

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 239 of 2015**

Dr. Jayram Patel S/o Shri Prahlad Patel, Aged About 44 Years, R/o. Main Road Basna, Thana and Tahsil -Basna, Civil and Revenue District- Mahasamund, (C.G).
---- Appellant/Claimant

Versus

1. Shashi Kumar Sahu S/o Shri Gendram Sahu, Aged About 29 Years, R/o: Village -Girsa Saniyadihi, Thana -Bilaigarh, Civil and Revenue Distt.- Baloudabajar, (C.G).
---- Non-applicant No.1/Driver.
2. Durga Carrier Private Limited, Lawan Road, Near Kishan Rice Mill Baloudabajar, Distt. -Baloudabajar, (C.G) --- **Non-applicant No.2/Owner.**
3. Manager, The New India Insurance Company Limited, Branch Office, Civil Line Baloudabajar, Through Manager, The New India Insurance Company Limited, Madim Manjil Jai Road, Raipur, Distt.- Raipur, (C.G).
--Respondents/Non-applicant No.3.

For Appellant : Mr. Sumit Shrivastava, Advocate.
 For Respondent No.1 & 2 : None.
 For Respondent No.3 : Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

21/01/2021

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of the amount of compensation awarded by the learned Additional Motor Accident Claims Tribunal, Saraypali, Distt -Mahsamund, (for short, 'Tribunal) vide award dated 23.12.2014 passed in Claim Case No.32/14, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded total compensation of Rs.6,09,747/- in an injury case.

2. Facts relevant for disposal of this appeal are that on 13.05.2013, appellant was going to Basna from Government Ayurveda Hospital, Toshgaon on scooty,

while so when he reached near village -Bansula, one Truck bearing registration No.CG04-JC-8452, (for short, 'offending vehicle'), driven by non-applicant No.1 rashly and negligently, dashed the scooty and caused accident. In the said accident, appellant suffered grievous injuries over his right leg, waist, right thigh and Knee. He was taken to Primary Health Centre, Basna from where he was referred to Medical College, Raipur. He was taken to Balaji Superspecialty Hospital, Raipur where he remained admitted from 13.05.13 to 17.05.13 and underwent surgery of thigh and knee. For surgery of his waist, he was brought to Shalby Hospital, Ahmedabad, Gujrat where he remained admitted from 18.05.13 to 28.05.13 and underwent surgery of waist. After discharge from Shalby Hospital, he was again brought to Balaji Superspecialist Hospital, Raipur where he took treatment from 29.05.13 to 13.06.13.

3. Appellant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.22,60,000/- pleading therein that on account of motor-accidental injuries, he became permanently disabled and incurred huge amount under different heads, apart from the amount of Rs.6,00,000/- towards his treatment.

4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, submitted reply to application, while denying pleadings made therein pleaded that amount of compensation claimed is highly exaggerated. Appellant himself was responsible for the accident as he drove his scooty rashly and negligently and dashed with offending vehicle. On the date of accident, offending vehicle was insured with non-applicant No.3-Insurance Company.

5. Non-applicant No.3/Insurance Company submitted its reply to application, while denying pleadings made therein pleaded that there was contributory negligence on the part of claimant also. Owner and Insurer of scooty have not

been arrayed as party to claim application. On the date of accident, neither applicant nor non-applicant No.1 were possessed with valid and effective driving license, even there was no valid permit with offending vehicle. As such offending vehicle was plied in breach of policy condition.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that appellant/claimant suffered grievous injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1. Negligence on the part of claimant in accident, breach of policy condition, as pleaded was not found to be proved. Tribunal allowed claim application in part, awarded total compensation of Rs.6,09,747/- including medical expenditure of Rs.4,49,747/- along-with interest @ 7% p.a. and fastened liability upon non-applicants, jointly & severally, to satisfy the amount of compensation.

7. Learned counsel for the appellant/claimant submits that appellant suffered permanent disability which is apparent from disability certificate placed on record as Ex.P-76, Tribunal has not considered the disability certificate and erroneously disbelieved the evidence of doctor without assigning proper reason. He further submits that amount incurred towards medical treatment itself is sufficient to show the nature of injuries suffered by appellant. Overlooking the nature of injuries, period of treatment, surgeries of knee, thigh and waste, Tribunal erred in not awarding any amount towards attendant, loss of amenities and joy in life, grievous injuries suffered by appellant, if not permanent disability. Amount awarded under other heads are also on lower side, hence, same are to be enhanced suitably.

8. Learned counsel for respondent No.3 -Insurance Company submits that Tribunal has rightly disbelieved disability certificate in view of evidence of Dr. N.

K. Mandapey, who is Member of District Medical Board, Mahasamund and issued disability certificate. He was examined as AW-2, admitted in his cross-examination that disability suffered by appellant is temporary in nature. Tribunal after considering the entire facts and circumstances of the case has awarded all the medical bills claimed by appellant and marked as exhibit. Amount of compensation awarded by Tribunal is just and proper, which does not call for any interference.

9. We have heard learned counsel for the respective parties and perused the record of claim case.

10. So far as first submission made by learned counsel for the appellant that Tribunal erred in not considering disability certificate and erroneously disbelieved the evidence of doctor is concerned, in disability certificate (Ex.P-76), it is mentioned that appellant suffered permanent disability to the extent of 65%. To prove said certificate, appellant examined Dr. N. K. Mandapey as AW-2 who in Para No.5 of his cross-examination has admitted that disability suffered by appellant is temporary in nature. In view of specific evidence of Dr. N. K. Manapey, disability certificate cannot be considered to be of permanent nature. But, it is true that appellant suffered grievous injuries on his knee, waist and thigh for which, he underwent surgeries, which are evident from medical documents available on record from Ex.P-52, 53 & 55. Taking into consideration over all facts and circumstances of the case, nature of injuries, medical documents available on record and also considering fracture injuries on his waist, thigh, knee and compound fracture over the patella, evidence of doctor, we find it appropriate to award Rs.50,000/- towards grievous injuries and Rs.50,000/- towards pain & sufferings instead of Rs.30,000/- as awarded by Tribunal.

11. Coming to next submission with regard to loss of amenities & joy in life. On the date of accident, appellant was 44 years of age and suffered bone injuries on different parts of his body. Looking to the nature of injuries, appellant has to face some difficulties in his future life, he may not be able to do some activities with same efficiency which he might be doing prior to the date of accident. Hence, we find it appropriate to award Rs.50,000/- towards loss of amenities and joy in life.

12. Tribunal has not awarded any amount towards attendant. Perusal of records would show that after accident appellant had taken continuous treatment from different doctors and hospitals including Shalbi Hospital, Amedabad, Gujarat. Further, looking to the nature of injuries, he may not be able to move himself but he had to go on stretcher for which atleast two persons might be required. Appellant in his evidence has also stated that he was attended by two persons, which could not be disbelieved. Hence, we find it appropriate to award Rs.20,000/- towards attendant, lodging and boarding charges.

13. Learned counsel for the appellant has not pointed out any error on the part of Tribunal in not awarding any amount towards medical expenditure which has been incurred and bills of which has been placed on record, hence, we affirm amount of Rs.4,49,747/- awarded by Tribunal towards medical expenses.

14. Apart from above, appellant is also entitled for Rs.90,000/- towards loss of income during the course of treatment, Rs.25,000/- towards travelling expenses and Rs.15,000/- towards nutritious diet, as awarded by Tribunal.

15. Now, appellant/claimant is entitled for a total sum of **Rs.7,49,747/-** (Rs. 50,000/- + Rs.4,49,747/- + Rs.50,000/- + Rs.50,000/- + Rs.20,000/- + **Rs.90,000/-** + Rs.25,000/- + Rs.15,000/-) instead of **Rs.6,09,747/-** as awarded

by Tribunal. This amount of compensation shall carry interest @ 7% p.a. from the date of filing of claim application till its realization. Rest of the conditions of impugned award shall remain intact.

16. In the result, appeal is allowed in part and impugned award stands modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-