioned accident, appellant suffered grievous injuries over his person, he was taken to Mission Hospital, Dhamtari, from where he was shifted to Visharad Hospital, Raipur. Accident was reported to concerned police station based on which crime 05/2012 was registered against non-applicant 1.

3. Appellant/ claimant filed an application under Section 166 of the Act of 1988 pleading therein that in motor accident, he suffered two fracture injuries over his right leg, he took treatment as in-patient at Visharad hospital from 10.04.2012 to 20.04.2012. On the date of accident, he was aged about 50 years and earning Rs. 8,000/- per month as Carpenter. Even after taking treatment from hospital, injury suffered by him could not cured fully and he suffered permanent disability. On account of permanent disability, he is unable to earn his livelihood and claimed Rs. 10,00,000/- (Rupees: Ten Lacs) as total compensation.
4. Non-applicant 1 and 2 who are driver and owner of the offending vehicle submitted reply to the claim application, denying the pleadings made therein. It was further pleaded that non-applicant 1 did not drive the offending vehicle rashly and negligently. Offending vehicle met with an accident on account of mechanical failure as steering of the vehicle failed. Offending vehicle was insured with non-applicant 3/ Insurance Company, as such, liability to pay the amount of compensation to be on non-applicant 3/ Insurance Company.
5. Non-applicant 3/ Insurance Company submitted reply to the claim application, denying the pleadings made therein. It was further pleaded that the offending vehicle was being used as Taxi. It was overloaded. Occupants of the vehicle were not relatives/ family members of the owner of the offending vehicle. Non-applicant 1 was not possessed with valid and effective driving licence, as such, there was breach of policy

conditions, hence, non-applicant 3/ Insurance Company is not liable to pay any amount of compensation.

6. Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties held that appellant-claimant suffered motor accidental injuries on account rash and negligent driving of offending vehicle by non-applicant 1. Income, permanent disability of the appellant and breach of policy conditions were not found to be proved and awarded Rs. 81,140/- as total compensation including Rs. 78,140/- towards medical expenditure.
7. Mr. Sumit Shrivastava, learned counsel for the appellant submits that Claims Tribunal overlooked the oral and documentary evidence placed on record by the appellant and arrived at an erroneous finding that the appellant failed to prove permanent disability suffered to him but only grievous injuries suffered by him. He further contended that the Claims Tribunal erred in awarding meagre amount of compensation in the facts and circumstances of the case. Non-pecuniary damages have not been awarded on all heads for which the appellant is entitled and except meagre amount of Rs. 3,000/- towards pain and sufferings, Tribunal has not awarded pecuniary damages on all heads for which the appellant is entitled. He submits that the amount of compensation be suitably enhanced considering the nature of injury and permanent disability suffered by the appellant.
8. No one appeared on behalf of the Respondents.
9. As this appeal is only with regard to enhancement of the amount of compensation awarded holding the non-applicants jointly and severally liable to satisfy the amount of compensation, we are proceeding to decide the appeal.

10. So far as the first submission made by the learned counsel for the appellant with regard to erroneous finding recorded by the Claims Tribunal that the appellant failed to prove permanent disability suffered by him is concerned, we have perused the record of the claim case. Disability certificate is placed on record as Ext. P-64. This disability certificate is issued by Medical Board consisting of three Doctors, issued on 25.03.2014. In the disability certificate, it is mentioned "*Malunited Lt, Tibia Fibula*". Appellant has examined Dr. V.K. Pandey as AW-2 to prove the disability certificate. Perusal of evidence of witness AW-2 would show that in cross-examination he admitted that on the date of issuance of Disability Certificate, appellant has not brought x-ray of injured part of body and no x-ray report was called for. There is no mention with regard to the calculation of percentage of disability to be by which scientific method. Claims Tribunal, in paragraph 8 of the impugned award, has considered the plea of permanent disability. Claims Tribunal has recorded that the doctor, in his evidence, has stated that the permanent disability as mentioned in Ext.P-64 is with regard to his leg only and not for the whole body, disbelieved the percentage of disability mentioned in Ext.P-64 and further held that the injuries suffered by the appellant to be grievous in nature.
11. We have perused the evidence and disability certificate issued by Medical Board. Evidence of doctor AW-2 would show that he has admitted the fact that the appellant has not been sent for x-ray or fresh x-ray report was called for before issuing the disability certificate. Permanent disability certificate, on account of some physical ailment of any part of the limb due to some bone injury, cannot be ascertained without looking into the recent/ fresh x-ray report of that particular part of body where the appellant/ injured suffered injuries stating it to be permanent disability.
12. In view of the aforementioned discussions and considering the evidence of

AW-2, we are not convinced with the submissions made by the learned counsel for appellant. Tribunal did not err in holding that appellant failed to prove permanent disability. In view of evidence of AW-2 (Doctor), we are of the view that the disability certificate has not been issued after following due procedure and proper examination of the appellant, hence, the disability certificate Ext. P-64 placed on record, as such, cannot be taken into consideration, but for that the appellant suffered grievous injuries.

13. Now we will deal with the submission made by the learned counsel for the appellant that the Claims Tribunal has not awarded just compensation in the facts and circumstances of the case. Appellant-claimant has placed on record MLC report as Ext.P-3 wherein it is mentioned as "*Lacerated crush injury on rt lower leg and ankle rt; compound fracture of lower end of Tibia & Fibula; swelling and tenderness on left foot.*" Medical certificate issued by the Visharad hospital placed on record as Ext.P-10, wherein the appellant has been shown to be admitted for treatment on 10.04.2012 and discharged on 20.04.2012. Looking to the nature of injuries mentioned in Ext. P-3 and Ext.P-10 would show that the appellant suffered grievous injuries over his person. Claims Tribunal has awarded Rs. 78,140/- towards medical expenses and awarded Rs. 3,000/- in lumpsum towards mental and physical sufferings. No amount on any other head is awarded. It is true that the appellant failed to prove the permanent disability suffered by him by placing admissible piece of evidence on record but nonetheless from perusal of the documents placed on record ie. MLC, Ext.P-3 and Medical Certificate issued by Visharad Hospital as Ext. P-10, nature of injury suffered by the appellant cannot be ignored. Appellant not only suffered crush injury but also the compound fracture injury on his right leg. Claims Tribunal has awarded meagre amount of Rs. 3,000/- towards pain and sufferings which in the opinion of this Court is on lower side. Appellant now may not able to do many of the activities which he could do without the injury which may cause loss of his amenities and joy in life. He

may not be able to do the work for sometime causing loss of earnings.

14. For the aforementioned reasons, we find it appropriate to re-compute the amount of compensation for which the appellant is entitled under different heads as per the ruling of Hon'ble Supreme Court in case of **R.D. Hattangadi v. Pest Control India Ltd.** reported in **1995 (1) SCC 551**. Appellant is entitled for Rs. 78,140/- towards medical expenditure as awarded by Claims Tribunal, Rs. 25,000/- towards pain and suffering, Rs. 15,000/- towards loss of amenities on account of injury suffered by him, Rs. 10,000/- towards transportation, attendant and special diet. Looking to the nature of injury, appellant might not be able to do his work for earning his livelihood for a period of three months. Looking to the nature of occupation as pleaded by the claimant in the application and submitted before this Court, we find it appropriate to assess the income of the appellant, on the date of accident, as Rs. 4,500/-, hence, he is entitled for Rs. 13,500/- (Rs.4500x3) towards loss of income during the period of treatment.
15. Now, the appellant-claimant will be entitled for total sum of **Rs. 1,41,640/-** (Rs.78140+Rs.25000+Rs.15000+Rs.10000+Rs.13500) instead of Rs. 81,140/- as awarded by the Claims Tribunal. Amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the Tribunal shall remain intact.
16. Consequently, appeal stands allowed. Impugned award is modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
 Judge