

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 310 of 2015**

Hemin Bai Dhritlahare W/o Suresh Dhritlahare Aged About 22 Years R/o Devgaon, P.S. - Kharora, Tahsil And District- Raipur, Chhattisgarh,

---- Appellant

Versus

1. Tekram Sahu S/o Doojram Sahu Aged About 22 Years R/o Village- Tarashiv, P.S. - Kharora, Tahsil And District- Raipur, Chhattisgarh,
2. Nand Kumar Sahu S/o Vishnu Prasad Sahu Aged About 36 Years R/o Village- Tarashiv, P.S. - Tilda Nevra, Tahsil And District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
3. I.C.I.C.I. Lombard General Insurance Company Ltd. Through- Claim Manager, Devendra Nagar, Shanti Nagar Road, Commercial Complex, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. P.R. Patankar, Advocate.
For Respondent No.2	:	None
For other respondent No.3	:	Mr. Saurabh Sharma, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****19/06/2019**

1. The appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 19.12.2014 passed by the 2nd Additional Motor Accidents Claims Tribunal, Raipur (CG) in Claim case No.20/2013, wherein the learned Claims tribunal allowed the claim application in part and awarded a total sum of Rs.54,100/- as compensation in an injury case.

2. Brief facts for disposal of this appeal are that on 12.9.2012 at about 12.00 pm when the appellant/claimant was returning from Sai Hospital, Raipur along with other family members on a Auto Rikshaw to their village, at that relevant time, when they reached near village Semariya, one Maruti Suzuki Zen No. CG 04 HC/0573 driven by non-applicant 1, dashed the Auto Rikshaw on which the appellant was travelling. In the aforementioned accident, she suffered injuries on different parts of her body including fracture over her right leg. She was immediately taken to Balaji Hospital at Raipur where she took treatment as inpatient from 12.9.2012 to 21.9.2012. The matter was reported to the concerned police station based on which crime bearing No.178/2012 was registered against non-applicant 1 for the offences defined under Sections 279, 337 and 338 of the I.P.C.
3. The appellant/claimant on account of suffering injuries and expending amount towards medical expenses has filed claim application before the competent claims tribunal claiming Rs.3,50,000/- as compensation on the grounds mentioned therein. The non-applicants 1 and 2 have denied all the adverse pleadings made in claim application and further pleaded that the driver of the Auto Rikshaw was driving his vehicle under the influence of liquor and the accident took place due to rash and negligent act of the Auto Rikshaw. It has also been pleaded that the award of compensation is on the higher side and on the date of accident the

offending vehicle was insured with non-applicant 3 and therefore, liability if any, would be on the insurance company, non-applicant 3.

4. Non-applicant 3/insurance company filed its reply separately and denied adverse pleadings made in the claim application and further pleaded that the accident took place due to negligent act of the Auto Rikshaw. There was contributory negligence on the part of the driver of the Auto Rikshaw. The non-applicant 1 was driving the offending vehicle without there being any valid and effective driving licence and therefore, there was violation of conditions of the insurance policy and the insurance company is not liable for payment of any amount of compensation.
5. Learned claims tribunal on appreciation of the pleadings and evidence available on record arrived at a finding that the accident took place due to rash and negligent driving of the offending vehicle bearing No.CG04HC/0573 by non-applicant 1, in which the appellant/claimant suffered grievous injuries over her person. The claims tribunal also held that there was no violation of conditions of insurance policy and after calculating the amount of compensation awarded a total sum of Rs.54,100/- including Rs.50,600/- towards medical expenses.
6. Learned counsel for the appellant submits that he is pressing the appeal only on the ground that the learned claims tribunal though awarded an amount towards medical expenses but have not

awarded any amount towards pain and suffering, attendant, conveyance expenses and less amount was awarded towards special diet.

7. Per contra, learned counsel appearing on behalf of respondent 3/ insurance company submits that the learned claims tribunal after considering the material and evidence available on record have awarded just and proper amount of compensation to the claimants and therefore, the impugned award does not warrant any interference.
8. I have heard learned counsel for the parties and perused the record.
9. The appellant/claimant in support of her claim has filed the discharge summary of Shri Balaji Super Speciality Hospital which is mentioned as Ex. A40 in which it has been mentioned that the appellant was admitted on account of injuries on 12.9.2012 and thereafter was discharged on 21.9.2012. The discharge summary also shows that the appellant suffered right hip dislocation. Ex.A6 is the MLC report conducted by the medical officer in which it has been mentioned that there was no external injury but the appellant/claimant suffered bonny injury and injury has been mentioned as grievous injury. The treatment taken by the appellant/claimant at Shri Balaji Super Speciality Hospital as indoor patient for the period mentioned therein is not in dispute. Looking to

the injuries even after discharge from the hospital, the appellant/claimant had to take complete bed rest and therefore, for the total period she has to be attended by one person but the learned claims tribunal has not awarded any amount towards attendant. The address of the appellant/claimant has been mentioned in the claim application as she is resident of Devgaon, Thana Kharora, District Raipur.

10. The place of accident as mentioned in the records and claim application is near village Semariya which comes within jurisdiction of Police Station, Vidhan Sabha, District-Raipur, and therefore, looking to the place of accident and also the place of resident of the appellant/claimant, the appellant might have expended the amount towards conveyance/transportation from the place of accident to hospital and from hospital to her village, but the claims tribunal have not awarded any amount on account of conveyance/transportation to the claimant.
11. As discussed in preceding para that the appellant suffered bonny injury and dislocation of her right hip and she took treatment as inpatient from 12.9.2012 to 21.9.2012 and might have suffered pain from the injury but the learned claims tribunal has not awarded any amount towards pain and suffering. In view of the above discussion, the impugned award passed by the claims tribunal requires reconsideration and recalculation.

12. The claims tribunal after considering the medical bills held that the appellant will be entitled for the following amount as compensation.

- (i) Rs.50,600/- towards medical expenses
- (ii) Rs.3,000/- as loss of income during the period of treatment
- (iii) Rs. 500/- towards special diet.

Thus, awarded a total sum of Rs.54,100/-. Looking to the injury sustained by the appellant/claimant on the part of her body, in the opinion of this Court, the appellant/claimant is entitled for a sum of Rs.10,000/- towards pain and suffering, Rs.5,000/- towards conveyance expenses and Rs.3,000/- towards attendant and special diet. Now the appellant/claimant will be entitled for a total sum of Rs.72,100/- instead of Rs.54,100/-.

13. In view of the above, the appeal is partly allowed and the impugned award passed by the claims tribunal is modified to the extent indicated above. The amount of compensation will carry interest @ 6% p.a. from the date of filing of the claim application till its realization.

Sd/-

(Parth Prateem Sahu)
Judge