

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1273 of 2015**

- Bharat Bhushan S/o Shree Krishana Yadav, aged about 47 years R/o Bajarpara, Lakhanpur, P.S. & Tahsil Lakhanpur, Civil & Revenue District Surguja (CG)

---- Appellant/Claimant**Versus**

1. Sunil Sharma S/o Shree Murarilal Sharma, aged about 50 years R/o C/o Mukesh Sharma, R/o Near Main Hospital, Raigarh, P.S. & Post Raigarh, Civil & Revenue District Raigarh Chhattisgarh, (Owner of Tankar bearing registration No. CG13-L-8389)
2. Shivmuni Singh Chauhan S/o Balli Singh, aged about 62 years R/o Bogna, P.S. & Post Marda, Civil & Revenue District Gajipur, U.P. (Driver of Tankar bearing registration No. CG13-L-8389)
3. National Insurance Company Limited, through Branch Manager, Raigarh Vigilance Center, Handi Chauk, Raigarh, PS & Post Raigarh, Civil & Revenue District Raigarh (CG) (Insurer of Tankar bearing registration No. CG13-L-8389)

---- Respondents

For Appellant	:	Ms. Priyanka Mehta, Advocate
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Mr. Garuav Singhal Advocate on behalf of Mr. Gautam Khetrapal, Advocate.

Hon'ble Shri Parth Prateem Sahu, J**Order On Board****01/10/2021**

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') seeking enhancement in amount of compensation awarded by learned Motor Accident Claims Tribunal, Sarguja (Ambikapur) [for short 'the Claims Tribunal'] in Claim Case No.99/13 whereby the Claims Tribunal allowed an application filed under Section 166 of the Act of 1988 in part; awarded Rs.2,03,411/- as total compensation in an injury case.

2. Facts of the case, in brief, are that 9.3.2013 at about 7:00 p.m. appellant was going to Lakhanpur from village Bargawan on his motorcycle bearing registration number CG15/CM/9407, when he reached near Suman Petrol Pump, Lakhanpur, one truck tanker bearing registration number CG13-L-8389 (for brevity 'the offending vehicle'), driven by non-applicant No.2 in rash and negligent manner, came on wrong side of road, dashed motorcycle of claimant and caused accident. In the accident, claimant-appellant suffered grievous injuries. He was immediately taken to Primary Health Centre, Lakhanpur from where he was shifted to Government Hospital, Ambikapur where he remained admitted from 9.3.2013 to 13.3.2013. As there was no improvement in condition of claimant-appellant, as per advise of doctors, he was hospitalized in MMI Narayana Hospital, Raipur wherein he took treatment as inpatient from 21.3.2013 to 30.3.2013.
3. Claimant-appellant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.10,00,000/- under different heads. It was pleaded in claim application that on the date of accident, claimant was able bodied 45 years old person and was earning Rs.15,000/- per month by doing farming and job.
4. Non-applicant No.1 & 2, owner and driver of offending vehicle, did not appear before Claims Tribunal, hence they were proceeded ex-parte.

5. Non-applicant No.3, insurer of offending vehicle, submitted reply to claim application denying facts pleaded therein. It was pleaded that accident was result of negligence on the part of appellant, who was driving motorcycle in negligent manner. Appellant was not possessed with valid and effective driving license. Amount of compensation claimed is highly exaggerated. Non-applicant No.2, driver of offending vehicle, was also not possessed with valid and effective driving license. Since offending vehicle was plied on road in breach of policy conditions, non-applicant No.3 is not liable to indemnify the insured.
6. The Claims Tribunal based upon appreciation of pleadings and evidence placed on record by respective parties, held that claimant-appellant suffered injuries in a motor vehicle accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.2-driver; there was no breach of any of conditions of insurance policy; there was no element of contributory negligence on the part of claimant. Consequently, Claims Tribunal allowed application in part and awarded total sum of Rs.2,03,411/-, which includes medical expenses of Rs.1,22,531/-, as compensation together with interest @ 6% p.a. from the date of filing of claim application till actual realization and fastened liability upon insurance company of offending vehicle to make payment of entire amount of compensation.
7. Ms. Priyanka Mehta, learned counsel for appellant-claimant

would submit that amount of compensation awarded by Claims Tribunal is on lower side in the facts and circumstances of case. The Claims Tribunal has not considered and evaluated evidence with respect to injuries suffered by appellant in appropriate manner. Appellant suffered grievous injuries on lumber spine and chest. She submits that during course of treatment at MMI Narayana Hospital, Raipur, appellant was diagnosed to be case of 'C₄ - D₂ Myelomalacia - quadri paresis with? C5-6 PND and acute kidney injury". The Tribunal in Paragraph-17 of impugned award observed that "a note is appended in cross-examination of claimant that on the date of recording of his evidence, he was brought to the Court by two persons and was not able to lift his leg completely". Despite aforementioned observation the Claims Tribunal has not awarded any amount of compensation towards loss of earning. From the documents available on record it is evident that as many as five times appellant had visited Raipur for his treatment, but adequate amount of compensation towards conveyance expenses has not been awarded. Amount of compensation awarded towards attendant, pain & sufferings, loss of income during period of treatment is also on lower side and deserve to be enhanced suitably. No compensation was awarded towards loss of amenities and joy in life. She submits that in absence of permanent disability certificate on record, Claims Tribunal ought to have considered medical documents filed by claimant; his physical appearance; consequences and

complications of injuries suffered by him and should have awarded just amount of compensation.

8. Mr. Gaurav Singhal, Advocate appearing on behalf of Mr. Gautam Khetrapal, Advocate for respondent No.3 would submit that claimant failed to place on record permanent disability certificate to prove disability, as argued by learned counsel for appellant. Even the doctor who treated appellant was not examined before the Claims Tribunal. Tribunal considering facts and circumstances of case has awarded just amount of compensation, which does not call for any interference. The Claims Tribunal has awarded entire medical bills submitted by appellant, hence he is not entitled for any award of compensation towards medical expenses and conveyance.
9. I have heard learned counsel for the parties and perused record of claim case.
10. So far as submission made by learned counsel for appellant that no amount of compensation is awarded towards loss of earning is concerned, on the date of accident appellant was aged about 45 years. Even if appellant has not been able to prove his occupation and income by placing cogent and reliable documentary evidence on record, then also looking to age of appellant, his occupation can be considered as a manual labour, who can earn Rs.150/- per day. Hence, income of appellant can be reckoned as Rs.4,000/- per month in place

of Rs.3,000/- as assessed by Claims Tribunal. It is ordered accordingly.

11. Perusal of 'Discharge on Request' dated 30.3.2013 of Narayana Hruddayalaya MMI Hospital, Raipur, available on record as Ex.P-38, would show that claimant was diagnosed as case of "C₄ - D₂ Myelomalacia - quadri paresis with? C5-6 PND and acute kidney injury...". Course of treatment in hospital is also mentioned in Ex.P-38, which reads thus:-

"MRI was done which revealed C4-D2 myelomalacia. He was started on IV steroids which was gradually tapered & was made oral and other supports. Routing investigation showed elevated cr. (18.7), Nephrology consultation was sought for the same. He underwent 2 sitting for Haemodialysis following which his creatinine was reduced (1.4). Regular physiotherapy was given. Patient is being discharged on request today. Option for surgery of PIVD was discussed with the relative and guarded prognosis was explained."

Further, it is mentioned in medical prescription of NH MMI Narayana Multi-speciality Hospital, Raipur that patient can walk with support.

12. Above mentioned documents would show that appellant suffered quadri paresis and even after lapse of more than a year from the date of discharge from hospital, he could not able to walk without support, as observed by Tribunal. On 20.10.2014 appellant was examined before the Claims Tribunal as AW-1, in Paragraph-7 of cross-examination the Claims Tribunal recorded as under:-

“.....आवेदक के प्रतिपरीक्षण में दर्ज टीप के अनुसार साक्ष्य तिथि को भी दो लोगो द्वारा उसके हाथ को पकडकर बमुश्किल चलाते हुए न्यायालय कक्ष में लाया गया था तथा वह थोडा – बहुत ही पैर को उठा पा रहा था”.....

13. From aforementioned medical documents and observation made by Claims Tribunal on the date of recording of evidence of appellant, it is evident that even after lapse of more than one & half year from the date of accident, appellant could not ale to walk without support. True it is that appellant-claimant could not able to place on record disability certificate issued by any Medical Board, but considering documents (Ex.P-38 to P-41) and observation made by Claims Tribunal on 20.10.2014 in Paragraph-7 of cross-examination of appellant, this Court is of the opinion that appellant-claimant is entitled for compensation towards loss of income, if not upto date of his cross-examination, then certainly from the date of accident i.e. 9.3.2013 upto 7.8.2014, on which date the doctor, who had examined claimant in MMI Narayana Hospital, Raipur, has opined that claimant can walk with support. Hence, it is hereby ordered that appellant-claimant is entitled for loss of income for a period of 15 months i.e. from 9.3.2013 to 7.8.2014. As monthly income of appellant-claimant is assessed as Rs.3,000/-, he is entitled for a sum of Rs.45,000/- (3000x15) towards loss of income instead of Rs.15,000/- as awarded by Claims Tribunal. It is ordered accordingly.
14. Claims Tribunal has awarded only Rs.10,000/- towards pain and sufferings, which in the given facts of case is on lower side. Considering the nature of injuries suffered by claimant

and the fact that even after lapse of more than one & half year from the date of accident, appellant could not able to walk without support, I find it appropriate to award Rs.35,000/- towards pains & sufferings and Rs.30,000/- towards loss of amenities and joy in life. It is ordered accordingly.

15. Claims Tribunal awarded only Rs.5,000/- towards attendant which also in the opinion of this Court is on lower side and I deem it proper to award a sum of Rs.20,000/- under aforementioned head. It is ordered accordingly.
16. Award of Rs.1,22,531/- by Claims Tribunal towards medical expenses; Rs.25,000/- for future treatment; Rs.15,880/- towards conveyance; Rs.10,000/- towards special diet, shall stand confirmed.
17. In view of above, claimant/appellant will be now entitled for compensation in following manner;-

Heads		Amount Awarded
• For loss of income	:	Rs.45,000/-
• For pains & sufferings	:	Rs.35,000/-
• For loss of amenities and joy in life	:	Rs.30,000/-
• For Medical Expenses	:	Rs.1,22,531/- (Maintained)
• For future treatment	:	Rs.25,000/- (Maintained)
• For conveyance	:	Rs.15,880/- (Maintained)
• For special diet	:	Rs.10,000/- (Maintained)
• For Attendant	:	Rs.20,000/-
Total	:	Rs.3,03,411/-

18. The Claims Tribunal has awarded interest @ 6% per annum, which in the opinion of this Court is on lower side. Thus, rate of interest is enhanced to 7% per annum. Claimant-appellant will be entitled to receive interest at the rate of 7% p.a. on total amount of compensation from the date of filing of claim petition till its realization.
19. Claimant/appellant will be entitled for Rs.3,03,411/- as total amount of compensation in place of Rs.2,03,411/- as awarded by Claims Tribunal vide impugned award. The amount of compensation shall carry interest @ 7% p.a. from date of application in stead of 6% p.a. as awarded by Claims Tribunal. Amount of compensation, if any, paid to claimant/appellant shall be adjusted. Rest of conditions of impugned award shall remain as it is.
20. In the result, appeal is allowed in part and the impugned award is modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-