

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 157 of 2015

- Ashwani Sahu S/o Shri Mahesh Sahu Aged About 32 Years R/o Vill. Biranpurkhurd, Post Udiyakhurd, P.S. And Tah. Lohara, Civil And Rev. Distt. Kabirdham, Chhattisgarh

---- Appellant/Claimant

Versus

1. Shyamlal Jaiswal, S/o Shri Jaikishan Jaisawal R/o Daihandeesh Udiyakhurd Tah. Lohara Civil And Rev. Distt. Kabirdham, Chhattisgarh
2. Kamlesh Kumar Patel S/o Shri B.R. Patel R/o Daihandeesh Udiyakhurd Tah. Lohara Civil And Rev. Distt. Kabirdham Chhattisgarh
3. Branch Manager Thru- The Oriental Insurance Co. Ltd. Near L.I.C. Office, Railway Station, Rajnandgaon, Civil And Revenue Distt. Rajnandgaon Chhattisgarh
4. Mohammed Siddiqui, S/o Shri Abdul Majid R/o Vill. House No. 100 Of Takiyapar, Beside House Of Parshad Gani Bhai, Durg, P.S. Durg, Civil And Rev. Distt. Durg Chhattisgarh
5. Rakesh Singh, S/o Late Gyan Singh R/o J.G. Nagar, In Front Of Shiv Mandir, Shravan Kirana Store, Ward No. 22, Camp-2 P.S. Bhilai Chawani, Civil And Rev. Distt. Durg Chhattisgarh

-----Respondents

For Appellant	: Shri Keshav Dewangan Advocate
For Respondents-1and 2	: Shri Dharmesh Shrivastava, Advocate
For Respondent-3	: Smt Chitra Shrivastava, Advocate

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**

Per PR Ramachandra Menon,CJ
01.09.2020

1. Challenge in this appeal is to the award dated 15.10.2014 passed by the Additional Motor Accident Claims Tribunal, District Kabirdham, in Claim Case No.67 of 2014, whereby, learned Claims Tribunal allowed the application in part and awarded total sum of Rs.2,48,100/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 27/5/2012 appellant along with Dhanraj Kaushik, Gangaram Kaushik, Naresh Patel, Sharif Khaa, Makhan Sinha, Mahesh Sahu, Ratan Patel and Chain Patel went to Raipur to attend Seminar/Group Meeting organized by Sapphire Multitrade Private Limited Company on a Tata Spacio Sumo bearing No.CG 09-5105 (hereafter, referred to as "offending vehicle"). When they were returning their home from Raipur at about 09.15 pm, NA-2, driver of offending vehicle drove his vehicle rashly and negligently and dashed with a stationary Truck Dumper bearing No.CG 04 G-4754 standing on the road. In the aforementioned accident, appellant suffered grievous injuries over his head, left leg and left hand. He was taken to District Hospital Durg, from where he was shifted to BSR Apollo Bhilai. Upon diagnosis, it was found that there was contusion with fracture Shaft of the femur left side, fracture of lower end radius and ulna left side. Appellant took treatment as inpatient from 28.05.2012 to 12.06.2012.

3. Appellant filed an application under Section 166 of the Act of 1988, seeking compensation of Rs.13,30,000/- on different heads pleading therein that appellant suffered fracture injuries on his left leg, left hand, injury on head, along with other parts of the body. It was also pleaded that he suffered head injury, fracture of Radial and Ulna, Comminuted displaced Fracture of left leg, Chest injury and injuries on other parts. He has to undergo operation in which implanting of steel rod over left femur bone and plating of ulna and fixation of lower radial was done. It is also pleaded that due to the injuries suffered by him, he could not look after his agriculture fields and suffered loss of agriculture production. He was

earning Rs.2 – 2.5 lakhs as agriculture income and Rs.1 – 1.5 lakhs of commission from the sale of pesticides of Sapphire Multitrade Private Limited Company.

4. Respondents- 1 & 2, who are Driver and Owner of offending vehicle filed their reply to the claim application pleading therein that the driver of offending vehicle was driving the offending vehicle very cautiously. The Truck / Dumper was parked on the centre of road negligently, without any indicators or sign. There was no negligence on the part of driver of offending vehicle, no offence was registered against him. The offence was registered against driver of Truck / Dumper and after investigation, final report / charge-sheet was also submitted before the jurisdictional court. That on the date of accident, offending vehicle was insured with NA-3 Insurance Company, the liability to satisfy amount of compensation is upon the Insurance Company, being insurer of the offending vehicle.

5. NA-3/Insurance Company submitted its reply to claim application pleading therein that the Insurance company can be held liable only if the vehicle is plied within the terms and conditions of the insurance policy. It is the liability of claimant to prove that the offending vehicle was being driven by driver possessing valid and effective driving license. From the documents, it is apparent that on the date of accident 09 persons were travelling in the vehicle and it was being plied as commercial vehicle (Taxi), whereas, offending vehicle was insured as private vehicle. The policy issued is of Private Car Package Policy. Driver of the offending vehicle was not possessing valid and effective driving license. There is breach of conditions of insurance policy.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that NA-2 while driving offending vehicle rashly and negligently dashed the Truck / Dumper and caused accident. The negligent parking of truck was not found to be proved. Breach of policy condition was also not found to be proved and awarded total amount of compensation of Rs.2,48,100/-.

7. Shri Keshav Dewangan, learned counsel for the appellant submits that learned Claims Tribunal erred in awarding meager amount of compensation. Learned Claims Tribunal erred in assessing the income of appellant as Rs.3,000/- per month only, whereas the appellant was engaged in doing the agriculture work and he was also engaged in the work of sale of pesticides in the Sapphire Multitrade Private Limited Company and earning handsome amount of Rs.1-1.5 lakhs per annum. He further submits that learned Claims Tribunal erred in not awarding any amount towards pain and suffering, loss of amenities and joy in life, attendant, transportation, special diet etc., for which appellant is entitled in the facts and circumstances of the case.

8. Per contra, Shri Dharmesh Shrivastava, learned counsel for respondents-1 & 2 and Smt.Chitra Srivastava, learned counsel for NA-3 supported the award passed by learned Claims Tribunal. She submits that the appellant failed to prove his income by placing on record cogent and admissible piece of evidence, the amount of compensation awarded by the learned Claims Tribunal is just and proper which does not call for any interference.

9. We have heard learned counsel for the respective parties and also perused the record.

10. The accident, insurance of offending vehicle and liability fastened upon the Insurance Company is not in dispute. The liability fastened upon the Insurance Company by the Claims Tribunal is not challenged by the Insurance Company. The ground raised by learned counsel for the appellant is with regard to quantum of amount of compensation awarded by learned Claims Tribunal.

11. So far as the amount of expenditure incurred by the appellant for treatment is concerned, he has filed the in-patient final bill as Ex.A21 in which it is shown total bill amount of Rs.2,17,590/-. The Claims Tribunal has awarded Rs.2,17,590/- i.e. the entire bill mentioned in the final in-patient bill of Apollo BSR Hospital, Bhilai. The Claims Tribunal further awarded Rs.2,500/- towards the bills of purchase of medicines. The learned counsel for the appellant could not able to point out that which of the bills placed on record has not been considered by the Claims Tribunal.

12. Learned claims tribunal has awarded the entire medical bills and the bills towards purchase of medicines placed on record, we affirm the award of **Rs.2,17,590/-** towards medical expenses and **Rs.2,500/-** towards purchase of medicines, as awarded by the Claims Tribunal.

13. So far as the other ground raised by learned counsel for the appellant that learned Claims Tribunal has not awarded any amount towards non-pecuniary damages is concerned, learned Claims Tribunal has awarded only Rs.10,000/- consolidate amount towards pain and

suffering, special diet, and attendant which in the facts of the case appears to be on lower side. Appellant suffered fracture of femur, fracture of radial and ulna and also chest injuries. He has to undergo operation for all the three fracture injuries suffered by him.

14. In view of above, we find it appropriate to award **Rs.25,000/-** towards pain and suffering. Taking into consideration the fracture injuries suffered by appellant, who was aged about 32 years on the date of accident, which will definitely have an impact for his whole life; also looking into the period of treatment, rest period and nature of injuries, we find it appropriate to award **Rs.20,000/-** towards loss of amenities and joy in life.

15. Appellant is also entitled for **Rs.10,000/-** towards special diet and attendant, **Rs.3,000/-** towards transportation because the appellant has to travel back to his house from the hospital at Bhilai.

16. The learned Claims Tribunal has awarded Rs.18,000/- towards loss of income for a period of 6 months, assessing monthly income of the appellant as Rs.3,000/- per month. The accident is of 27.05.2012 and looking to the fact that he is attending the Group Meeting arranged by the Company, we find it appropriate to hold his income as Rs.4,500/- per month on notional basis. The Claims Tribunal has held the loss of income during the period of treatment for six months and hence total loss of income during the period of treatment will come to **Rs.27,000/-** (4500 x 6).

17. Now the appellant/claimant is entitled for a total amount of compensation of **Rs.3,05,090/-** (217590 + 2500 + 25000 + 20000 + 10000 + 3000 + 27000) instead of Rs.2,48,100/-.

18. Aforementioned total amount of compensation shall carry interest @ 8% from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

19. Appeal is allowed in part and the amount awarded is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge