

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No.1165 of 2013****Reserved on 10.12.2019****Pronounced on 19.12.2019**

1. Rakesh Kumar Sharma, S/o Nand Kumar Sharma Aged About 29 Years R/o Behind Bti Janjgir, P.S. Janjgir, Distt. Janjgir Champa CG.
2. Yogesh Sharma S/o Nand Kumar Sharma Aged About 33 Years R/o Behind Bti Janjgir, P.S. Janjgir, Distt. Janjgir Champa C.G.
3. Nand Kumar Sharma S/o Late Bali Ram Sharma Aged About 61 Years R/o Behind Bti Janjgir, P.S. Janjgir, Distt. Janjgir Champa C.G.

---- Appellants**Versus**

1. Banmali Kashyap, S/o Bhagat Ram Aged About 21 Years R/o Chaurabhata, p.S. And Tah. Navagarh, Presently R/o Behind Sharda Talkies, Ward No. 19, Janjgir, Distt. Jajgir Champa CG. Driver Of Vehicle
2. Geeta Prasad Choubey S/o Late Manharanlal Choubey Aged About 41 Years R/o Link Road, Ward No. 16, Chandaniya Para, Janjgir, P.S. Janjgir, Distt. Janjgir Champa, C.G. Owner Of Vehicle
3. National Insurance Co. Ltd. S/o Through Sastya Automobiles, Korba, Distt. Korba C.G. Insuree

---- Respondents

For Appellants:	Shri Hanuman Prasad Agrawal, Advocate.
For Respondents No.1 & 2:	Shri AP Sharma, Advocate.
For Respondent No.3:	Shri Raj Awasthi, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**C A V Award**

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 28.10.2013 passed by the Additional Motor Accident Claims Tribunal (FTC), Janjgir-Champa, District Janjgir-Champa (for short 'the Claims Tribunal') in Claim Case No.09/2013 whereby, the learned Claims Tribunal, while allowing the claim in

part, has awarded a lump sum amount of Rs.1,50,000/- with 9 % interest per annum from the date of filing of the Claim Petition till its realization. The parties to this Appeal shall be referred hereinafter as per their description in the trial Court.

2. The facts of the case in nut-shell are that on 06.04.2011, the Claimants were travelling by the offending vehicle 'Maruti Van' bearing its Registration No.CG-11E-0246, which was owned by Non-Applicant No.2-Geeta Prasad Choubey, insured with Non-Applicant No.3-National Insurance Company Limited. At the relevant time, the alleged vehicle was being driven by its driver, Banmali Kashyap-Non-Applicant No.1 in a rash and negligent manner. As a result of which, he lost his control and owing to which, the alleged accident occurred, where Applicant No.1-Rakesh Kumar Sharma got injured badly and suffered permanent disability, while others have sustained grievous injuries giving rise to the institution of the claim under Section 166 of the Act of 1988, whereby a total amount of compensation to the tune of Rs.20,12,646/- has been claimed under various heads.

3. The aforesaid claim has been contested by the Non-Applicants and the Claims Tribunal, after considering the evidence led by the parties, arrived at a conclusion that the alleged accident occurred on 06.04.2011 due to rash and negligent driving by the driver of its offending vehicle and the Claimants have sustained grievous injuries. It held further that the vehicle in question was not being used in violation of the policy and that by fastening the liability upon the Insurance Company, awarded a lump sum amount of Rs.1,50,000/- payable jointly to the Claimants with 9% interest per annum from the date of filing of the Claim Petition till its realization.

4. Being aggrieved, the Claimants have preferred this Appeal. Shri

Hanuman Prasad Agrawal, learned Counsel appearing for the Appellants/Claimants submits that the Claims Tribunal, while passing the award impugned, has erred in awarding a lump sum amount of Rs.1,50,000/- only payable jointly to the Appellants by ignoring the medical bills of Apollo Hospital. While inviting attention to the medical bills, marked as Exs.A-12, A-13, A-25 to A-27, A-34, A-35 and A-40 as also un-exhibited documentary evidence pertaining to the medical bills for the relevant period, submits that the Claims Tribunal ought to have taken note of these documentary evidence in order to provide just and proper compensation to the Claimants.

5. On the other hand, Shri Raj Awasthi appearing for Respondent/Non-Applicant No.3, while supporting the award impugned, submits that in absence of the examination of the Doctor, the Claims Tribunal has not committed any illegality in awarding a lump sum amount of Rs.1,50,000/- as such.

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

7. It appears as reflected from the perusal of the evidence placed on record that on account of the alleged accident, occurred on 06.04.2011, the Claimants have sustained serious injuries and the Claimant No.1-Rakesh Kumar Sharma was admitted into the Apollo Hospital at Bilaspur on the same day, i.e. 06.04.2011 and has undergone treatment up to 30.04.2011. During this period, he incurred a sum of Rs.1,25,299.55 towards his treatment as evidenced by a medical bill (Ex.A-12) issued by the said Hospital. It appears further based upon the bill marked as Ex.A-13 issued by the said Hospital that he (Rakesh Kumar Sharma) was admitted again into the said Hospital on 09.05.2011 and was discharged therefrom on 12.05.2011 and during this period, he incurred a sum of Rs.11,635/- and incurred further sum of

Rs.9,365/- as evidenced by a bill (Ex.A-25) issued by Shriram Medico Surgico, Medical Complex, Telipara, Bilaspur. As an out patient as evidenced by a documentary evidence marked as Ex.A-26 and Ex.A-27, he incurred a sum of Rs.7,420/-. It appears further from the un-exhibited bills commencing w.e.f. 11.04.2011 up to 25.06.2011 that a sum of Rs.14,557.55 has been incurred by him. He thus, incurred a total sum of Rs.1,68,277/- approximately for his treatment.

8. Likewise, father-NK Sharma, Claimant No.3 was admitted into the said Hospital on 11.11.2011 and was discharged therefrom on 18.11.2011 as evidenced by a documentary evidence marked as Ex.A-14 and during this period, he incurred a sum of Rs.2,73,720/-, while a sum of Rs.1,271.45, as evidenced by un-exhibited bills commencing w.e.f. 06.04.2011 to 26.04.2011. He, thus, incurred a total sum of Rs.2,74,991.45 rounded off as Rs.2,75,000/- for his treatment.

9. Similarly, Claimant No.2-Yogesh Sharma was also admitted into the said Hospital on 06.04.2011 for a day and incurred a sum of Rs.3,258/- as evidenced by a bill marked as Ex.A-34. It appears further that as an out patient as evidenced by bill (Ex.A-35), he incurred a sum of Rs.18,140/-, while a sum of Rs.160/- was shown to be incurred by him through un-exhibited bill dated 07.04.2011. He thus incurred a total sum of Rs.21,558/-. It is surprising enough to observe that while passing the award impugned, the Claims Tribunal has completely ignored all these material documentary evidence despite the same not being controverted by the Non-Applicants. However, in order to provide just and proper compensation, the aforesaid documentary evidence ought not to have been escaped over in such a manner. Having failed to take note of it, the Claims Tribunal has certainly committed an

illegality in awarding a meager amount of compensation payable to the Claimants.

10. It appears further from the perusal of the record that although, certain bills as observed hereinabove were not exhibited, yet, it can be taken into consideration as the same were produced for the relevant period in the light of the decision rendered by the Supreme Court in the matter Vimla Devi And Others vs. National Insurance Company Limited And Another reported in **(2019) 2 SCC 186** wherein, it has been observed at paragraph-20.8 as under:-

Seventhly, if the Court did not exhibit the documents despite the appellants referring to them at the time of recording evidence, then in such event, the appellants cannot be denied of their right to claim the compensation on such ground. In our opinion, it was nothing but a procedural lapse, which could not be made basis to reject the claim petition. It was more so when the appellants adduced oral and documentary evidence to prove their case and the respondents did nothing to counter them.

11. Applying the aforesaid principles to the case in hand vis-a-vis the unrebutted aforesaid documentary evidence, it appears that the Claimants have incurred the following expenses towards their treatment:-

A	Claimant No.1	Rakesh Kumar Sharma	Rs.1,68,277/-
B	Claimant No.2	Yogesh Sharma	Rs.21,558/-
C	Claimant No.3	Nand Kumar Sharma	Rs.2,75,000/-

12. Besides, they are also entitled to a sum of Rs.10,000/-, Rs.1,000/- and Rs.5,000/- respectively towards physical and mental agony occurred owing to the alleged accident. Accordingly, the Claimants are entitled to a total sum of compensation as under:-

A.	Claimant No.1	Rakesh Kumar Sharma	Rs.1,78,277/- (1,68,277+ 10,000)
B.	Claimant No.2	Yogesh Sharma	Rs.22,558/- (21,558+ 1,000)
C.	Claimant No.3	Nand Kumar Sharma	Rs.2,80,000/- (2,75,000+ 5,000)

13. The aforesaid amount shall carry interest at the rate of 6% per annum from the date of filing of Claim Petition till its realization.
14. The Appeal is accordingly allowed to the extent indicated hereinabove. Rest of the observations as made by the Claims Tribunal shall remain intact.
- No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge

Priya