

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 44 of 2015**

- Jai Singh Verma, S/o Bankelal Caste Lodhi, aged about 55 years, R/o village Atariya, Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh
-----Appellant

VERSUS

1. Nehru Ram S/o Bhageetram Verma, vehicle owner and driver, aged about 28 years, R/o village Patar Jhori, Police Station Deokar, Tahsil Saja, District Durg Chhattisgarh

-----Owner and Driver Motor Cycle No. CG04CA0273

2. Arun Kumar S/o Tilakram Verma, Driver, aged about 35 years, R/o Bhinpuri, Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh

-----Driver of Motor Cycle No. CG08F8940

3. Harprasad Verma S/o Jaisingh Verma, aged about 30 years, R/o Bazar Atariya, Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh

-----Owner of Motor Cycle No. CG08F8940

4. Branch Manager, Shriram General Insurance Company, Branch Durg, Tahsil and District Durg Chhattisgarh

-----Insurer of Motor Cycle No. CG04CA0273**-----Respondents**

For Appellant	: Mr. Pravin Dhurandar, Advocate
For Respondent 1	: Mr. Abhishek Sharma, Advocate
For Respondent 2&3	: None.
For Respondent 4	: Mr. S.S. Rajput, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J.****15/01/2021**

1. Appellant/ claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 17.10.2014, passed by learned Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon Chhattisgarh (for short "Claims Tribunal"), in Claim Case no. 98/2011 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 and awarded Rs. 1,27,555/- as total compensation and

apportioned the said compensation to the extent of 50% upon the owner, driver and insurer of both the motor cycle involved in the accident.

2. Facts relevant for disposal of this appeal are that, on 14.04.2011, appellant along with his wife was travelling on a motor cycle bearing registration No. CG08-F-8940 owned by Respondent 3 and driven by Respondent 2. On the way, when they reached near village Vicharpur, one another motor cycle bearing registration no. CG04-CA-0273 (henceforth "offending vehicle") driven by non-applicant 1/ Respondent 1, dashed the motor cycle on which appellant was traveling. In the said accident, appellant suffered fracture injury on his femur bone along with other injuries. Accident was reported to concerned Police Station by Respondent 1/ non-applicant 1, based on which crime No. 72/11 was registered. Appellant was taken to Sector-9 Hospital at Bhilai, from where he was referred to Mekahara Hospital, Raipur, where he underwent operation. Appellant filed an application under Section 166 of the Act of 1988, pleading therein that on account of motor accidental injuries suffered by him, he became permanently disabled and not able to do his routine work, he is unable to earn his livelihood and claimed Rs. 11,59,350/- as compensation.
3. Non-applicant 1/ Respondent 1 (owner-cum-driver of offending vehicle) submitted reply to the claim application, pleading therein that the accident was not a result of his negligence but was on account of negligence on the part of non-applicant 2/ Respondent 2/ driver of motor cycle on which appellant was traveling. On the date of accident, he was possessed with valid and effective driving licence and his vehicle (offending vehicle) was insured with non-applicant 4/ Respondent 4.
4. Non-applicant 4/ Respondent 4/ Insurance Company of offending vehicle, submitted reply to the application pleading therein that on the date of accident, non-applicant 1 was not possessed with valid and effective

driving licence. Accident was a result of negligence on the part of non-applicant 2/ driver of motor cycle on which appellant was traveling. There was contributory negligence of both the drivers in the accident as the accident was head-on-collision of two motor vehicles.

5. Non-applicant 2 and 3/ Respondent 2 and 3, who are driver and owner of motor cycle on which appellant was traveling submitted reply to the claim application, pleading therein that the accident was on account of rash and negligent driving of offending vehicle by non-applicant 1/ Respondent 1. They have admitted the pleading of appellant with regard to nature of work ie. agriculturist and tailor and also admitted the pleadings made therein.
6. Learned Claims Tribunal, upon appreciation of pleadings and evidence brought on record by respective parties, held that on account of negligent driving of offending vehicle by non-applicant 1, applicant/ appellant suffered grievous injuries resulting in permanent disability affecting loss of earning capacity to the extent of 8%. Held contributory negligence of drivers of both the vehicles, awarded Rs. 1,27,555/- as total compensation and apportioned the liability of satisfying the amount of compensation to the extent of 50% each between Respondent 1 and 4 for one part and Respondents 2 and 3 the other part.
7. Mr. Pravin Dhurandar, learned counsel for appellant submits that learned Claims Tribunal has awarded meagre amount of compensation; income of appellant is assessed on lower side ie. Rs. 36,000/- per annum only, overlooking to the age of appellant to be 55 years and date of accident ie 14.04.2011. He submits that appellant is having 9.65 acre of agricultural land in his name and now for the agricultural work, he has to engage another person/ labourer on daily wage. Claims Tribunal has not awarded any amount of compensation on other non-pecuniary damages and awarded Rs. 2,000/- only towards special diet and Rs. 1,000/- towards transportation expenses. It is further contended that the appellant has

placed on record, disability certificate as Ext. P-107 issued by District Medical Board, showing permanent disability to the extent of 40% but the Claims Tribunal erroneously arrived at a finding that appellant suffered only 8% loss of earning capacity. The said finding is perverse in view of the evidence of doctor AW-2. Lastly, he contended that the Claims Tribunal has not considered that the Claim application is filed by pillion rider and not by driver of motor cycle on which appellant was traveling. It was composite negligence and the appellant can recover the entire amount of compensation from any of the owner and insurer of motor cycle out of two. Claims Tribunal ought not to have apportioned the liability between the owner, driver and insurer of both the vehicles.

8. Mr. Abhishek Sharma, learned counsel for Respondent 1 would support the impugned award passed by learned Claims Tribunal and submit that on the date of accident, Respondent 1 was having a valid and effective driving licence and the vehicle was insured with Respondent 4.
9. Mr. Sachin Singh Rajput, learned counsel for Respondent 4/ Insurance Company submits that the quantum of amount of compensation awarded by Claims Tribunal is just and proper in the facts and circumstances of the case. He further pointed out that looking to the cause title of impugned award appellant/ claimant is father of Respondent 3/ non-applicant 3, applicant was traveling on a motor cycle owned by his son and in this circumstance, submission with regard to pay and recover of learned counsel for appellant is not sustainable. He submits that the award passed by Claims Tribunal is just and proper and does not call for any interference.
10. We have heard learned counsel for respective parties and also perused the record of Claim Case.
11. So far as the first submission made by learned counsel for appellant with regard to quantum of amount of compensation is concerned, perusal of

medical documents available on record would show that appellant suffered two fracture injuries ie. on femur right and fracture on patela right as mentioned in Ext. P-17. He was admitted in Sector-9 Hospital on 14.04.2011 and discharged on 15.04.2011. He took treatment at Mekahara Hospital, Raipur, thereafter, he took treatment at different hospitals. Claims Tribunal overlooking the aforementioned medical documents available on record, had not awarded any amount of compensation under the head of pains and sufferings, loss of amenities and joy in life, attendant etc. Claims Tribunal has awarded under the head of loss of income, medical expenses, vehicle repairing charges, nutritious diet and traveling expenses. In the considered opinion of this Court, appellant is also entitled for the amount of compensation under the head of pain and sufferings, and towards loss of amenities and joy in life.

Claims Tribunal has assessed income of appellant as Rs. 3,000/- per month, which, looking to the age of appellant on the date of accident and considering other factors like cost of living, wage structure, we are of the opinion that the Claims Tribunal assessed monthly income of appellant, is on lower side.

12. Considering the aforementioned relevant factors, we find it appropriate to reckon the income of appellant as Rs. 4,000/- per month. Claims Tribunal has not awarded any amount towards loss of income during the period of treatment, taking into consideration the entire facts and circumstances of the case, age of appellant and nature of injuries leading to permanent disability on right thigh, we are of the opinion that the appellant is also entitled for loss of income during the period of treatment for a period of 5 months. Claims Tribunal has assessed only 8% loss of earning capacity in the facts of the case whereas doctor has opined 40% permanent disability in the disability certificate Ext. P-107. True it is that Doctor AW-2 in the evidence has stated that percentage of disability mentioned in the

certificate is only with regard to affected parts of body and not for whole body but even then looking to the nature of occupation being agriculturist and tailor as pleaded, and permanent disability of leg(Rt) we are of the view that the Claims Tribunal erred in assessing loss of earning capacity on lower side. Tribunal has not assigned any proper reason for arriving at a conclusion that the appellant suffered only 8% loss of earning capacity. For a person who is not in occupation of table work but working in the fields will definitely affect more than that as assessed by Tribunal. Appellant suffered permanent disability on one of the limbs. Working and supervision of agricultural field is not in a plain area but it requires movement on uneven surface as well, hence, we find it appropriate to assess loss of earning capacity as 10% instead of 8%. It is ordered accordingly.

13. For the foregoing reasons, we find it appropriate to re-calculate and re-compute the amount of compensation which is as under.
14. Income of the appellant has been assessed as Rs. 4,000/- per month ie. Rs. 48,000/- per annum. As per the material available on record, appellant was 55 years of age on the date of accident, hence, there will be addition of 10% of the established income towards future prospects as per the rulings of Hon'ble Supreme Court in **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**. Upon adding 10% in the established income of appellant, yearly income will come to Rs. 52,800/- [Rs.48,000+10% of Rs.48000]. Appropriate multiplier, as per the law laid down by Supreme Court in **Sarla Verma & others v. Delhi Transport Corp. & anr.** reported in **(2009) 6 SCC 121**, will be 9 instead of 8 as applied by Claims Tribunal. Upon applying multiplier of 9 to yearly income, total income will come to Rs.4,75,200/- [Rs.52,800x9]. As we have held that appellant suffered loss of earning capacity to the extent of 10%, hence, loss of earning capacity will come to Rs.47,520/- [10% of

Rs.4,75,200]. Apart from loss of future income, appellant is also entitled for loss of income during the period of treatment for a period of 5 months which comes to Rs. 20,000/- (Rs.4000x5), Rs. 25,000/- towards pain and sufferings, Rs. 25,000/- towards loss of amenities and joy in life. Appellant is also entitled for Rs. 1,01,515/- towards medical expenses and vehicle repairing charges, Rs. 2,000/- towards nutritious diet, Rs. 1,000/- towards attendant for a period of two months and Rs.5,000/- towards transportation.

15. Now the appellant-claimant is entitled for total sum of **Rs. 2,27,035/-** [Rs.47,520+Rs.20,000+Rs.25,000+Rs.25,000+Rs.1,01,515+Rs.2,000+Rs. 1,000 + Rs.5,000] as compensation instead of Rs.1,27,555/-. The said amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization.
16. So far as, the other submission made by learned counsel for appellant with regard to apportionment of amount of compensation between the owner, driver and insurer of two motor cycles is concerned, contributory negligence of drivers of both the motor vehicles to the extent of 50% as assessed by Claims Tribunal is not put to challenge by any of the drivers and owner of motor vehicles, hence, the said finding recorded by Tribunal is affirmed. With regard to apportionment of amount of compensation is concerned, true it is that the appellant could claim entire amount of compensation being pillion rider, from one of the joint tortfeasors, or from both, if both the drivers and owners are impleaded as party. But looking to the peculiar facts of the case that the appellant is father of owner of one of the vehicles on which he was traveling, we are not inclined to accept the prayer made by learned counsel for appellant and more so, when drivers and owners of both vehicles are impleaded as party respondents.
17. Other aspect of the case is that the Claims Tribunal has awarded penal interest @ 9% p.a. if the amount of compensation is not deposited within a

period of two months. Award of interest as envisaged under Section 171 of the Act of 1988, there is no provision under the Act to award penal interest, hence, the award of penal interest by Claims Tribunal is set aside and the appellant will be entitled for interest @ 6% p.a. as held above.

18. In the result, appeal is allowed in part. Appellant is entitled for total sum of **Rs.2,22,035/-** as compensation instead of Rs.1,27,555/- as awarded by Tribunal. Other conditions of the award shall remain intact.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge