NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 440 of 2015

- Kaushar Bano Meman W/o Siraj Meman Aged About 37 Years R/o Ward No. 6, Barethpara, Khairagarh, Police Station And Tahsil-Khairagarh, Civil And Revenue District Rajnandgaon, Chhattisgarh **---- Appellant /Claimant**

Versus

1. Laxman Sinha, S/o Ramadhar Sinha Aged About 26 Years R/o Village Kohka, Police Station-Manpur, Tahsil- Manpur, District Rajnandgaon, Chhattisgarh
2. Future General India Insurance Company Limited Through Divisional Manager, Raipur, District Raipur, Chhattisgarh **----Respondents**

For Appellant	:	Shri Abhishek Sharma, Advocate
For Respondents- 1 and 2	:	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.
27.01.2021

1. Appellant /Claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 seeking enhancement of the compensation awarded by the First Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon (for short, 'Claims Tribunal') in Claim Case-48 of 2013 vide award dated 19.01.2015, whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 in part and awarded total compensation of Rs.1,32,478/- in an injury case.

2. Facts relevant for disposal of this appeal are that on 28.04.2013 appellant was travelling on her Scooty bearing No.CG 08 N-9113 along with her daughter Kum Shifa, and going to visit religious place at Parrinala Dargah along with other members of community and her husband. While so, at about 10.30 pm, one Tata S four wheeler (*Chota Hathi*) bearing No.CG 08L-1730 (hereafter referred to

as 'offending vehicle') driven by NA1 rashly and negligently, dashed Scooty of appellant and caused accident. In the said accident, appellant and her daughter fell down, both of them suffered grievous injuries. Appellant suffered grievous injuries like fracture of neck scapula (Rt), Ac Joint disruption clavical injury, fracture of volar Borton. Her daughter also suffered grievous injuries over her right femur. Both of them were taken to the District Hospital, Rajnandgaon, from where they were referred to Sector-9 Hospital, Bhilai. Appellant took treatment as inpatient for about 11 days, in Sector-9 Hospital, Bhilai.

3. Appellant/Injured filed an application under Section 166 of the Act of 1988, seeking compensation of Rs.24,45,000/- pleading therein that on account of motor accidental injuries suffered by her, she became permanently disabled. She is unable to perform her daily routine work. Prior to the accident, she was earning Rs.1,91,000/- per annum as commission being LIC Agent and from cloth business. She is tax payer and submits her Income Tax Return (ITR) regularly.

4. NA1, driver of offending vehicle did not appear before the Claims Tribunal and was proceeded *ex parte*.

5. NA2/Insurance Company submitted reply to claim application pleading therein that claimant/appellant suffered injuries on account of her own negligence. Offending vehicle was not involved in the accident; she did not suffer any permanent disability, amount of compensation is highly exaggerated, offending vehicle was not insured with NA2 and further that NA1 was not possessed with valid and effective driving license. There was breach of policy conditions.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties, held that appellant/claimant suffered motor accidental injuries due to rash and negligent driving of offending vehicle by NA1. It is held that claimant suffered 8% permanent disability, breach of policy conditions was not found to be proved, awarded Rs.1,32,478/- as total compensation and fastened liability upon Non-applicants jointly and severally to satisfy the amount of compensation.

7. Shri Abhishek Sharma, learned counsel for the injured appellant submits that learned Claims Tribunal has not considered nature of injuries suffered by the appellant, treatment taken by her, Disability Certificate issued by the Medical Board, evidence of AW2 Dr Prakash Bhalerao, and arrived at an erroneous finding that appellant suffered permanent disability only to the extent of 8%. Referring to the evidence of Dr Prakash Bhalerao and Ex.P10 Disability Certificate, learned counsel contended that Medical Board has assessed permanent disability of the appellant to the extent of 70% which is also proved by AW2, member of the Medical Board. Tribunal has assessed income of appellant as Rs.5,000/- only, overlooking income, pleaded and proved by producing copy of ITR marked as Ex.P2, P13, P14 and P15, wherein income of the appellant has been shown as Rs.1,90,000/-. He further argued that when once the appellant has declared her income as Rs.1,90,000/- per annum, and documents/copies of ITR are prior to the date of accident, then, there was no reason for the Tribunal to disbelieve those documents and assessing income of appellant on Notional basis. He further submits that Tribunal has not awarded any amount towards loss of income during the period of treatment overlooking nature and grievousness of injuries suffered by her. Claims Tribunal ought to have awarded loss of income

during the period of treatment, at least for a period of three months. Tribunal also not awarded any amount towards loss of amenities and joy in life, pains and suffering, attendant, travelling expenses. Amount awarded for nutritious diet is also on lower side he submits.

8. No one appeared for the respondents-1 and 2 even in the second round of hearing.

9. We have heard learned counsel for the appellant and also perused record of claim case.

10. To appreciate the ground raised by learned counsel for the appellant with regard to assessment of permanent disability by the Tribunal, overlooking Disability Certificate and evidence of AW2 Dr Prakash Bhalerao, perusal of record would show that appellant has placed on record copy of MLC report as Ex.P7, wherein it is mentioned that lacerated wound at scalp, lacerated wound on hand, lacerated wound on right FA mid1/ 3^{rd} along with other injuries. She took treatment as inpatient at Jawaharlal Nehru Hospital and Research Centre, Bhilai. Copy of Discharge Ticket is placed on record as Ex.P18, wherein date of admission has been shown as 29.04.2013 ie on the very next day of accident, time of admission is 5.30am and date of discharge is 09.05.2013 at 1 pm. Upon provisional diagnosis, doctors found some injuries and after entire examination and tests, they found injuries as shown in Ex.P18, which is extracted below for ready reference:

> <u>Provisional Diagnosis</u>: 7/A # dtel- Radius ®, $\overline{C}$ # Scapula ® $\overline{C}$ Gr III Dislocation of AC Jn (rt)

Final Diagnosis: # Valar Barton ® $\overline{C}$ Gr III AC Joint disruption ® $\overline{C}$, # neck scapula ®

11. After discharge from the hospital, appellant appeared before the District Medical Board, District Hospital, Rajnandgaon. Doctors while issuing Disability Certificate, mentioned permanent disability of appellant to the extent of 70%. Dr Bhalerao, one of the Ortho Specialists of Medical Board is examined as AW2. In his evidence, he stated that appellant suffered right precial (brachial) Plexus due to old injury, affecting 100% working efficiency of right hand. Found right joint disruption and right scapula fracture. In his statement, he stated that as per NIOH guidelines, appellant suffered 70% permanent disability.

12. Appellant has been examined as AW1 in which she stated that she suffered fracture injury on her right hand and shoulder along with other injuries on her body. Functioning of her right hand is 100% affected.

13. Taking into consideration the entire medical documents available on record along with Ex.P17, ie MRI of Cervical spine, Ex.P10 Disability Certificate, evidence of AW2 Dr Prakash Bhalerao, we are of the view that learned Claims Tribunal has not considered the entire documentary evidence available on record for assessing the permanent loss of earning capacity on account of permanent disability suffered by her. But on the basis of presumption and surmises, have assessed the permanent disability for the whole body as 8%only.

14. So far as nature of work of the appellant is concerned, appellant in her evidence very categorically stated that she was doing the business/work as LIC agent, also having cloth business and earning Rs.1,90,000/- per annum. In

support of her evidence, she has placed on record copy of bank statement showing commission received by her from LIC and allotment of LIC agency in her name. Apart from above, it could not be lost sight of the fact that the appellant is a married woman having her family behind with a small child. She has to take care of her family and their needs from morning till night. Therefore, loss of earning capacity on account of permanent disability suffered by her on her right hand is to be assessed taking into consideration her work as LIC Agent, cloth business and also household work.

15. AW2 Dr Prakash Bhalerao has stated 70% permanent disability due to brachia plexus on right hand causing 100% loss of working efficiency of right hand. For the purpose of calculation of compensation towards loss of earning capacity, we find it appropriate to hold that the appellant suffered 35% loss of earning capacity. It is ordered accordingly.

16. Now we will consider the 2nd submission made by the appellant with regard to the assessment of income of the appellant by Claims Tribunal to the extent of Rs.4,800/- per month only.

17. Learned Claims Tribunal has considered pleadings, evidence and documents placed on record by the appellant ie Passbook, allotment of LIC Agency and Registration of shop under the Shop and Establishment Act in the name of appellant. She has further placed on record documents of ITR as Ex.P12, P13, P14 and P15, though there is some whitener over the 'Gross Total Income' in Ex.P12 and P13, which was submitted on 31.03.2010 but in the ITR submitted on 28.03.2011 and 31.03.2012 income has been clearly mentioned as Rs.1,91,000/- and Rs.1,89,343/- respectively.

18. Learned Claims Tribunal has disbelieved this Government document which is of Income Tax Department, only on the ground that the appellant failed to show source of income.

19. We find it difficult to accept the reasoning assigned by the Tribunal. For the purpose of assessing income for calculating amount of compensation, what is to be looked into is the income of claimant or deceased prior to the date of accident. Ex.P14 and 15 are declaration of income of appellant before IT Department. Both the documents are prior to the date of accident. No one can foresee any mishap with her or him to presume that the document has been prepared with ulterior motive.

20. For the foregoing reasons, we are of the view that learned Claims Tribunal erred in assessing income of the appellant as Rs.4,800/- only, ignoring /overlooking income shown in Ex.P14 and P15 which were submitted before IT Department. Hence, we hold the income of appellant as Rs.1,90,000/- per annum.

21. Learned Claims Tribunal has awarded only Rs.3,000/- towards travelling expenses and Rs.1,000/- for special diet. No compensation has been awarded for loss of amenities and joy in life, overlooking permanent disability suffered by the appellant for her upper right limb; pains and suffering, overlooking the nature of injuries and treatment period etc., attendant and loss of income during the period of treatment.

22. Taking into consideration nature of injuries ie fracture over the Clavicle bone and right scapula we hold that the appellant could not have performed her

work for a period of about 3 months, hence, she is entitled for loss of income for a period of 3 months during period of treatment.

23. For the foregoing reasons, amount of compensation to be awarded to the appellant /claimant requires reconsideration as under:

a) Income of appellant is assessed as Rs.1,90,000/- per annum.

b) As we have held that appellant suffered loss of earning capacity to the extent of 35%, therefore, yearly loss of earning capacity would be Rs.66,500/- (190000 x 35).

c) Appellant is shown as 37 years of age hence appropriate multiplier would be 16 instead of 17 as awarded by the Tribunal. Upon multiplying yearly loss of earning capacity with multiplier of 16, total loss of income on account of permanent disability comes to Rs.10,64,000/-.

d) Appellant was unable to work for a period of three months during her treatment. Hence, she is also entitled for Rs.47,499/- {(190000/12) x 3}.

e) Looking to the nature of permanent disability, appellant is also entitled for Rs.30,000/- towards loss of amenities and joy in life, Rs.30,000/- towards pains and suffering, Rs.10,000/- towards transportation and special diet, Rs.51,678/- for medical expenses as awarded by the Tribunal.

24. Now, appellant/claimant shall be entitled for **Rs.12,33,177/-** (1064000 + 47499 + 30000 + 30000 + 10000 + 51678) as total compensation instead of Rs.1,32,478/- as awarded by Claims Tribunal.

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

26. Appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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