

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 23 of 2015**

- Pardeshi (Died) Through Lrs-
 1. Sukrita Bai W/o Late Pardeshi, Aged About 35 Years
 2. Laxmin D/o Late Pardeshi, Aged About 8 Years (Minor)
 3. Rohit s/o late Pardeshi, aged about 5 years (Minor)
- Appellants 2 and 3 being minor, through their natural Guardian Mother Sukrita Bai
- All are R/o Village Devermal Chowki Uрга, District Korba Chhattisgarh

---- Appellants/claimants**Versus**

1. Deleted (Ashish Chauhan) As Per Honble Court Order Dated- 02-07-2020 And 28-09-2020
2. Abhay Sharma S/o Mithilesh Sharma, Aged About 43 Years R/o 15 Block, Q.No. A.S.10, Thana Korba, Civil And Revenue District Korba Chhattisgarh (Owner)
3. Shri Ram General Insurance Company Limited, Rikko Industrial Area, Sitapura Jaipur (Rajasthan) Through Branch Manager, Shri Ram Transport Finance Company Limited Korba, Civil And Revenue District Korba Chhattisgarh (Insurer)

----Respondents/NAs

For Appellants	: Shri Kalpesh Ruparel Advocate
For Respondents-	: None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
07.01.2021

1. This appeal is filed by the injured claimant challenging the impugned award dated 01.10.2014 passed by the Motor Accident Claims Tribunal, Korba (CG) (for short, 'Claims Tribunal') in Claim Case-83 of 2011, whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 and awarded Rs.49,000/- as total compensation in injury case.
2. Facts relevant for disposal of this appeal are that on 18.01.2011 at about 12.30 pm claimant was returning to his house at village Devarmal on

his Motorcycle. When he reached near Nonbirra Baseen Road, one Bus bearing No.CG12-9736 (hereafter, referred to as 'offending vehicle') driven by NA1 rashly and negligently, dashed the Motorcycle and caused accident. In the aforementioned accident, Pardeshi suffered grievous injuries over his person. He was immediately taken to Primary Health Centre at Kartala, looking to nature of injuries, he took treatment at different hospitals of Korba and Champa.

3. Injured claimant filed an application under Section 166 of the Act of 1988 challenging therein that in motor accident, he suffered fracture injuries on both his legs, apart from other injuries. Even after taking treatment of injuries, it could not cured fully, leading to permanent disability. He is unable to earn his livelihood and claimed Rs.10,10,000/- as total compensation. It was further pleaded that prior to date of accident, he was engaged in doing centering work in under construction houses and buildings and thereby earning Rs.400/- per day.

4. NA1 and 2 did not appear before the Tribunal and they were proceeded *ex-parte*.

5. NA3/Insurance Company submitted reply to the claim application while admitting the pleadings made in para-2 of claim application, have denied the other pleadings made therein. It was further pleaded that owner and insurer of Motorcycle were not arrayed as party non-applicants. There was non- joinder of necessary parties. NA1 was not possessed with valid and effective driving license. Offending vehicle was used in breach of permit conditions, as such, there was breach of policy conditions.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties, held that claimant suffered grievous motor accidental injuries on account of rash and negligent driving of offending vehicle by NA1. Breach of policy conditions was not found to be proved, assessed income of the claimant as Rs.3,000/- per month and awarded Rs.49,000/- as total compensation.
7. Injured claimant died on 24.02.2015 during the pendency of the appeal.
8. Shri Kalpesh Ruparel, learned counsel for the appellants submits that Claims Tribunal erred in not considering entire documentary and oral evidence placed on record by claimant. He contended that the Tribunal erred in disbelieving permanent Disability Certificate placed on record as Ex.P10 and arrived at an erroneous finding that claimant has not suffered any permanent disability but only grievous injuries. He further argued that date of accident is of 18.01.2011, claimant took treatment till the year 2013, which itself is sufficient to prove that the injuries suffered by the claimant could not be cured and he suffered permanent disability, resulting him unable to earn for his livelihood. He further contended that Claims Tribunal erred in awarding meagre amount of compensation under loss of income, pains and suffering and further, not awarding any amount towards loss of amenities and joy in life in the facts and circumstances of case.
9. No one appeared on behalf of the respondents even after completion of service of notice upon respondents.

10. To appreciate the submissions made by learned counsel for the appellant, we have perused record of claim case. Perusal of MLC report placed on record as Ex.P4 would show that claimant suffered fracture of right lower thigh at $\frac{1}{4}$ of leg; lacerated wound on left leg and $\frac{1}{2}$ of leg bone was visible. Claimant has further placed on record ExP10 Certificate issued by Dr PP Singh, PG Medical Officer, District Hospital, Korba under the standard Format of Certificate to be issued for the persons with disabilities. In the said certificate, percentage of disability has been mentioned as 30.89, showing it to be permanent physical impairment and condition likely to improve. To prove the disability certificate Ex.P10, claimant examined Dr PP Singh, Medical Officer, who in his evidence has stated that after examining the claimant and taking X-ray of thigh, he found 30.89 % of permanent disability and further if the disability is assessed for the whole body, it will come to 12.5 %. He can able to do the normal work but cannot do lifting of heavy articles.

11. Claims Tribunal taking into consideration that appellant after 17.09.2013 did not appear for his examination and there is mention in the Disability Certificate that condition likely to improve, the claimant failed to prove his permanent disability, which in the opinion of this Court cannot be said to be correct finding recorded by the Claims Tribunal.

12. Claims Tribunal is exercising its jurisdiction under the provision of Motor Vehicle Act, which is a beneficiary piece of legislation. Tribunal could have put specific question to the doctor, who appeared as witness before the Tribunal to prove the Disability Certificate placed on record as Ex.P10, if the Tribunal is having some doubt over the nature of permanent disability as mentioned in the Disability Certificate.

13. Section 168 of the Act of 1988 envisages manner in which application for grant of compensation filed under the Act of 1988 is to be considered and decided. Learned Claims Tribunal overlooking nature of injuries and its grievousness, had awarded only Rs.10,000/- towards pain and suffering, which is also on lower side. Income of claimant has been assessed as Rs.3,000/- per month, which in view of the nature of his occupation as pleaded and stated by claimant and considering the date of accident appears to this Court on lower side. Tribunal has not awarded any amount towards transportation expenses.

14. True, it is that during the pendency of this appeal before this Court, injured claimant died on 24.02.2015, but as this Court is considering the quantum of compensation awarded by the Tribunal on 01.10.2014 during the life time of claimant to be just compensation or not for the accidental injuries of 18.01.2011, we find it appropriate to consider this appeal on the ground that the amount of compensation awarded by Tribunal on the date of passing the award is just or not.

15. As discussed above, learned Claims Tribunal has not awarded any amount towards grievous injuries, loss of amenities and joy in life in view of Ex.P10 Disability Certificate issued by the doctor, no amount is awarded towards transportation, awarding meagre amount on the head of pains and suffering and further considering the changed circumstances, we find it appropriate to award Rs.1,00,000/- *lump-sum* in addition to the amount already awarded by the Claims Tribunal.

16. In view of aforementioned discussion, the impugned award is modified and now, appellant will be entitled for additional sum of Rs.1,00,000/- as

compensation in addition to amount of Rs.49,000/- already awarded by the Tribunal, which makes the total compensation as Rs.1,49,000/-.

17. Enhanced amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma