NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No.1117 of 2014

Anil Kumar Sharma S/o Late Hare Krishna Sharma Occupation Contractor (Carpenter) R/o Village Through Permhansh Sharma Vishwakarma Chouk Badhai Para Shiv Nager Tahsil and District Raipur Chhattisgarh

---- Appellant

Versus

1. Mahendra Muchaki aged about 35 years S/o Laxman Muchaki Occupation of truck Driver R/o Bhanupratappur Basant Nager District Kanker Chhattisgarh
2. Rajendra Kumar Jain S/o Inderchand Jain Occupation of Truck Owner R/o F.33 Rishabh Green City Thana Pulgaon Tahsil and District Raipur Chhattisgarh
3. The New India Insurance Company Ltd. Through Branch Manager Branch Office City Branch Office Bajrang Market R.D.A. Building Near Shastri Chouk Raipur Tahsil and District Raipur Chhattisgarh

---- Respondents

M. A. (C) No. 128 of 2015

New India Assurance Company Limited Through Branch Manager Branch Office Urban Branch Office Bajrang Market R.D.A. Building Near Shastri Square Raipur Tahsil & District Raipur Chhattisgarh Through Authorized Signatory New India Assurance Company Limited Divisional Office Opposite Rajiv Plaza Old Bus Stand Bilaspur Chhattisgarh

---- Appellant

Versus

1. Anil Kumar Sharma S/o Late Harekrishna Sharma Occupation Contractor (Carpenter) R/o Care of Paramhansh Sharma Vishwakarma Chowk Badhaipara Shivnagar Tahsil and District Raipur Chhattisgarh
2. Mahendra Muchaki aged about 35 years S/o Laxman Muchaki Occupation Driver R/o Bhanupratappur Basant Nager District Kanker Chhattisgarh
3. Rajendra Kumar Jain S/o Inderchand Jain Occupation Owner of the Vehicle R/o Rishabh Green City P.S. Pulgaw Tahsil and District Raipur Chhattisgarh

---- Respondents

MAC No.1117 of 2014

For Appellant	: Shri A.L. Singroul, Advocate
For Respondent No.1	: None
For Respondent No.2	: Shri D.N. Prajapati, Advocate
For Respondent No.3	: Shri B.N. Nande, Advocate

MAC No.128 of 2015

For Appellant	: Shri B.N. Nande, Advocate
For Respondent No.1	: Shri A.L. Singroul, Advocate
For Respondent No.2	: None
For Respondent No.3	: Shri D.N. Prajapati, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

01.09.2020

1. As both the appeals are arising out of award dated 22.08.2014 passed by Second Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.125 of 2012, they are being disposed of by this common judgment.

2. MAC No.1117 of 2014 is filed by the claimant (injured) seeking enhancement of amount of compensation awarded by learned Claims Tribunal, whereas MAC No.128 of 2015 is filed by the Insurance Company challenging the direction of pay and recover issued by learned Claims Tribunal as well as quantum of amount of compensation.

3. Facts relevant for disposal of these appeals, are that, on 18.02.2012, Anil Kumar Sharma was returning from work place

Talpuri, Durg on Motorcycle bearing No.CG-07/L/3394 at about 11.00 pm, when he reached near Nehru Nagar Chowk, he was knocked down by a Truck bearing No.CG07/AD/8001 (hereinafter referred to as 'offending vehicle'), driven by non-applicant No.1. In the aforementioned accident, claimant suffered grievous injuries over his left thigh, head and other parts of body. He was admitted to Chandulal Chandrakar Memorial Hospital, Bhilai (hereinafter referred to as 'CCM Hospital, Bhilai'), thereafter, he was shifted to Jawahar Lal Nehru & Research Centre, Bhilai Steel Plant, Bhilai (hereinafter referred to as 'JLN Hospital, Bhilai'). He suffered fracture over his left thigh (Femur) bone and fracture over the tibia fibula and he underwent operation for his fracture injuries. He also suffered injuries over his left eye and ribs.

4. After some recovery from injuries, claimant filed claim application under Section 166 of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.20,00,000/- pleading therein that on the date of accident, he was aged about 52 years and engaged in manufacturing of furnitures; he has employed 2-3 workers as also takes contract for furnishing/constructing show-room and from the aforementioned work, he was earning Rs.15,000/- per month, but on account of injuries suffered by him, he became permanent disabled.

5. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application while denying the fact of accident, pleaded that on the date of accident, offending vehicle

was insured with non-applicant No.3, therefore, the liability to satisfy the amount of compensation would be upon non-applicant No.3/Insurance Company.

6. Non-applicant No.3/Insurance Company submitted reply to claim application while denying the facts pleaded in claim application, pleaded that on the date of accident, non-applicant No.1 was not possessing valid and effective driving licence, there was no valid permit and fitness and offending vehicle was being plied in breach of conditions of insurance policy. It was further pleaded that Insurance Company is not liable to satisfy the amount of compensation as there was breach of conditions of insurance policy. It was lastly pleaded that claim application is not maintainable as the claimant has not arrayed the Insurance Company of Motorcycle in the party array, hence, there is non-joinder of necessary party.

7. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as four issues for consideration. On appreciation of pleadings, evidence and material placed on record by the respective parties learned Claims Tribunal held that non-applicant No.1 while driving the offending vehicle rashly and negligently, dashed the claimant and caused grievous injuries; there was breach of conditions of insurance policy and awarded sum of Rs.2,49,128/- as compensation and fastened liability to satisfy the amount of compensation upon non-applicants No.1 and 2 i.e. driver and owner of the offending vehicle jointly and

severally. Learned Claims Tribunal further issued a direction to non-applicant No.3/Insurance Company to first satisfy the amount of compensation and thereafter to recover it from non-applicants No.1 and 2/driver and owner of offending vehicle.

8. Shri A.L. Singroul, learned counsel for the claimant submits that learned Claims Tribunal has not considered the disability certificate and erred in awarding meager amount of compensation. He further submits that income assessed by learned Claims Tribunal is on lower side and contrary to evidence and pleadings of the claimant with regard to his occupation and income. Claims Tribunal has not awarded any amount towards loss of amenities and enjoyment in life looking to the nature of injuries suffered by the claimant, awarded only Rs.5,000/- towards pain and suffering, which is on the lower side looking to the nature of injuries suffered by the claimant and treatment taken by him. It is further contended that learned Claims Tribunal erred in not awarding any amount towards attendant, amount of compensation should be suitably enhanced after taking into account permanent disability suffered by the claimant.

9. Per contra, Shri B.N. Nande, learned counsel for the Insurance Company while opposing the submissions made by learned counsel for the claimant, submits that amount of compensation awarded by learned Claims Tribunal is on the higher side. He further submits that the disability certificate (Ex.A/74) is not of Medical Board, hence, permanent disability was not proved by the

claimant in accordance with law and no amount of compensation can be granted under this head. It is contended that Insurance Company has also filed an appeal being MAC No.128 of 2015 challenging the award of compensation to be on higher side as well as direction issued by learned Claims Tribunal to Insurance Company for pay and recover even after recording that on the date of accident, non-applicant No.1 was not possessing valid and effective driving licence to drive the vehicle.

10. We have heard learned counsel for the respective parties and perused the record carefully.

11. So far as the appeal filed by the claimant being MAC No.1117 of 2014 for enhancement of impugned award is concerned, we have perused the record of claim case. Claimant has filed permanent disability certificate (Ex.A/74) issued by Dr. A.A. Saify. Dr. A.A. Saify was examined as AW-2, who in his evidence, stated that he has examined the injured in his Clinic on 14.02.2013. In cross-examination, he admitted that the disability mentioned with regard to his left hand is not on account of bone injury, but on account of stiffness on muscle. He further stated that he is not a treating doctor, but has issued disability certificate on the basis of documents of treatment placed before him. The doctor recorded that in X-Ray of the claimant, he found old fracture injury over the rib, which was united, old fracture over femur bone with implant fitted and bone was united, old fracture over tibia fibula bone with implant fitted and bone was united. The claimant took treatment in

CCM Hospital, but for occupying the certificate, he has not approached to treating doctor or before the District Medical Board. In view of fact that Dr. A.A. Saifi (AW-2) who issued disability certificate (Ex.A/74) is not a treating doctor and not a doctor of District Medical Board, hence, we are of the view that non-awarding of amount of compensation on the ground of loss of income due to permanent disability is not called for any interference. This submission of learned counsel for the claimant is not sustainable and is hereby rejected.

12. Learned Claims Tribunal has awarded Rs.1,33,128/- towards medical expenditure. Learned counsel for the claimant was unable to point out that the medical bills exhibited have not been considered by learned Claims Tribunal. Learned Claims Tribunal also awarded Rs.60,000/- towards injuries and Rs.15,000/- towards special diet and conveyance expenses, in our considered opinion looking to the facts and circumstances of the case as well as documentary evidence available on record, we are of the firm view that learned Claims Tribunal awarded just amount of compensation towards medical expenditure, injuries, special diet and conveyance expenses.

13. So far as monthly income of the claimant as assessed by learned Claims Tribunal is concerned, the date of accident is 18.02.2012, nature of occupation of the claimant has been shown to be Carpenter and Contractor, the claimant has not filed any document showing the licence under Shop and Establishment Act

or any contract agreement for furnishing or making furnitures for any of his client. In absence of any specific evidence in this regard, the income as pleaded by the claimant cannot be accepted as it is, but can be assessed on notional basis. The income of the claimant assessed by learned Claims Tribunal at Rs.3,000/- per month, who was aged about 52 years, in our considered opinion is on the lower side. The notional income of a person has to be considered looking to the nature of occupation, his age, price index and cost of living. In the aforementioned facts and circumstances, particularly, taking into consideration the date of accident i.e. 18.02.2012, we find it appropriate to assess the income of the claimant as Rs.4,500/- per month.

14. Learned Claims Tribunal has considered the loss of income during the period of treatment for 12 months i.e. for one year, which in the opinion of this Court, is for a longer period. The discharge ticket (Ex.A/33) placed on record of CCM Hospital, Bhilai would show that claimant was admitted on 19.02.2013 to 25.02.2012 and in JLN Hospital, Bhilai (Ex.A/19) from 25.02.2012 to 12.03.2012. The injuries mentioned in discharge tickets of CCM Hospital, Bhilai (Ex.A/33) and JLN Hospital Bhilai (Ex.A/19) is polytrauma, head injury, close fracture shaft of left femur, close fracture distal tibia/fibula left with computed segmental multiple rib fracture left. The claimant has not placed on record further continuous treatment, hence, loss of income during the period of treatment can be taken for a period of six months, which comes to

Rs.27,000/- (4,500 x 6).

15. Learned Claims Tribunal has awarded only Rs.5,000/- towards pain and suffering, which looking to the nature of injuries i.e. head injury, fracture of left femur, fracture of left tibia fibula and computed segmental multiple rib fracture left is on the lower side and we find it appropriate to award **Rs.25,000/-** towards pain and suffering.

16. On account of injuries suffered by the claimant, looking to the recovery period and further that on the date of examination, implant was there over the fracture injury, we find it appropriate to award **Rs.25,000/-** towards loss of amenities and enjoyment in life and **Rs.8,000/-** towards attendant as the claimant might be required one attendant for his movement and for doing his daily routine work. The claimant will be further entitled for a sum of **Rs.1,33,128/-** towards medical expenditure, **Rs.60,000/-** towards injuries, **Rs.15,000/-** towards special diet and conveyance expenses as awarded by learned Claims Tribunal.

17. Now, the claimant is entitled for total compensation of **Rs.2,93,128/-** (27,000 + 25,000 + 25,000 + 8,000 + 1,33,128 + 60,000 + 15,000) instead of Rs.2,49,128/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization.

18. So far as the appeal filed by the Insurance Company being MAC

No.128 of 2015 challenging the direction of pay and recover is concerned, the policy is not disputed, exoneration of Insurance Company is only on account of non-renewal of driving licence (Transport) within the period prescribed under Section 15(4) of the M.V. Act. Section 15 of the M.V. Act provides for renewal of licence latest by within 30 days of the date of its expiry to have the continuation of the licence for issue of its earlier date, and if the application for renewal is not filed within the period of 30 days than it licence is to be treated to be effective from the date of its renewal. In the case at hand, the date of renewal of licence is after period of 30 days. The driver on the date of accident was not having the licence.

19. The claim is of third party and the risk of claimant is covered under the insurance policy, therefore, if for any reason driver was not possessing valid and effective driving licence, a direction of pay and recover to be issued in view of the verdict rendered by Hon'ble Supreme Court in case of **Shamanna and Another v. Divisional Manager, Oriental Insurance Company Limited and Others**[1].

20. In view of aforementioned facts and the law laid down by Hon'ble Supreme Court in **Shamanna** (supra), we do not find any error in the direction issued by learned Claims Tribunal to the Insurance Company to first pay the amount of compensation and thereafter to recover the same from the driver and owner of offending

1 **(2018) 9 SCC 650**

vehicle. The appeal filed by Insurance Company so far as it relates to challenge with respect to pay and recover is dismissed.

21. In view of above, both the appeals (MAC Nos.1117 of 2014 and 128 of 2015) are allowed in part. The claimant is entitled for total compensation of **Rs.2,93,128/-** with interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact. The liability to satisfy the amount of compensation will be upon non-applicants No.1 and 2 i.e. driver and owner of the offending vehicle. It is directed that the Insurance Company will first deposit the entire amount of compensation before learned Claims Tribunal and thereafter will recover the same from non-applicants No.1 and 2/driver and owner of the offending vehicle. For the recovery of amount of compensation, Insurance Company is not required to file separate suit or proceeding, but can make an application in the very same proceeding for recovery of amount so deposited by it.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh