

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 17.03.2021

Judgment pronounced on 25.03.2021

MAC No. 591 of 2015

- The Chief Municipal Officer, Nagar Panchayat Patan, Distt. Durg Chhattisgarh

---- Appellant/Owner

Versus

1. Sukh Chand Dhimar, S/o Shatrughan Dhimar Aged About 25 Years, R/o Indira Nagar, Patan, District Durg Chhattisgarh
2. Kalanath Verma, S/o Salikram Verma Aged About 33 Years, R/o Village Matiya, P.S. And Tahsil Patan, District Durg Chhattisgarh

----Respondents

For Appellant	: Shri MPS Bhatia, Advocate
For Respondent-1	: Shri Praveen Durandhar, Advocate
For Respondent- 2	: None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Correctness and sustainability of the award dated 16.02.2015 passed by the 7th Additional Motor Accident Claims Tribunal, Durg (for short, 'Claims Tribunal') in Claim Case-110 of 2013 is put to challenge in this appeal, whereby learned Claims Tribunal allowed application of claimant in part and awarded Rs.2,72,813/- as total compensation in an injury case.
2. Facts relevant for disposal of this appeal are that on 06.04.2012, Sukhchand Dheemar was working as a labourer in under construction accommodation of one Banwari Sharma. At 11.30 pm the Tractor Water Tanker

of NA2 bearing No CG 07 B 3202 (hereafter, referred to as 'offending vehicle') came there and NA1, Driver of offending vehicle called Sukhchand Dheemar and asked him to remove attachment of Tractor with Trolley. When Sukhchand Dheemar was removing the attachment/connecting rod of Tractor, NA1 drove the vehicle rashly and negligently, due to which the connecting rod fell over the right leg of Sukhchand Dheemar, as a result he suffered grievous injury on his right leg. He was immediately taken to the Primary Health Centre, Patan, District Durg, from where he was referred to District Hospital, Durg. The family members of Sukhchand Dheemar took him to Gayatri Hospital, Raipur, where during the course of treatment, four toes of his right foot except the little toe were amputated. Accident was reported to Police Station Patan, based upon which Crime No.118 of 2012 was registered for offences punishable under Sections 279, 337 and 338 of IPC against NA1, driver of offending vehicle.

3. Sukhchand Dheemar filed an application under Section 166 of the Motor Vehicle Act, 1988 seeking compensation of Rs.9,58,000/- pleading therein that prior to the date of accident, he was working as labourer and earning Rs.150/- per day. On account of motor accidental injuries, he has suffered permanent disability on his right leg and is unable to do the work of labourer.

4. NA 1 and 2, Driver and Owner of offending vehicle submitted reply to the claim application, denying the entire facts pleaded therein. They denied the fact of accident with the offending vehicle owned by NA2 and driven by NA1, and also permanent disability of claimant. They have pleaded that as per pleadings, accident took place on 06.04.2012, which itself shows that the claimant has prepared false and fabricated case against NA1 and NA2. Based on the aforementioned pleadings, it was pleaded that NA1 and NA2 are not liable for

payment of any amount of compensation and prayed for dismissal of the claim application.

5. Learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties, held that the claimant suffered motor accidental injuries on account of rash and negligent driving of offending vehicle by NA1; claimant suffered permanent disability; upon considering income of the claimant as Rs.3,000/- per month, assessed loss of earning of claimant to the extent of 30% and awarded total amount of compensation of Rs.2,72,813/-, to be paid by NA1 and NA2, jointly and severally.

6. Shri MPS Bhatia, learned counsel for the appellant/Owner submits that learned Claims Tribunal erred in arriving at a finding that the offending vehicle owned by NA2 and driven by NA1 is involved in the accident. He submits that in fact, the claimant failed to prove the injuries suffered by him on 06.04.2012 in an accident caused by the offending vehicle due to rash and negligent driving of NA1, driver. Claimant has not placed on record any document to show that offending vehicle of Nagar Panchayat, District Durg was called by Banwari Sharma to his under construction building. Claimant has not examined any of his co-labourers or Banwari Sharma under whom he was working as labourer. He further pointed out that the accident took place on 06.04.2012, claimant took treatment from 07.04.2012 to 19.04.2012 at Gayatri Hospital, Raipur, but even then, FIR was lodged only on 10.09.2012 ie after delay of about five months, which itself shows that offending vehicle has been falsely implicated only to seek compensation. He submits that in absence of the evidence and proof with regard to involvement of offending vehicle, learned Claims Tribunal ought not to have allowed claim application, fastening liability upon NA1 and NA2 jointly and

severally. Shri Bhatia further pointed out that claimant has not placed on record any documentary evidence to show that he took treatment immediately after the accident.

7. Shri Praveen Durandhar, learned counsel for respondent-1/claimant submits that in claim application, claimant very categorically pleaded about the date, time and manner in which the accident took place. Registration number of offending vehicle was also mentioned in the application. In the motor accident, respondent-1 suffered grievous injuries resulting in amputation of toes of his right foot, except little toe. Respondent-1/claimant on account of amputation of his four toes, suffered permanent disability and unable to do the work as labourer with same efficiency, and thereby suffered loss of earnings. Claimant is a poor illiterate villager who was engaged as labourer. FIR was lodged and upon investigation Police filed charge-sheet against NA1 which itself is sufficient to prove that the offending vehicle driven by NA1 was involved in the accident. Registration of Criminal case against NA1 has not been challenged before any other Court or forum by NA1 and NA2. He further pointed out that except denial of pleadings in the reply to claim application, NA1 and NA2 have not brought on record any evidence before the claims Tribunal to prove their pleadings. Even NA1, driver of offending vehicle, did not enter into witness box to prove the pleadings. Pleadings in itself will not be treated as evidence. The claimant in support of motor accidental injuries suffered by him has placed on record medical documents as Ex.P8, and Ex.P9 collectively. In Ex.P7 it was mentioned that injuries over his right foot are with the offending vehicle. Claimant was immediately taken to the Government Hospital, Patan on 06.04.2012 ie on the date of accident. The claimant, thereafter, took treatment at Gayatri Hospital,

from 07.04.2012 to 19.04.2012 as inpatient. Document available on record clearly shows amputation of four toes of right foot and thereby claimant has proved his case. He further submits that so far as the submission made by learned counsel for the appellant with regard to award of compensation on higher side is not sustainable.

8. The respondent/claimant has filed cross-objection challenging the quantum of compensation awarded by the learned Claims Tribunal *inter-alia* on the grounds that monthly income of claimant is assessed on lower side, no amount of compensation towards future prospects has been awarded and the ground raised with regard to contributory negligence is also not sustainable as appellant/NA2 has not brought on record any evidence in this regard before the Claims Tribunal.

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

10. So far as the ground raised by learned counsel for the appellant/Owner with regard to false involvement of offending vehicle is concerned, claimant in support of his claim application, has placed on record copy of FIR as Ex. P1, Final Report under Section 173 of CrPC as Ex.P2. Though the FIR was lodged only on 10.09.2012 in respect of an accident, which took place on 06.04.2012, the contents of FIR cannot be said to be false or fabricated. More so, when the Police after completion of investigation filed Final Report against NA1, driver of offending vehicle. There is no material available on record to show that the appellant/Owner at any point of time, challenged registration of criminal case.

Therefore, motor accident cannot be doubted merely on the ground that FIR has been lodged with some delay.

11. Hon'ble Supreme Court in case of **Ravi Vs Badrinarayan and other** , (2011) 4 SCC 693, has dealt with the issue with regard to delay in lodging the FIR and held thus:

“17. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

19. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. 21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.”

12. Claimant in support of his case, has placed on record documentary evidence ie document of Government Hospital, Patan, dated 06.04.2012 (Ex.P8), other medical prescriptions and documents of Gayatri Hospital showing his treatment as inpatient from 07.04.2012 to 19.04.2012. These medical documents available on record as Ex.P8 and Ex.P9 have not been controverted by the appellant/Owner by producing any impeaching evidence on record. These documents available on record clearly show that the claimant took treatment

immediately after the accident on 06.04.2012 at Patan and thereafter, from 07.04.2012 till 19.04.2012 at Gayatri Hospital, Raipur as inpatient. Document Ex.P9 would further show that X-ray of right foot of claimant was done on 07.04.2012.

13. In view of documentary evidence available on record with regard to the treatment taken by the claimant/respondent-1, the submission made by learned counsel for the appellant that there is no material to show that respondent/claimant has not taken treatment immediately after accident is not sustainable and it is hereby repelled.

14. For the foregoing reasons, taking into consideration the documents Ex.P1, Ex.P2, Ex.P8 & Ex.P9, the fact that registration of criminal case was not challenged and further considering that appellant has not examined any witness before the Tribunal controverting the above documents, we do not find any force in the submission of learned counsel for the appellant that offending vehicle owned by the appellant is not involved in the accident. The said submission of learned counsel is hereby repelled.

15. So far as the 2nd submission raised by learned counsel for the appellant that issue of contributory negligence has not been considered by learned Claims Tribunal is concerned, on going through the reply of NA1 and NA2, it is clear that appellant has not taken any such plea but for the plea of false implication of offending vehicle. Even the driver of offending vehicle has not entered into witness box.

16. In view of above, 2nd ground raised by learned counsel for the appellant is also repelled.

17. The last ground raised by learned counsel for the appellant is with regard to award of interest on higher rate of 9%.

18. Award of interest is to be considered taking note of date of accident from when the claimant becomes entitled for the award of compensation. The claimant suffered grievous injuries resulting into amputation of four toes of his right foot on 06.04.2012. Injured claimant filed claim application on 26.11.2012 which came to be decided on 16.02.2015.

19. Taking into consideration the date of accident, filing of claim application, the date of award, rate of interest prevailing on Fixed Deposit on that date and further that claimant is a poor labourer, we are not inclined to reduce the rate of interest awarded by learned Claims Tribunal ie @ 9% per annum from the date of filing of claim application till its realisation.

20. Now, we will deal with the cross objection filed by the claimant/respondent-1 seeking enhancement of compensation.

21. Learned counsel for respondent-1/claimant submits that the Tribunal erred in assessing income of respondent only as Rs.3,000/- per month, overlooking the facts such as date of accident ie 06.04.2012, age of claimant on the date of accident 22 years, and his occupation as labourer. He further pointed out that learned Claims Tribunal has not awarded any amount towards future prospects, overlooking the fact that even after awarding the amount of compensation towards loss of future income @ 30% due to permanent disability suffered by the

respondent/claimant. He further argued that Claims Tribunal has awarded consolidated sum of Rs.5,000/- towards loss of amenities and joy in life, Physical and mental pain, which in view of nature of injury and permanent disability suffered by the claimant, is on lower side.

22. Shri MPS Bhatia, learned counsel for the appellant submits that learned Claims Tribunal taking into consideration the entire facts and circumstances of the case, nature of injury and disability suffered by the claimant, has awarded higher amount of compensation.

23. Undisputedly, date of accident is 06.04.2012. Claimant/respondent-1 was aged about 22 years at the time of accident and working as labourer. Claimant being labourer, could not be able to prove his income as Rs.150/- per day, but then, for computing just amount of compensation, Courts/Tribunals have to consider income of victim on notional basis, based on nature of employment, wage structure, cost of living and such other relevant factors.

24. Taking into consideration entire facts and circumstances of the case, ie date of accident, cost of living, nature of occupation, we find it appropriate to reckon income of respondent-1/claimant as Rs.4,000/- per month and Rs.48,000/- per annum. When there is permanent loss of income/loss of earning capacity, which the injured/claimant have to suffer for whole of his life, then, there shall be an addition of amount towards future prospects as held by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others**, (2017) 16 SCC 680.

25. In case at hand, claimant on the date of accident, was aged about 22 years and not in permanent employment. Hence, there shall be addition of 40% of his established income in monthly income, to assess total income on the date of accident for the purpose of computation of just compensation.

26. Learned Claims Tribunal has awarded a consolidated sum of only Rs.5,000/- towards loss of amenities and joy in life, and pain and suffering, which is on lower side. Taking into consideration age of claimant, nature of his occupation and further that he has to live with the permanent disability suffered by him for whole of his life, we find it appropriate to award Rs.25,000/- for loss of amenities and joy of life and Rs.25,000/- for pain and suffering.

27. For the foregoing reasons, we find it appropriate to recalculate the amount of compensation as under.

a) Income of respondent/claimant has assessed by this Court as Rs.4,000/- per month and Rs.48,000/- per annum.

b) By adding 40% towards the yearly income, total yearly income comes to Rs.67,200/- $\{48000 + (48000 \times 40/100)\}$.

c) To the total yearly income, there shall be application of multiplier 18, which makes the total loss of income as Rs.12,09,600/- (67200×18)

d) As it is held that claimant suffered 30% loss of earnings, claimant is entitled for Rs.3,62,880/- $(1209600 \times 30/100)$ under the head of loss of earning.

e) Apart from the loss of earning, claimant will be further entitled for Rs.12,000/- towards loss of income during period of treatment for three months, Rs.47,213/- towards medical expenses, Rs.25,000/- for pain and suffering, Rs.25,000/- for loss of amenities and joy in life, Rs.2,600/- towards attendant, Rs.5,000/-for special diet, and Rs.9,600/- for transportation expenses.

28. Now, claimant shall be entitled for a total sum of **Rs.4,89,293/-** as total compensation. This total amount of compensation shall carry 9% interest from the date of filing of claim application till its realisation.

29. In the result,

- a) Appeal filed by the appellant/Owner of offending vehicle is dismissed; and
- b) Cross-objection filed by Respondent-1/ Claimant is allowed and impugned award passed by the Tribunal is modified to the extent as indicated herein above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge