NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 693 of 2012

- Mannu Hotwani Through LRs

1a. Smt. Bhumika Hotwani, Wd/o Late Mannu Hotwani, aged about 37 years

1b. Piyush Hotwani, S/o Late Mannu Hotwani, aged about 14 years.

1c. Sahil Hotwani, S/o Late Mannu Hotwani, aged about 12 years.

Appellant/legal representatives 1b & 1c are minor hence impleaded through their natural guardian/mother appellant No.1 Smt. Bhumika Hotwani.

All R/o EWS 245 Vaishali Nagar Bhilai, P.S. Supela, Tah. & District- Durg, (CG)

---- Appellants

Versus

1. Derhadas Manikpuri S/o Tihayraj Manikpuri, R/o New Anand Nagar, Bhanpuri, Raipur, P.S. Khamtrai, Tahsil & District- Raipur (CG).
(Driver)
2. Krishna Kumar Sahu S/o Purushottam Sahu, R/o Tikrapara, Siddharth Chowk, Raipur, Tah. & Distt. Raipur (C.G.)
(Insured)
3. New India Insurance Company Ltd. Through- Divisional Manager, Thakkar Chambers, G.E. Road, Power House, Bhilai, District Durg (CG).
(Insurer)

---- Respondent

For Appellant	:	Shri Amiyakant Tiwari, Advocate.
For Respondent	:	Shri Hanuman Prasad Agrawal, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

26/11/2018

1. This appeal is preferred against the award dated 24.4.2012 passed by the learned 6th Additional Motor Accident Claims Tribunal, Durg (for short 'the Claims Tribunal') in Claim Case No.53/2011 whereby the learned Claims

Tribunal, in an injury case, awarded total compensation of Rs.11,69,002/- to the injured claimant.

2. During the pendency of this appeal, injured claimant Mannu Hotwani died and therefore his legal heirs i.e. present appellants, have been substituted.

3. Brief facts of the case are that on 9.2.2011 said Mannu Hotwani was travelling on his motorcycle from Bhilai to Raipur and at about 8.25 p.m. when he reached near Kanji House, Main Road, Kumhari, one Tata Sumo bearing registration number CG04-ZP-2482, which was being driven by respondent No.1 herein, dashed against the motorcycle due to which said Mannu Hotwani sustained grievous injuries over his leg and waist. He was immediately taken to Apollo Hospital, Bhilai and there it was diagnosed that spinal cord of injured got fractured and he became paralytic. Looking to the condition of the injured, he was referred to Bombay Hospital, Mumbai for better treatment where he undergone treatment as indoor patient for about 12 days. However, even after taking treatment, he became permanent disabled. For the aforementioned reasons, injured Mannu Hotwani filed claim application before the competent Claims Tribunal claiming compensation to the tune of Rs.92,90,000/- under various heads on the grounds mentioned therein.

4. Respondent No.1 & 2 i.e. owner and driver of offending vehicle, filed their reply to the claim application and denied the allegations of negligence on the part of the driver of offending vehicle and further stated that there was contributory negligence on the part of the injured himself. It has been further contended that on the date of accident the offending vehicle was insured with respondent No.3 Insurance Company and therefore liability, if any, would be on the insurance company.

5. Respondent No.3 Insurance Company also submitted its reply denying the averments made in the claim application. It has been submitted that intimation regarding the said accident has not been given to the insurance company within the prescribed period of 30 days.

6. After considering the pleadings and evidence placed on record (oral and documentary both) by the respective parties, the Claims Tribunal has partly allowed the claim application and awarded total compensation of Rs.11,69,002/- with interest @ 6% per annum by holding that the injured has suffered permanent disability to the extent of 70% .

7. Perusal of the impugned award would show that the Claims Tribunal awarded Rs.58,214/- in total towards medical expenses out of which Rs.15,395/- has been awarded towards the medical expenses at Bombay Hospital, Mumbai.

8. Learned counsel for the appellants submits that as during the pendency of appeal, the original claimant expired, therefore, he is restricting his claim with respect to monetary damages which the original claimant suffered by making expenditure towards medical treatment, which was not considered by the Claims Tribunal. He further submits that bills issued by the Bombay Hospital & Research Centre, Mumbai showing expenditure of Rs.2,71,928/- & Rs.27,418/- respectively on the treatment of injured had been produced and exhibited as Ex.P-112 & P-114, but the same have not been taken into consideration by the Claims Tribunal.

9. Learned counsel appearing on behalf of respondent No.3-Insurance Company opposes the arguments advanced by learned counsel for the appellants and submits that the Claims Tribunal after considering the entire material on record has awarded reasonable amount of

compensation. He further submits that as the injured claimant died during the pendency of this appeal, therefore, the appeal for enhancement of compensation itself is not maintainable and liable to be dismissed as such.

10. I have heard learned counsel for the claimants/appellants and perused the record.

11. True it is that in injury case certain claims made by injured do not survive and extinguishes on the death of injured, but it does not mean that every right to claim extinguishes. Under the Motor Vehicles Act, 1988 damages have been categorized in two segments, one is 'pecuniary damages' and another is 'non-pecuniary damages'. Pecuniary damages (special damages) are (i) expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure; (ii) loss of earning (and other gains) which the injured would have made had he not been injured, comprising, loss of earning during the period of treatment & loss of future earnings on account of permanent disability; (iii) future medical expenses.

Non-pecuniary damages (general damages) relate to damages for pain, sufferings & trauma as a consequence of the injuries; loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life (shortening of normal longevity).

12. Reverting back to the facts of present case and the ground urged by learned counsel for the appellants that he is confining his claim with respect to the pecuniary damages only which the family members of the injured claimant suffered due to payments made by them during the treatment of the injured.

13. The Act of 1988 is a beneficial piece of legislation which provides for adequate and reasonable compensation for the loss and damages suffered by an injured/deceased and their family members. In the case in hand, from the injuries sustained by the injured, which is fracture of spinal cord as a result of which he subsequently became paralytic, and from the medical bills & prescriptions available on record as exhibits, it is clear that huge amount of expenditure has been incurred by the family members of the injured in his treatment in different hospitals. It is not in dispute that in injury cases that too the nature of injuries which injured Mannu Hotwani sustained in the accident in question, expenses are to be incurred by the family members by arranging funds from all around. Said expenditure was to be incurred in cash and for which the injured alone cannot be said to be sufferer and therefore even after the death of injured claimant, his other legal heirs would be entitled for the amount of compensation which infact is in the way of reimbursement of the amount expended by them towards the medical expenditure, which the members of the family or the attendant of injured incurs from his own pocket.

14. In the aforementioned facts and circumstances of case, if we peruse the record and impugned award, it is clear that learned Claims Tribunal while determining the medical expenses incurred by the injured in his treatment at Bombay Hospital, Mumbai has taken into consideration bill of Rs.15,395/- (Ex.P-115) only and not other bills & prescriptions produced and exhibited by the injured in support of his claim i.e. Ex.P-112 & P-114. Although the Claims Tribunal has held that looking to the documents made available on record by the injured according to which the injured took treatment as indoor patient in Bombay Hospital, Mumbai from 12.2.2012 to 24.2.2012 i.e. for about 14 days, but even then other medical bills i.e. Ex.P-112 & P-114 were not taken into consideration for awarding

amount towards medical expenses and even those exhibits were not discussed in the award. However, in the opinion of this Court, looking to the injuries suffered by injured Late Mannu Hotwani and period of treatment which he took as indoor patient at Bombay Hospital, Mumbai, there is no doubt that expenditure of amount mentioned in Ex.P-112 & P-114 could not have been incurred.

15. In view of the above discussion, in the considered opinion of this Court, present appellants, who are legal heirs of injured claimed Mannu Hotwani, are entitled for further amount of Rs.2,99,346/- (2,71,928 +27418), as mentioned in Ex.P-112 & P-114, as well as interest on this amount @ 6% p.a. from the date of filing of application till actual payment is made to them. Ordered accordingly.

16. In the result, the appeal is partly allowed and impugned award is modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-