

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 543 of 2013

- National Insurance Company Limited Through Its Divi. Manager, Divisi. Office, B-1 Taha Complex, 1st Floor, Ring Road-1 Priyadarshini Nagar, Vyapar Vihar, Bilaspur P.S. Civil Lines, Bilaspur, distt Bilaspur, Chhattisgarh
---- **Appellant**

Versus

1. Rajkumar Yadav, S/o Bhagwan Das Yadav Aged About 25 Years R/o Naka Chowk, Firangi Par Kota, Tah. And P.S. Kota, Dist. Bilaspur, Chhattisgarh
2. Yogesh Kumar Sahu S/o Parsaduram Sahu R/o Vill. P.O. Kurud, P.S. Jamul, Bhilai, District : Durg, Chhattisgarh (Driver of Vehicle Scorpio No.CG/07/MA/2870)
3. Parsaduram Sahu S/o Neelkanth Sahu R/o Vill. P.O. Kurud, P.S. Jamul, Bhilai, District : Durg, Chhattisgarh (Registered owner of Vehicle Scorpio No.CG/07/MA/2870)
---- **Respondents**

For Appellant : Shri Dashrath Gupta, Advocate
For Respondent-1 (Claimant) : Shri AL Singraul, Advocate
For Respondents- 2 and 3 : None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

15.05.2019

1. This appeal is filed by Insurance Company challenging the impugned award dated 16.02.3012 passed by learned Third Additional Claim Tribunal, Bilaspur (for short,'Claims Tribunal') in claim case No. 08 of 2012 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.3,75,400/- in an injury case including Rs.3,60,000/- towards medical expenses along with interest @ 6% per annum from filing of claim application.

2. Brief facts for disposal of this appeal are that on 18.09.2011 claimant/respondent went to village Munda to call truck driver, namely Mohd. Indu Ansari. When he was returning on motor cycle bearing number CG10E-K-7763 along with Mohd. Indu Ansari, at that relevant time when they reached near Mohanbhata bus stand, one Scorpio Jeep bearing No.CG07-MA-2887 (offending vehicle) driven by respondent- 2/non-applicant 1 dashed their motor cycle. Appellant sustained grievous injuries on his person and was admitted to government hospital, Korba. Looking to the injuries suffered by appellant, he was referred to superior hospital and therefore, he came to Bilaspur and took treatment from Apollo Hospital as a referral case. The incident was reported to concerned police station based on which Crime case under section 279, 337 and 338 IPC was registered against respondent-2.

3. Injured- claimant after recovery of his injuries, filed claim application before competent Claims Tribunal mentioning therein that he was working as Transport Operator and thereby earning Rs.15,000/- to 20,000/- per month; on account of injuries sustained in the accident he took treatment as inpatient from 18.09.2011 to 19.10.2011 in Apollo Hospital, Bilaspur; and underwent multiple operations. In his claim application, it has been further pleaded that, he incurred medical expenses to the extent of Rs.10,00,000/-, loss of income Rs.5,00,000/- and also claimed towards pain and suffering, thereby claimed Rs.32,50,000/- as total compensation from non-applicant 1 therein.

4. Non-applicants 1 & 2 who are driver and owner of offending vehicle submitted reply to claim application and pleaded that accident took place due to own negligence of driver of motorcycle i.e. injured claimant himself. Income of injured claimant pleaded in claim application on higher side and

further that on the date of accident offending vehicle was insured with non-applicant 3 Insurance Company and therefore liability if any, for payment of compensation would be on the Insurance Company.

5. Non-applicant 3 insurance company submitted reply to the claim application and pleaded that driver of motorcycle Mohd Indu Ansari was driving without possessing any valid and effective driving license. He was driving motorcycle rashly and negligently and, claimant did not suffer any disability due to accident and further that driver of offending vehicle also was not possessing valid and effective driving license on the date of accident.

6. Learned Claims Tribunal on appreciation of pleadings and evidence available on record awarded a total sum of Rs.3,75,400/- and held that accident took place due to rash and negligent driving of non-applicant 1, claimant not suffered disability, there was no contributory negligence on the part of claimant and there was no violation of conditions of Insurance Policy of offending vehicle i.e. Scorpio and awarded a total sum of Rs.3,75,400/- along with interest @ 6% from the date of filing of claim application, including medical expenditure of Rs.3,60,000/-.

7. Learned Counsel for the appellant Insurance Company submitted that learned Claims Tribunal awarded Rs.3,60,000/- towards medical expenses which is contrary to the documentary evidence i.e. medical bills on record. He further submits that the amount mentioned in inpatient bill which is a running bill and payment received have been taken twice and therefore, payment of inpatient medical bills have been raised on higher side. He

submits that inpatient bill and cash payment of bill are same which cannot be taken as different amounts of payments made by the claimant.

8. Learned Counsel for respondent/claimant submits that learned Claims Tribunal have rightly assessed the medical expenditure on the basis of documentary evidence available on record. He further submits that he had also filed cross objection challenging the impugned award. He further submits that learned Claims Tribunal committed error in not awarding appropriate amount towards other conventional heads like loss of income during the period of treatment and amount towards attendant, special diet etc. He further submits that learned Claims Tribunal ignoring the grievous injuries and operations undergone by him have committed error in not awarding any amount on the head of pain and suffering.

9. I have heard Learned Counsel for the parties and perused the record. So far as the ground raised by learned counsel for the appellant-Insurance Company is concerned, perusal of Inpatient bill (Ex.P/13) would show that it is a inpatient running bill from the date of admission till discharge. Total amount of expenditure during the period of his treatment as inpatient has been shown as Rs.2,17,345/-, out of which the payment on different dates made by the claimant or his relatives was deducted and final bill on the date of discharge has been shown as NIL. Date of admission in Ex.P/13 has been mentioned as 18.09.2011 and discharge on 19.10.2011, which is not disputed by respondents. Perusal of records Ex.P/14, P/15, P/31, P/32, P/33, P/34, P/35, P/36, P/37, P/38, P/39, P/40, P/41 and P/42 are deposit intimation slips. Total amount of payment made by claimant or his relatives before counter has already been deducted from Inpatient Bill i.e. Ex.P/13. On specific query

made by this court to learned Counsel for respondent -claimant that whether there are any other receipts as mentioned in Ex.P/13 towards deposit but he failed to answer the query.

10. In view of aforementioned facts and circumstances of the case, the total expenditure mentioned in Inpatient bill and incurred by respondent-claimant is to be taken as Rs.2,17,345/-only. Other medical bills show that respondent claimant also incurred medical expenses as out-patient. Learned Counsel for appellant-Insurance company assessed the total amount of expenditure towards out-patient treatment as Rs.11,840/-. This amount in view of documents available on record and as explained by learned Counsel for respondent-claimant has not been disputed.

11. For the foregoing reasons, total expenditure incurred by respondent-claimant towards medical expenses would come to Rs.2,29,185/- (217345 + 11840) instead of Rs.3,60,000/- as held by learned Claims Tribunal. Now, other question which is to be taken into consideration on the basis of cross objection filed by respondent- claimant is that learned Claims Tribunal not awarded appropriate amount towards other heads like pain and suffering, special diet, attendant and conveyance.

12. Looking to the fact that respondent-claimant took treatment as inpatient for about 30-32 days as per medical documents, therefore, he is entitled for a sum towards loss of income during the treatment. Learned Claims Tribunal has taken income of claimant as Rs.3,000/- per month, ignoring the date of accident. In the year 2011, income of an ordinary man could be taken as Rs.50/- per day and Rs.4,500/- per month. In the opinion of this court,

respondent-claimant is entitled for loss of income for about two months. Looking to the admission slip and injuries sustained by him, amount of loss of income therefore to be taken as Rs.9,000/-. Learned Claims Tribunal not awarded any amount towards pain and suffering though respondent/ claimant sustained multiple injuries on his person, he underwent operation also as per his averment and took treatment as inpatient for about two months. In view of evidence and material placed on record, respondent- claimant also entitled for a grant of Rs.10,000/- towards pain and suffering. As respondent -claimant was admitted in hospital for more than one month, therefore definitely he was having attendant to take care of all necessary assistance and compliance as directed by hospital authorities.

13. As I have taken income of Rs.4,500/- per month, therefore amount towards attendant can be safely taken as Rs.4,500/-. Therefore, amount towards attendant is awarded as Rs.4,500/-. Attendant is required to take his diet out of his earning at the place of hospital and therefore in the facts and circumstances of the case I deem it fit to award Rs.2,000/- for his diet and conveyance. As the claimant is resident of Kota which is quite far distance from Bilaspur and looking to the injuries, he might have travelled by private transportation, but no transportation bill has been annexed in claim application. In the facts and circumstances of case and looking to the job of claimant, I deem it fit to grant Rs.3,000/- towards transportation and conveyance of respondent- claimant.

14. In view of above discussion, respondent- claimant is entitled for a total sum of Rs.2,57,685/- {229185 (medical expenses) + 9000 (loss of two

months' salary) + 10000 (pain and suffering) + 4500 (attendant) + 3000 (conveyance of claimant) + 2000 (attendant diet and conveyance)}

15. In view of above discussion, appeal and cross-appeal are allowed in part.

16. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma