

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 631 of 2015**

- Chandrakishor Kamde S/o Late Lakhan Lal Kamde Aged About 48 Years R/o Ward No. 11, Chhuikhadan, tahsil - Chhuikhadan District- Rajnandgaon, Chhattisgarh.

-----Appellant**VERSUS**

1. Jalesh @ Jaleshwar S/o Sukhchain Gandharv, aged about 34 Years R/o Pandatrai Tahsil- Pandariya, District- Kabirdham, Chhattisgarh.
2. Mahant Das Barmate S/o Lakshman Das Barmate aged about 42 Years R/o Pandatrai Tahsil- Pandariya, District- Kabirdham, Chhattisgarh.
3. Iffco Tokiyo General Insurance Company Ltd, Branch Office 345-347-3rd Floor, Lal Ganga Shopping Mall Raipur, District- Raipur, Chhattisgarh.
4. Rajkumar Pal S/o Jagesar Pal aged about 21 Years R/o Ward No. 15 Chhuikhadan District- Rajnandgaon, Chhattisgarh.
5. Sukhi Ram S/o Deendayal aged about 33 Years R/o Indira Gandhi Ward Chhuikhadan District- Rajnandgaon, Chhattisgarh.
6. National Insurance Company Ltd. Kamthi Line Rajnandgaon, Chhattisgarh.

----Respondents

For Appellant	:	Mr. C.K. Kesharwani, Advocate
For Respondent 3	:	Mr. Tessy Abraham, Advocate on behalf of Mr. Amrito Das, Advocate.
For Respondent 4	:	Mr. Abhishek Sharma, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, J.****15/03/2021**

1. Challenge in this appeal is to the award dated 20.04.2015 passed by Additional Motor Accident Claims Tribunal, Rajnandgaon, Chhattisgarh (for short "Claims Tribunal"), in Claim Case No. 40/09, whereby learned Claims Tribunal allowed the application for grant of compensation in part and awarded Rs. 41,767/- as total compensation in an injury case.

2. Facts of the case necessary for disposal of this appeal are that, on 15.12.2008, appellant went to Dantewada, to attend engagement ceremony of the son of his friend Alauddin, on vehicle Tata Spacio bearing registration no. CG04-H-6067. After attending the ceremony, when he was returning back along with other persons on the said vehicle to Chhuikhadan and reached near village Fattepur, one another four-wheeler bearing registration no. CG04-JB-1683 (hereinafter referred to as "offending vehicle"), driven by non-applicant 1 rashly and negligently dashed the vehicle in which the appellant was travelling and caused accident. In the said accident, appellant suffered grievous injuries over his wrist of right hand, ribs and right shoulder. Upon diagnosis, it is detected that the appellant suffered fracture injury of 3rd rib (posterior) and fracture of distal end of Radius.
3. Appellant filed an application under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs. 1,90,900/-, pleading therein that prior to the date of accident, he was engaged in agricultural work but due to disability suffered by him on account of motor accidental injuries, he could not able to supervise his agricultural fields. Initially, the claim application was filed against Respondent 1 to 3, who are driver, owner and insurer of offending vehicle, subsequently, the driver, owner and insurer of Tata Spacio vehicle on which appellant was travelling, were also impleaded as party Non-applicant.
4. Non-applicants 1 and 2/ Respondents 1 and 2 submitted reply to the claim application, pleading therein that non-applicant 1 was going to Rajnandgaon on the offending vehicle, accident was a result of rash and negligent driving of Tata Spacio by non-applicant 4. Amount of compensation is highly exaggerated. Appellant has not suffered any permanent disability. Non-applicant 1 was possessed with valid and effective driving licence and the offending vehicle was insured with non-

applicant No.3.

5. Non-applicant 3/ Insurance Company of offending vehicle submitted reply to the claim application pleading that, there is no fault on the part of non-applicant 1 in the accident. Drivers of both the vehicles were not possessed with valid and effective driving licence. Four persons were traveling on offending vehicle which was more than the seating capacity and as per the insurance policy, risk of the driver only, is covered under the policy.
6. Non-applicants 4 and 5/ driver and owner of Tata Spacio vehicle, submitted reply to the claim application and pleaded that the accident was a result of rash and negligent driving of non-applicant 1. Non-applicant 1 was possessed with valid and effective driving licence and it was insured with non-applicant 3, as such, the application be dismissed against non-applicants 4 and 5.
7. Non-applicant 6/ insurer of Tata Spacio vehicle submitted reply to claim application, while denying the pleadings made therein, further pleaded that the appellant/ claimant has not suffered any permanent disability. Drivers of both the vehicles were not possessed with valid and effective driving licence. Vehicle was being used as Taxi on which 14-15 persons were traveling, as such, vehicle was plied in breach of policy conditions, hence the Insurance Company of Tata Spacio vehicle is not liable for payment of any amount of compensation.
8. Learned Claims Tribunal, on appreciation of pleadings and evidence brought on record by the respective parties, held that the accident was result of rash and negligent act on the part of drivers of both the vehicles. Appellant suffered grievous injuries resulting in 8% permanent disability. Breach of policy conditions with regard to policy of Tata Spacio vehicle has been found to be proved and awarded Rs. 41,767/- as total compensation.

9. Mr. C.K. Kesharwani, learned counsel for the appellant/ claimant submits that the Tribunal overlooking the nature of injuries, permanent disability certificate Ext. P-16, has awarded meagre amount of compensation. Tribunal has not awarded proper amount of compensation towards pain and sufferings, special diet, transportation and no amount of compensation is awarded under the head of loss of income during the period of treatment, loss of amenities and joy and life. He further submitted that the Tribunal erred in arriving at a finding that the appellant suffered only 8% loss of earning capacity without assigning any reason to come to such a conclusion when there is disability certificate issued by Medical Board, proved by the doctor stating 40% permanent disability to appellant. He submits that the Claims Tribunal also erred in assessing income of appellant as Rs. 3,000/- per month only.
10. Mr. Tessy Abraham, learned counsel for Respondent 3 submits that the Claims Tribunal taking into consideration the nature of injuries, disability certificate, evidence of doctor and also nature of occupation, has passed just award in the facts and circumstances of the case which does not call for any interference. He further submits that the permanent disability mentioned in the disability certificate is only with regard to the affected part of body and it cannot be said to be the permanent disability of whole body.
11. Mr. Abhishek Sharma, learned counsel representing Respondent 4/ driver of Tata Spacio, submits that the quantum of amount of compensation is under challenge. He will support the award passed by the Claims Tribunal.
12. We have heard learned counsel for the respective parties and also perused the record of claim case.
13. Perusal of the award would show that the Claims Tribunal has awarded Rs. 37,440/- towards loss of earning, Rs. 4,327/- towards medical expenses. No compensation is awarded on any other head. To appreciate

the submissions made by the learned counsel for the appellant that the Claims Tribunal erred in arriving at a finding that the appellant suffered 8% loss of earning capacity, perusal of Ext. P-9 which is x-ray report of appellant of District Hospital, Rajnandgaon, would show that the appellant suffered fracture of 3rd rib (posterior), fracture of distal end of radius. Medical Board issued the disability certificate Ext. P-16, wherein the permanent disability has been shown to be 40% of non-progressive nature. To prove the disability certificate, appellant examined Dr. Y.K. Tiwari, AW-2. In his evidence, he categorically stated that he found stiffness over his right wrist and right shoulder, assessed 40% permanent disability of non-progressive nature. Claims Tribunal though has accepted the disability certificate Ext. P-16 but while considering that the disability mentioned therein, it cannot be said to be for whole body and has held that the appellant suffered 8% permanent disability for the whole body. For arriving at such a conclusion, learned Claims Tribunal has not given any reason but held only on the basis of presumptions. Tribunal has not considered the permanent disability certificate and the evidence of doctor who is expert on the subject. Even if, the disability from overall assessment can be ascertained for a particular part of body then also for ascertaining loss of earning capacity due to permanent disability is to be calculated keeping in mind part of the body which suffered disability and nature of occupation and work of claimant.

14. In the case at hand, Tribunal has held the appellant to be an agriculturist who is having small piece of land as per Ext. 67. The person involved in agricultural work has to do all nature of works manually for which equal efficiency in both the hands are required. If for any of the reason, there is restriction in the use of any of the hands with equal efficiency then the person engaged in the agricultural work might not be able to do all the works. Taking into consideration, the nature of occupation, part of body

affected where the Medical Board found permanent disability, we find it appropriate to hold the loss of earning capacity of appellant to be 20% instead of 8% as held by the Tribunal. It is ordered accordingly.

15. Other submission made by learned counsel for the appellant that the Tribunal erred in assessing income of the appellant to the tune of Rs. 3,000/- per month only. Perusal of award would show that on the date of accident, appellant was aged about 48 years and an able bodied person. Looking to the age of appellant and nature of occupation, we find it appropriate to assess his income on notional basis as Rs. 4,000/- per month, treating him to be a manual labourer. Appellant will also be entitled for the compensation towards pain and sufferings, loss of amenities and joy in life, transportation expenses, special diet and loss of income during the period of treatment. Looking to the nature of injury suffered by the appellant, we are of the view that the appellant might not be able to work for a period of 5 months, hence, he is entitled for Rs. 20,000/- (Rs.4000x5) towards loss of income during the treatment period. As the appellant has suffered loss of earning capacity due to permanent disability which will remain with him for whole of his life, he is also entitled for the amount of compensation under the head of future prospects as held by the Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, ie. an addition of 25% of the established income as the appellant is aged between 40-50 years.
16. For the foregoing reasons, the amount of compensation to be awarded to the appellant requires re-computation and re-calculation which is as under.
17. As we have held income of appellant as Rs. 4,000/- per month ie. Rs. 48,000 per annum. By adding 25% of the established income to the yearly income of appellant towards future prospects, total income of the appellant will come to Rs. 60,000/- [Rs.48,000+25% of Rs.48,000]. We

have held that the appellant suffered 20% loss of earning capacity, hence, the yearly loss of earning capacity will come to Rs. 12,000/- [20% of Rs.60,000]. As on the date of accident, appellant was between the age group of 40-50 years, appropriate multiplier would be 13 which makes total loss of income as Rs. 1,56,000/- [Rs.12,000x13]. Apart from the above, appellant will be further entitled for Rs. 20,000/- towards pain and sufferings, Rs. 25,000/- towards loss of amenities and joy and life, Rs. 10,000/- towards special diet, transportation, attendant etc and Rs. 20,000/- towards loss of income during treatment period as held above.

18. Now the appellant/ claimant will be entitled for total sum of **Rs. 2,31,000/-** [Rs.1,56,000 +Rs.20,000 +Rs.25,000 +Rs.10,000 +Rs.20,000] as compensation instead of Rs. 41,767/- as awarded by the Claims Tribunal. Aforementioned amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till its realization. Other part of the award with regard to apportionment of compensation and liability fixed by the Tribunal shall remain intact.
19. Resultantly, appeal is allowed in part and the impugned award passed by the Claims Tribunal stands modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
 Judge