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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 315 of 2015

- Karan Dhruw, W/o Ramesh Dhruw, Aged About 45 Years, R/o Nootan Colony, Sarkanda, Tahsil And District-Bilaspur, Chhattisgarh,

---- Appellant/Claimant

Versus

1. Rajaram Yadav, S/o Bhagirathi Yadav, R/o Nootan Colony, Sarkanda, Tahsil And District-Bilaspur, Chhattisgarh, (Driver-Motor Cycle No. C.G.-10-N-3717)

2. R.P. Dhruw, So Late P.S. Dhruw, R/o Nootan Colony, Sarkanda, Tahsil And District-Bilaspur, Chhattisgarh, (Owner-Motor Cycle No. C.G.-10-N-3717)

3. Tata A.I.G. General Insurance Company Limited, Peninsula Corporate Park, Nicolas Peeramal Tower, 9th Floor, Ganpatrao Kadam Road, Lower Parel, Mumbai 400013, (Insurer-Motor Cycle No. C.G.-10-N-3717) **---- Respondents**

For Appellant	:	Shri Avinash Chand Sahu and Shri Vijay Kumar Sahu, Advocates.
For Respondents No.1 &2	:	None appears, though served.
For Respondent No.3	:	Shri Abhishek Sinha with Shri Vaibhav Maheshwari, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

26.07.2019

1. This Miscellaneous Appeal has been preferred by the applicant under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the propriety of the Award dated 12.09.2014 passed by the 3rd Additional Member to the Court of 1st Additional Motor Accidents Claims Tribunal, Bilaspur in Claim Case No.55/2013, by which, the Claims Tribunal, while allowing the claim in part, has awarded a total sum of Rs.3,44,000/- with 6% interest per annum from the date of filing of Claim Petition till its realisation while fastening the liability upon the insurance company. The parties to this appeal shall be referred hereinafter

as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 24.03.2013 the deceased Danveer Dhruw, 25 years old, was coming with one Rajaram by motorcycle bearing its registration No. C.G.-10-N-3717 while sitting behind him as a pillion rider from Chakarbhata and as soon as he reached near village Chichirda, it dashed one unknown vehicle from its back side. As a result of which, the said Danveer Dhruw received multiple injuries and was immediately admitted into the Apollo Hospital, Bilaspur and during the course of treatment he expired on 04.04.2013. According to claim petition, the deceased was an Electrician and used to earn Rs.3300/- per month, and therefore, the applicant, being the mother of the said deceased claimed total amount of compensation to the tune of Rs.11,85,000/- by filing an application under Section 166 of the Act of 1988.

3. The aforesaid claim has been contested by non-applicants No. 1 & 2, the driver and owner of the offending vehicle, by saying that the alleged vehicle has been insured by non-applicant No.3 by issuing a package policy (Ex.D.1) and pleaded further that at the relevant time, it was not being used in violation of the insurance company, and therefore, in case of any liability being fastened, the same could be indemnified by the insurer/non-applicant No.3.

4. The non-applicant No.3/Tata AIG General Insurance Company Limited, while disputing the monthly income of the deceased and that by questioning the involvement of the alleged offending vehicle with regard to the said accident, contested the claim by saying that the driver of the offending vehicle was not holding the valid and effective driving licence, and therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, the Claims Tribunal arrived at a conclusion that the alleged accident occurred on 24.03.2013 on account of rashness and negligent driving of the driver of the offending vehicle (motorcycle) resulting into the sad demise of deceased Danveer Dhruw and held further that the driver was holding the effective and valid driving licence and the insurance company has failed to prove that the alleged offending vehicle was being used in violation of the insurance policy. Further by considering the monthly income of the deceased to the tune of Rs.3000/- and that by deducting half of it towards his personal expenses, awarded total amount of compensation to the tune of Rs.3,44,000/- with 6% interest per annum from the date of filing of Claim Petition till its realisation while fastening the liability upon the said insurance company.

6. Being aggrieved, the applicant has preferred this appeal. Shri Avinash Chand Sahu, learned counsel for the applicant submits that the award impugned as passed by the Claims Tribunal disbelieving the medical bill (Ex.P.17) of Rs.2,99,459.29 incurred by the applicant during the course of treatment of her son, has erred in awarding meagre amount of compensation. He submits further that while awarding the amount of compensation, the Tribunal ought to have awarded a sum of Rs.30,000/- instead of Rs.20,000/-, towards conventional head. As such, just and fair compensation payable to the applicant/claimant under the Act of 1988 has not been made by the Claims Tribunal.

7. On the other hand, Shri Abhishek Sinha appears along with Shri Vaibhav Maheshwari, learned counsel for non-applicant No.3 submits that in absence of the examination of Doctor of the said Hospital, the Claims Tribunal has rightly not accepted medical bill (Ex.P.17). The award impugned is, therefore, not liable to be interfered.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. The main contention of the applicant by way of filing of this appeal is that while awarding the amount of compensation, the Claims Tribunal ought not to have disbelieved the medical bill (Ex.P.17) showing that the applicant has incurred a sum of Rs.2,99,459.29 towards the medical treatment of her son. Having disbelieved the same, the Tribunal has erred in not granting the just and fair compensation payable to the applicant and, the award impugned is, therefore, liable to be modified accordingly.

10. In order to consider the aforesaid contention of Shri Sahu, I examined the medical bill (Ex.P.17) and a bare perusal of it, would show that a sum of Rs.2,99,459.29 has been spent towards treatment by the applicant. The said medical bill (Ex.P.17) was issued in the printed form by the Apollo Hospitals Enterprise Limited, Bilaspur and one Sanjay Thakur, the Assistant Manager of Billing Department of it was examined as A.W.2 by the applicant, who in turn, has certified the same by saying that the deceased was admitted into the said Hospital from 25.03.2013 upto 04.04.2013 for his treatment and during the course of his treatment, a sum of Rs.3,22,935.84 was spent and out of which, a sum of Rs.23,476.55 was deducted and the applicant has paid a sum of Rs.2,99,459.29 for her son's treatment. The statement of this witness could not have been rebutted in his cross-examination nor any cogent and reliable evidence was adduced by the insurer in order to disbelieve the authenticity of the alleged bill (Ex.P.17), yet the Tribunal has disbelieved the same merely on the ground that Doctor has not been examined. Therefore, the finding as recorded by the Tribunal in this regard cannot be held to be sustainable, particularly, when the particular bill (Ex.P.17) was not only issued by the said Hospital but the Assistant

Manager of the Billing Department of the said Hospital has not only entered into the witness box but has duly proved the same. Considering the alleged bill (Ex.P.17), vis-a-vis, the statement of said witness, it is evident that a sum of Rs.2,99,499.29, rounded off Rs.2,99,500/-, has been incurred by the applicant with regard to the treatment of her son, who was admitted into the Hospital on 25.03.2013 immediately after the accident and was treated in the said Hospital upto 04.04.2013 till he succumbed to the injuries.

11. Besides, a sum of Rs.20,000/- as awarded by the Tribunal towards conventional head also appears to be on lower side. However, it ought to have been Rs.30,000/-, and therefore, the finding as recorded while assessing the amount of compensation towards conventional head deserves to be and is hereby modified in this regard as well. In consequence, the applicant would, thus, be entitled to total sum of Rs.6,53,500/- (Rs.3,24,000 + Rs.2,99,500 + Rs.30,000 = Rs.6,53,500/-) (Rupees six lacs fifty three thousand and five hundred only). The amount of compensation as assessed herein shall carry interest, as held by the learned Claims Tribunal, from the date of filing of Claim Petition till its realisation. Rest of the findings of the Tribunal shall remain intact.

12. In view of the foregoing discussions, the appeal is allowed in part and the award impugned is hereby modified to the extent indicated herein above. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Anjani