NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1210 of 2014

Pradeep Kumar Haldar S/o Late Fani Bhushan Haldar Aged About 48 Years R/o Opposite To Shiv Mandir, Bircona Road, P.S. Koni, Distt. Bilaspur C.G.

---- Appellant

Versus

1. Durga Prasad Yadav. S/o Dallu Ram Yadav Aged About 26 Years R/o Pandri Dand, P.S. Udaypur, Distt. Sarguja C.G., Chhattisgarh
2. Keshwar Prasad S/o Late Lachchhan Ram Paikra Aged About 53 Years R/o Rakeli, Post- Jamdih, P.S. Udaypur, Distt. Sarguja C.G.
3. Branch Manager, The Oriental Insu.Co.Ltd., Branch Office- Near Ambedkar Chouk, Manendragarh Road, Ambikapur C.G.

---- Respondents

For Appellant:	Shri Rajesh Jain, Advocate.
For Respondents No. 1 & 2:	None, though served.
For Respondent No. 3:	Shri N. K. Malaviya, Advocate.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Order On Board

23.08.2018

1. This miscellaneous appeal has been preferred by the claimant under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') questioning the award dated 08.09.2014 passed by the Fourth Additional Member to the Court of First Additional Motor Accident Claims Tribunal, Bilaspur (hereinafter referred to as 'the Claims Tribunal') in Claim Case No. 55/2013 by which, the learned Claims Tribunal has awarded total amount of compensation to the tune of Rs. 1,96,500/- with 6% interest per annum from the date of filing of the claim petition till its realization.

2. Shri Rajesh Jain, learned counsel for the appellant submits that while passing the impugned award, the Claims Tribunal has committed an

illegality in not considering the medical bills (Ex.P-36 to Ex.P.-56) and erred further in not considering the bill (Ex.P.-57) of his staying at hotel at the time of his treatment and has thus erred in awarding unjust amount of compensation payable to him.

3. On the other hand, Shri N. K. Malaviya, learned counsel for the Respondent No. 3/The Oriental Insurance Company Limited while supporting the award impugned, submits that the Claims Tribunal has awarded just and proper compensation to him and therefore, the award impugned does not require to be interfered.

4. I have heard learned Counsel for the parties and perused the entire record carefully.

5. A claim enumerated Section 166 of the Act has been filed by the claimant-Pradeep Kumar Halder on account of the accident occurred on 08.01.2013 when he was going on his motorcycle to his institution. At the relevant time his vehicle was dashed vehemently from the opposite side by the offending vehicle "Bolero" bearing Registration No. C.G.-15 B-6712 owing to rashness and negligent driving of its driver, namely Durga Prasad Yadav, the respondent No. 1 herein, which was owned by Respondent No. 2-Keshwar Prasad and insured with the Respondent No. 3/The Oriental Insurance Company Limited. According to the claimant, he suffered permanent disability due to the alleged accident as occurred on 08.01.2013 and has claimed total compensation of Rs. 9,60,200/-.

6. The aforesaid claim was contested by Respondents No. 1 & 2, the driver and the owner of the offending vehicle, by submitting *inter-alia* that the alleged accident has been occurred because of the rashness and negligent driving of the appellant himself and, therefore, he is not entitled

to claim any amount of compensation from them. They submit further that since the vehicle in question was insured with the Respondent No. 3/The Oriental Insurance Company Limited, therefore, in case of any liability being fastened, the same will be indemnified by Respondent No. 3/The Oriental Insurance Company Limited.

7. The Respondent No. 3/The Oriental Insurance Company Limited has contested the said claim on the ground that the claimant himself was responsible for the alleged accident and as the offending vehicle was being driven by said Durga Prasad Yadav without holding any valid and effective driving license in utter violation of the terms and conditions of the insurance policy, therefore, the Respondent No. 3/The Oriental Insurance Company Limited cannot be held liable to indemnify the insured.

8. After considering the aforesaid pleadings and the evidence adduced by the parties, the learned Claims Tribunal has come to the conclusion that the alleged accident has occurred on 08.01.2013 at 10:30 A.M. on account of rashness and negligent driving of Respondent No. 1-Durga Prasad Yadav, the driver of the said offending vehicle “Bolero”. It held further that though the claimant was injured due to the said accident but has not suffered permanent disability due to the said accident as contended by him and held further that the driver of the offending vehicle was not driving the alleged vehicle in violation of the policy as alleged by the Insurance Company and, in consequence, while fastening the liability upon the Insurance Company, awarded total amount of compensation to the tune of Rs. 1,96,500/- with 6% interest per annum from the date of filing of the claim petition till its realization. Perusal of the record would, however, show that while passing the impugned award, the Claims Tribunal has omitted to

consider the relevant medical bills (Ex.P-36 to Ex.P.-56) which are of Rs. 1,10,119/- and likewise erred further in ignoring the bill (Ex.P.-57) of Rs. 2520/- in respect of his staying at hotel during his treatment. These bills (Ex.P.36 to P.57) are, therefore, should have been taken into consideration by the learned Claims Tribunal while passing the award under appeal. The findings of the learned Claims Tribunal are, therefore, required to be modified in this regard. I, therefore, modify the same by awarding further sum of Rs. 1,12,639/- (Rs.1,10,119 + Rs. 2,520 = Rs.1,12,639/-) after considering these bills, i.e., Ex.P.36 to Ex.P.57 omitted without any consideration by the learned Claims Tribunal at the time of passing the award impugned.

10. In view of the aforesaid facts and circumstances, the appeal is allowed in part and the claimant is entitled further sum of Rs. 1,12,639/- in addition to what was granted earlier by the Claims Tribunal. The said enhanced amount shall carry interest as per the direction issued by the Claims Tribunal. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Nikita