NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 906 of 2013

1(A). Smt. Taramati Benjamin W/o Late Anil Benjamin aged about 65 years R/o Madan Mohan Malviya Ward, Jagdalpur, Bastar (CG)

1(B). Smt. Abhilasha Peter W/o Vishal Peter D/o Late Anil Kumar Benjamin Aged About 40 Years. R/oMadan Mohan Malviya Ward, Jagdalpur, Bastar (CG).

---- Appellants

Versus

1. Kushal Singh, S/o K. Singh, Aged About 45 Years, R/o Gourgaon, Tahsil Keshkal, District Bastar (CG) ....Owner
2. Bhakt Prahlad S/o Siyaram, aged about 30 years, R/o Gourgaon, Tahsil Keshkal, Distt. Bastar (CG) ....Driver.
3. Jeshwar Koushik S/o Puranik Koushik, Aged About 45 Years R/o Lakhenagar, Raipur (CG) ....(Ex. Owner)
4. Insurance Company, Through- Branch Manager, ICICI Jagdalpur, Bastar, Permanent Address- Jeenat House, Keshav Rao Khade Marg, Mahalaxmi, Mumbai. ....Insurance Company,

---- Respondents

For Appellant	:	Shri CP Soni, Advocate
For Respondent No.4	:	Shri Shailendra Sharma, Adv. on behalf of Shri Vinay Pandey, Advocate.

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

26/04/2019

1. Challenge in this appeal is to award dated 28.6.2013 passed by the learned 1st Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (for short 'the Claims Tribunal') in Claim Case No.64/10 whereby the Claims Tribunal has awarded compensation of Rs.43,000/- in an injury case.
2. Present appellants are wife and daughter of original claimant

Anil Kumar Benjamin, who died during pendency of this appeal.

3. Brief facts relevant for disposal of this appeal are that on 17.1.2009 at about 4 pm. when Anil Kumar Benjamin was going on his Luna Moped towards Jagdalpur from village Aasna, at that time his moped was dashed by one Mahendra Jeep bearing registration number CG04-ZD-3735, driven by respondent No.2 herein rashly and negligently. In the said accident, said Anil Kumar Benjamin sustained grievous injuries on his right ankle, right thigh and also fracture injury on his right hand. Said Anil Kumar Benjamin filed claim application on 20.10.2009 mentioning therein that due to aforementioned injuries, he was admitted in Vivekanand Hospital, Dharampura and thereafter he took treatment from Christian Hospital, Navrangpur where he underwent surgery of his right hand. It has been further pleaded that due to injuries sustained by him in the said accident, he became permanently disabled and he is unable to perform work of mechanic of diesel pump, rice mill, electric pump, flour mill etc., which he was doing prior to the accident. He claimed total amount of Rs.14,75,500/- as compensation showing his income as Rs.500/- per day.

4. Respondent Nos.1 & 2 submitted reply to claim application and pleaded that on the date of accident, respondent No.2 was having valid & effective driving license to drive offending vehicle, which was insured with respondent No.4 and therefore liability, if any, for payment of compensation would

be on the insurance company.

5. Respondent No.4 submitted reply to claim application and pleaded that accident took place on account of negligence of injured claimant himself and therefore he is not entitled to get any compensation. It has also been pleaded that on the date of accident the driver of offending vehicle was not having valid and effective driving license, hence the insurance company is not liable to indemnify the owner of offending vehicle.
6. Learned Claims Tribunal while appreciating pleadings and evidence of respective parties has held that claimant Anil Kumar Benjamin sustained injuries in the accident and further that accident took place on account of rash and negligent driving of non-applicant No.2-driver. It was also held that there was no violation of conditions of insurance policy and awarded a sum of Rs.43,000/- which includes Rs.30,000/- towards medical expenses.
7. Learned counsel for the appellants would argue that the Claims Tribunal erred in not considering that claimant suffered permanent disability and has not performed his work from the date of accident till filing of claim application. He further argued that claimant sustained grievous injuries causing him permanent disablement, which is also evident from medical certificate of Ex.A-86 issued by District Medical Board, Maharani Hospital, Jagdalpur, but the Claims Tribunal has totally ignored all the aforesaid aspects and awarded meagre amount of compensation. He also argued that even the Claims Tribunal has not awarded total expenditure incurred by

claimant in his treatment.

8. Per contra, learned counsel appearing for respondent Insurance Company argued that claimant has not produced medical prescriptions of doctors to show that what treatment he took after the accident. He further argued that the doctor who treated claimant and the doctor who issued disability certificate were not examined to prove disability sustained by claimant. He would also argue that the Claims Tribunal has rightly awarded amount towards medical expenses in lump sum.

9. I have heard learned counsel for the parties and perused the record.

10. Perusal of record would show that the Claims Tribunal has held that the claimant sustained injuries in accident as pleaded by him and those injuries were grievous in nature. The Claims Tribunal also recorded that accident took place due to rash and negligent driving of offending vehicle by respondent No.2 herein and further that there is no violation of conditions of insurance policy. These findings recorded by the Claims Tribunal remained unchallenged as neither owner or driver nor insurance company has filed any appeal or cross-appeal challenging the impugned award.

11. The question which arises for consideration for this Court is whether the Claims Tribunal has awarded just and reasonable compensation to claimant in the facts and circumstances of case?

12. True it is that injured claimant has not filed medical

prescriptions of the doctors, who treated him in the hospitals at Navrangpur & Visakhapatnam respectively, but the medico legal examination report (Ex.A-6) of claimant shows that he suffered four injuries over his person which included two fracture injuries. As per medical prescription (Ex.A-6) of Dr. Govind Singh, Radiologist, the claimant suffered fracture on middle 1/3rd shaft humerus and distal end of right tibia. These two documents available on record show that claimant suffered grievous injuries including fracture injuries in the said accident. Thus, the Claims Tribunal has rightly held that claimant has sustained grievous injuries in the accident.

13. The Claims Tribunal while recording that claimant failed to prove medical bills by producing medical prescriptions so that medicines mentioned in medical bills (Ex.A-10 to A-73) could be verified, therefore, not awarded amount of bills exhibited in its entirety and only awarded a lump sum amount of Rs.30,000/- towards medical expenses. However, in the opinion of this Court, reason assigned by the Claims Tribunal for not allowing medical expenses is too technical in the facts of case where fracture injuries were found to be proved by Claims Tribunal. Claimant submitted medical bills issued in his name and perusal of which would show that the same were during the period of accident and of further period. Since the claimant had sustained fracture injury, he would certainly have incurred expenditure for curing his fracture injury. In such a situation, the Claims Tribunal ought to have allowed entire medical expenditure which claimant incurred while undergoing

treatment. Claimant had produced and exhibited medical bills of Rs.48,500/- and the appellants herein are entitled for the said amount. Thus, it is held that the appellants herein are entitled for Rs.48,500/- towards medical expenses instead of Rs.30,000/- as awarded by Claims Tribunal.

14. Learned Claims Tribunal awarded Rs.5,000/- each towards pains & sufferings and special diet respectively. In the given facts and circumstances of case, I am of the view that the amount awarded under the heads of pains & sufferings and special diet cannot be said to be erroneous.

15. A sum of Rs.3,000/- was also awarded towards loss of income during treatment period i.e. of one month. Appellants have not placed on record medical prescriptions of doctor showing continuous treatment of claimant to assess period of treatment during which claimant could not be able to perform his work and therefore I feel that assessment of loss of income during the period of treatment done by the Claims Tribunal i.e. for a period of one month, cannot be said to be erroneous.

16. In view of above discussion, I do not find any force in the arguments raised by learned counsel for the appellants that the Claims Tribunal had not awarded any amount towards permanent disability or any amount towards loss of income during the period of treatment i.e. from the date of accident till date of filing of application, only for the reason that claimant failed to prove the fact by reliable piece of evidence. Although medical disability certificate (Ex.A-86) has been filed but it was also not proved by examining member of the Medical Board

which issued such certificate.

17. In the result, the appeal is partly allowed. The amount of compensation determined by the learned Claims Tribunal is increased to Rs.18,500/-, that is to say, the appellants herein are now entitled for total compensation of Rs.61,500/- instead of Rs.43,000/- as awarded by the Claims Tribunal. This additional amount of compensation shall carry interest at the rate of 6% per annum from the date of application till its realisation. The award shall stand accordingly modified. Rest of the conditions of impugned award shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-