

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**MAC No. 1183 of 2014**

Tosh Kumar Patel, S/o Shri Kamal Singh Patel, Aged About 28 Years, Occupation Service, R/o Chote Bhandar, Tahsil Pussour, District Raigarh (C.G.)

---- Appellant**Versus**

1. Vibhishan Kumar Sahu, S/o Sukhram, Aged About 35 Years, Occupation Vehicle Driver, R/o Telghani Naka, Ward No. 17, Station Road, Raipur, District Raipur (C.G.)
2. Capton Singh, S/o Makhan Singh, Aged About 40 Years, Occupation Owner of the vehicle, R/o Best Road Career, Veer Savarkar Nagar, Heerapur, District Raipur (C.G.).
3. Universal Sampo General Insurance Company Limited, Head Officer- Unit No. 401, 4th Floor, Sargam Complex, 127, Kurla Road, Andheri (West), Mumbai, Through Branch Officer, Raipur (C.G.)

---- Respondents

For Appellant	: Mr. Abhishek Saraf, Advocate
For Respondents 1 to 2	: None
For Respondent No.3	: Mr. Tessy Abraham, 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****13.04.2021**

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 01.09.2014 passed by the Motor Accident Claim Tribunal, Raigarh Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.17 of 2013 whereby learned Claims Tribunal allowed application filed under Section 166 of the M.V. Act in part and

awarded Rs.10,53,900/- as total compensation in a permanent disability case.

2. Facts relevant for disposal of this appeal, are that, on 13.07.2012, appellant/claimant was travelling on motorcycle bearing No.CG-13/H/5293 along with his friend pillion Pramod Patel from Raigarh to his village. While so, when they reached near Turkumunda Agrawal weigh bridge, one Truck bearing No.CG-04/J/2575 (hereinafter referred to as 'offending vehicle'), driven by non-applicant No.1 rashly and negligently, dashed the motorcycle of appellant/claimant. In the said accident, appellant/claimant suffered grievous injuries over his right thigh and other vital parts of body. He was immediately taken to District Hospital, Raigarh and thereafter, to the hospitals of Dr. Sunil Khemka, Dr. Varsha Jhanwar and Shree Nayarana Hospital, Raipur for his treatment. During the course of treatment, his right leg was amputated below knee and he undergone operation of his testicle.
3. Appellant has filed an application under Section 166 of M.V. Act before learned Claims Tribunal seeking compensation of Rs.18,58,840/- on different heads pleading therein that on the date of accident, he was working as Shiksha Karmi, earning Rs.7,000/- per month and due to motor accidental injuries, he suffered 50% permanent disability. He incurred heavy expenditure for his treatment and further expended huge amount towards artificial leg.
4. Non-applicants No.1 and 2 who are driver and owner of offending

vehicle did not appear before learned Claims Tribunal and were proceeded *ex parte*.

5. Non-applicant No.3/Insurance Company submitted its reply to claim application and denied the entire pleadings made therein. It was pleaded that on the date of accident, non-applicant No.1/driver of offending vehicle was not possessed with valid and effective driving licence; non-applicant No.2 was plying the offending vehicle without there being any valid permit, fitness certificate and other necessary certificates and documents. It was further pleaded that appellant/claimant suffered motor accidental injuries on account of his own negligence while driving the motorcycle and he was not possessed with valid and effective driving licence.
6. On appreciation of pleadings and evidence brought on record by respective parties, learned Claims Tribunal held that claimant suffered grievous injuries due to rash and negligent driving of offending vehicle by non-applicant No.1; awarded Rs.10,53,900/- as total compensation and fastened the liability to satisfy the amount of compensation upon the non-applicants jointly and severally.
7. Mr. Abhishek Saraf, learned counsel for appellant/claimant submits that learned Claims Tribunal has awarded very meagre amount of compensation in the facts and circumstances of the case. He further submits that appellant/claimant has suffered amputation of his right leg below knee, but learned Claims Tribunal has not awarded any amount towards loss of amenities and enjoyment in life and awarded

meagre amount of compensation towards pain and suffering and travelling expenses. It is contended that learned Claims Tribunal has not awarded any amount towards loss of income during the period of treatment at different hospitals considerable for long time, attendant, special diet and lodging/boarding, etc. It is further contended that learned Claims Tribunal has not awarded entire medical bills. He also submits that appellant/claimant took further treatment at Shree Narayana Hospital, Raipur of the same leg, due to complications and now it is amputated from above knee. Appellant/claimant has taken estimate of artificial limb, which is required now in substitution of right leg above knee and estimated cost of which is Rs.24,38,037/-. He further argued that medical bills/discharge ticket and estimate issued by Ottobock are filed along with an application under Order 41 Rule 27 of the CPC. Lastly, he submits that amount of compensation be enhanced suitably taking into considering the medical bills of the year 2018, chemist shops' bills and estimated cost of artificial limb.

8. Per contra, Mr. Tessy Abraham, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal while taking note of the fact that appellant/claimant was working as Shiksha Karmi, he has not lost his job, income of appellant/claimant has not been affected due to permanent disability, rightly not awarded any amount towards loss of earning capacity due to permanent disability. He pointed out that learned Claims Tribunal has awarded entire medical bills produced by the appellant/claimant,

Rs.20,000/- towards pain and suffering and Rs.20,000/- towards transportation allowance. Claims Tribunal awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference. It is further contended that additional document/evidence cannot be taken into consideration in the appeal, where treatment bills are of the year 2018, whereas the accident took place on 13.07.2012. It is further contended that if at all documents filed by the appellant/claimant in appeal is required to be considered for any reason, then those documents are required to be proved in accordance with law granting opportunity to respondent No.3 to cross-examine the witness to be examined by the appellant/claimant to prove the additional documents and prayed that the appeal be dismissed.

9. We have heard learned counsel for the respective parties and perused the record carefully.
10. This appeal is filed on behalf of the injured claimant against the injuries and permanent disability suffered by him. The insurance of the offending vehicle and the liability fastened upon by the Claims Tribunal is not in dispute.
11. The submission of learned counsel for the appellant/claimant that learned Claims Tribunal has not awarded just amount of compensation and amount of compensation on the head of loss of amenities and enjoyment in life, compensation towards other non-pecuniary damages as well as loss of income during the period of

treatment, lodging/boarding and special diet, etc. are not awarded is concerned, the Hon'ble Supreme Court has issued guidelines for awarding amount of compensation in personal injury cases in case of **R. D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others** reported in **(1995) 1 SCC 551** and **Raj Kumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343**.

12. Learned Claims Tribunal in paragraph-9 of the impugned award has considered the evidence wherein appellant/claimant has stated that his right leg was amputated below knee and produced medical documents showing the nature of treatment and expenditure incurred by him at different hospitals as also the disability certificate (Ex.P/19). Learned Claims Tribunal considering the occupation of appellant/claimant to be a Shiksha Karmi held that appellant/claimant did not suffer any loss of income due to permanent disability and calculated the amount of compensation of Rs.10,53,900/- including medical expenses of Rs.10,13,900/-.
13. Appellant/claimant before this Court has placed on record the documents i.e. final bill, discharge ticket and pharmacy bills of Shree Narayana Hospital, Raipur and further, estimated cost of artificial limb to be affixed above knee. The documents of treatment as appearing from discharge summary with application for additional evidence shows that appellant/claimant took treatment as inpatient from 01.06.2018 to 05.06.2018, whereas date of accident was 13.07.2012 and disability certificate (Ex.P/19) was dated 26.11.2012. In view of the above facts, we are of the considered

view that appellant/claimant is required to prove the medical bills of the year 2018 to co-relate with the motor accidental injuries suffered by him on 13.07.2012. Estimated cost of artificial limb is also required to be proved by producing reliable piece of evidence.

14. In view of above, we are of the view that additional evidence cannot be considered without proving the documents as placed on record in accordance with law. As it is an appeal arising out of the motor accidental claim case, we find it appropriate to remit back the case to learned Claims Tribunal for deciding the quantum of amount of compensation to be awarded to the appellant/claimant afresh. However, we affirm the finding recorded by learned Claims Tribunal with regard to other issues. Learned Claims Tribunal shall decide the amount of compensation, for which, the appellant/claimant is entitled for after providing an opportunity to all the parties concerned to place on record further documentary and oral evidence. While deciding the claim application and fixing the amount of compensation, learned Claims Tribunal shall keep in mind the aforementioned judgments passed by Hon'ble Supreme Court. It is made clear that this Court has not made any observation on merits of the additional evidence. The learned Claims Tribunal shall consider it on its own merits based on evidence in accordance with law.
15. Accordingly, the appeal is allowed. Impugned award to the extent of the quantum of compensation is set aside and the matter is remanded back to the Claims Tribunal with a direction to pass an

award afresh as directed above, in accordance with law, after providing adequate opportunity of hearing to all the parties. Since the accident is of the year 2012, we direct learned Claims Tribunal to decide Claim Case No.17 of 2013 as expeditiously as possible, preferably within 'five months' from the date of receipt of certified copy of this judgment.

16. Original record of Claim Case No.17 of 2013 be sent back forthwith along with copy of this judgment.

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

Sd/-
(Parth Prateem Sahu)
Judge