

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 448 of 2015**

Vishwash Nigam S/o Surendra Kumar Nigam, Aged About 36 Years, R/o LIG-62 Shivaji Nagar, Korba, Police Station Kotwali Korba, Revenue and Civil District Korba, Chhattisgarh.

---- Appellant**Versus**

1. Sunil Rajput S/o Mahesh Rajput, Aged About 24 Years, R/o Sanjay Nagar, Near Railway Phatak, Korba, Police Station, Kotwali Korba, Revenue and Civil District Korba, Chhattisgarh.
2. Shiv Ratan Lal Shrivash S/o Jiwan Lal Shrivash, Aged About 38 Years, R/o Qt. No. 389, Ward No. 15, Aramashin Mohalla Korba, Revenue and Civil District Korba, Chhattisgarh.
3. Cholamandalam (MS) General Insurance Company Limited Through Manager, Cholamandalam (MS) General Insurance Company Limited, Office, 1st Floor, Rajiv Plaza, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	: Ms. Nand Kumari Kashyap, Advocate
For Respondents 1 to 2	: Mr. Sanjay Patel, Advocate
For Respondent No.3	: Mr. Ghanshyam Patel, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, Judge****02.02.2021**

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the correctness and sustainability of impugned award dated 27.11.2014 passed by the Additional Motor Accident Claim Tribunal (F.T.C.), Korba Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.150 of 2013 whereby learned

Claims Tribunal allowed application filed under Section 166 of the M.V. Act in part and awarded Rs.2,51,000/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal, are that, on 27.01.2013 at about 5.00 PM, Vishwash Nigam was returning back to his house on two-wheeler Scooter bearing No.CG-12/N/7646, while so, when he reached near Corporation Complex, one Mahindra Xylo (four-wheeler) bearing No.CG-12/D/1713 (hereinafter referred to as 'offending vehicle'), dashed two-wheeler driven by Vishwash Nigam and caused accident. In the said accident, he suffered grievous injuries on his head, forehead, backbone along with other injuries.
3. Appellant has filed an application under Section 166 of M.V. Act before learned Claims Tribunal seeking compensation of Rs.36,10,000/- on different heads pleading therein that on account of injuries suffered by him on his head, forehead and backbone, he became permanently disabled; he could not able to stand for long time; he faces difficulty on bending and performing his daily routine work. Upon examination of the appellant, District Medical Board issued disability certificate (Ex.P/47) assessing permanent disability to the extent of 80%.
4. Non-applicant No.1/driver of offending vehicle submitted reply to claim application, while denying all the adverse pleadings made against him, pleaded that no accident occurred from the vehicle driven by him, claimant has filed false and fabricated case against

him. In additional pleadings, it has been pleaded that accident was a result of negligence on the part of claimant himself, on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company.

5. Non-applicant No.2/owner of offending vehicle submitted reply to claim application, while denying the pleadings made therein, pleaded that amount of compensation claimed is highly exaggerated; there was no accident from the vehicle owned by him; on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company hence liability, if any, to pay amount of compensation would be upon the Insurance Company.
6. Non-applicant No.3/Insurance Company submitted its separate reply, while denying pleadings made therein, pleaded that case has been filed on false ground; non-applicant No.1 was not possessed with valid and effective driving licence; offending vehicle was plied in breach of policy conditions and claimant met with an accident on account of his own negligence.
7. On appreciation of pleadings and evidence brought on record by respective parties, learned Claims Tribunal held that accident was a result of rash and negligent driving of offending vehicle by non-applicant No.1; appellant suffered grievous injuries leading to permanent disability; breach of policy conditions and contributory negligence could not be proved and awarded Rs.2,51,000/- as total compensation on different heads.

8. Ms. Nand Kumari Kashyap, learned counsel for appellant submits that learned Claims Tribunal erred in awarding meagre amount of compensation. She submits that learned Claims Tribunal has assessed loss of earning capacity to the extent of 20% only overlooking the permanent disability certificate (Ex.P/47) issued by doctor of District Hospital, Korba. It is contended that learned Claims Tribunal has overlooked the nature of injuries suffered by appellant, particularly, injury over backbone and documents of medical treatment placed on record. Tribunal has also not taken into consideration the evidence of doctor examined only on the ground that some relevant material has not been placed on record which was considered by Dr. P.P. Singh (AW-6) while issuing permanent disability certificate (Ex.P/47). She argued that learned Claims Tribunal has erroneously assessed the income of appellant on lower side overlooking the documents placed on record with regard to occupation of appellant to be a contractor. Meagre sum of Rs.5,000/- has been awarded towards pain, suffering and mental agony, Rs.5,000/- towards nutritious diet and Rs.6,000/- towards attendant and no amount has been awarded towards loss of amenities and joy in life.
9. Per contra, Mr. Sanjay Patel, learned counsel for respondents No.1 and 2 supports the award impugned passed by learned Claims Tribunal.
10. Mr. Ghanshyam Patel, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal has

discussed in detail for not accepting permanent disability certificate (Ex.P/47) issued by Dr. P.P. Singh (AW-6) in paragraphs-13 and 14 of impugned award. He further submits that application under Order 11 Rule 12 of the CPC has been filed for production of opinion given by Dr. S.N. Madhariya, who is a treating doctor, but Dr. P.P. Singh (AW-6) did not place any such document on record. He contended that learned Claims Tribunal awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference.

11. We have heard learned counsel for the respective parties and perused the record carefully.
12. To appreciate the submission made by learned counsel for the appellant with regard to assessing loss of earning capacity to the extent of 20% only, we have perused the record of claim case. Appellant in support of claim application has placed on record MLC (Ex.P/3) dated 11.02.2013 wherein injuries suffered by the appellant is mentioned. Appellant has also placed on record discharge ticket (Ex.P/8) issued by Ramkrishna Care Hospital, Raipur, Department of Neurosurgery wherein he has been shown to be admitted in Hospital from 28.01.2013 to 04.02.2013, which shows that appellant suffered "cervical spine injury quadriplegia". Appellant has also placed on record the certificate issued by Dr. S.N. Madhariya, Sr. Consultant Neuro Surgeon, Ramkrishna Care Hospital, Raipur as Ex.P/42, which is a hand-written certificate, which reads as under :

“This is certify that Mr. Vishwas Nigam 35Y/M. A case of cervical cord injury operated in January 30, 2013 having Qudriperesis power in UL & LL 2 to 3/5 is not in condition to walk properly and unable to write properly with generalised rigidity so unable to perform work independently. He needs continuous follow up. Physiotherapy & treatment.”

13. True it is that, appellant though resident of Korba city where he could have obtained permanent disability certificate from District Medical Board, but appellant has obtained disability certificate by a single doctor of District Hospital, Korba. Looking to the nature of injuries suffered by appellant as mentioned in Ex.P/8 and Ex.P/42 by treating doctor and considering the object of the M.V. Act, we find it appropriate to remit back the case to learned Claims Tribunal for providing an opportunity to appellant to place on record permanent disability certificate to be issued by competent authority in the larger interest of justice. If the appellant has suffered permanent disability to the extent of 80% as shown by a single doctor of District Hospital, Korba, based on the certificate Ex.P/42 of a treating doctor then naturally loss of annual earning capacity will be more than assessed by learned Claims Tribunal.
14. Accordingly, the appeal is allowed. Impugned award is set aside and the matter is remanded back to the Claims Tribunal with a direction to decide the case afresh in accordance with law, after providing adequate opportunity of hearing to all the parties. The parties will be

at liberty to place of record additional documents, adduce additional evidence, if any. Since the accident is of the year 2013, we direct learned Claims Tribunal to decide Claim Case No.150 of 2013 as expeditiously as possible, preferably within 'five months' from the date of receipt of certified copy of this judgment.

15. Original record of Claim Case No.150 of 2013 be sent back forthwith along with copy of this judgment.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh