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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 588 of 2014**

Shivkumar Patel son of Late Chain Singh Patel, aged about 35 years, Caste Aghariya, Occupation Service (J.S.P.L.- Ju. Engineer), resident of Bandhapali, Police Station and Tahsil Tamnar, District Raigarh, at present resident of Deendayal Colony, Dhimrapur, District Raigarh, Chhattisgarh

-----Appellant**Versus**

1. Shivkumar Sharma son of Rambhajan Sharma, aged about 35 years, Caste Brahman, Occupation Vehicle Owner, resident of Dhimrapur Chowk, Raipur, Tahsil, P.S. and District Raigarh, Chhattisgarh
2. Sanju Nishad son of Ballu Nishad, aged about 20 years, Caste Kenwat, Occupation Driver, resident of Rambhatha, near Mandir Chowk, Raigarh, Tahsil, P.S. and District Raigarh, Chhattisgarh
3. Branch Manager, Ifco Tokio General Insurance Company Limited, Shop No.345-374 Lal Ganga Shopping Mall, G.E. Road, Raipur, through Branch Manager, Ifco Tokio General Manager Insurance Company Limited, Branch Office, Raigarh, Chhattisgarh

----Respondents

For Appellant	: Shri Manoj Kumar Jaiswal, Advocate.
For Respondent No.1	: Shri Abhishek Saraf, Advocate.
For Respondent No.2	: None
For Respondent No.3	: Shri P. Acharya, 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****09.10.2020**

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as

'M.V. Act') challenging the award dated 01.03.2014 passed by the First Additional Motor Accident Claims Tribunal, Raigarh, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.69 of 2011 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.4,032/- as compensation in an injury case.

2. Facts of the case relevant for disposal of this appeal, are that, on 05.08.2009, at about 9.30 am, appellant Shivkumar Patel was travelling on a motorcycle bearing No.CG-15/D/2580 along with his son Ashish Patel from Raigarh to his village Bandhapali (the motorcycle was owned by his brother-in-law). When they were crossing Aamaghat, one Scorpio bearing No.CG-13/C/4461 (hereinafter referred to as 'offending vehicle') coming from opposite direction, driven by non-applicant No.2 rashly and negligently dashed the motorcycle of appellant. In the aforementioned accident, appellant suffered grievous injuries over his left leg apart from other injuries, his motorcycle also got badly damaged. The appellant was taken to Jindal Hospital, Raigarh for his treatment.
3. Appellant/claimant filed an application under Section 166 of the M.V. Act pleading therein that in the aforementioned accident, he suffered fracture injuries over his legs along

with other injuries on different parts of body; he took treatment as inpatient from 05.08.2009 to 04.09.2009 at Jindal Hospital, Raigarh; undergone operation and steel rod was implanted; suffered permanent disability to the extent of 45% on account of motor accidental injuries suffered by him and claimed Rs.62,33,496/- as total compensation on different heads.

4. Non-applicants No. 1/owner of offending vehicle submitted reply to claim application, while denying the pleadings made in claim application pleaded that appellant himself was liable for accident, the amount of compensation claimed is highly exaggerated.
5. Non-applicant No.2/driver of offending vehicle did not appear before Claims Tribunal, not submitted any reply to claim application and was proceeded *ex parte*.
6. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the adverse pleadings made in claim application pleaded that claim application was filed only on the basis of presumption and surmises, there was breach of conditions of insurance policy.
7. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties held that appellant suffered grievous injuries on account of rash and negligent driving of offending vehicle by non-

applicant No.2; permanent disability and breach of conditions of insurance policy were not found to be proved. Calculated total amount of compensation as Rs.1,04,032/-, but taking note of the fact that appellant received Rs.1,00,000/- towards medical reimbursement, deducted an amount of Rs.1,00,000/- and awarded only a sum of Rs.4,032/- as compensation with interest at the rate of 6% per annum from the date of filing of claim application till its realization. Fastened the liability upon non-applicant No.3/Insurance Company.

8. Shri Manoj Kumar Jaiswal, learned counsel for the appellant submits that learned Claims Tribunal erred in awarding meager amount of compensation and also erred in deducting Rs.1,00,000/- from the calculated amount of compensation without assigning any reason. It is pointed out that Rs.1,00,000/- received by the appellant from Jindal Steel Power Limited is in the nature of advance and the same will be deducted from the monthly salary of the appellant, therefore, an amount of Rs.1,00,000/- could not have been deducted by learned Claims Tribunal while awarding the amount of compensation. It is contended that learned Claims Tribunal erred in disbelieving the disability certificate (Ex.P/38), which is proved by Dr. Rajkumar Gupta (AW-2), who in his evidence admitted that he has

issued disability certificate of 45% permanent disability suffered by the appellant. It is further contended that learned Claims Tribunal erred in not applying the multiplier system for the purpose of calculating the amount of compensation in the facts of the case. He lastly submits that learned Claims Tribunal erred in not awarding any amount of compensation towards loss of income during the period of treatment, future prospects, pain and suffering as well as loss of amenities and joy in life.

9. Per contra, Shri Abhishek Saraf, learned counsel for respondent No.1 and Shri P. Acharya, learned counsel for respondent No.3 supported the impugned award and submitted that appellant suffered grievous injuries on his left leg, but disability certificate issued by Dr. Rajkumar Gupta (AW-2) could not be proved, in view of the statement given by Dr. Rajkumar Gupta (AW-2) before the learned Claims Tribunal. They have argued that appellant has not placed on record any document to show that Rs.1,00,000/- received by him on account of accidental injuries to be an advance liable to be deducted from the monthly salary of appellant. It is further pointed out that learned Claims Tribunal has awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference.

10. We have heard learned counsel for the respective parties and also perused the record.
11. Appellant in his application has pleaded that in the accident, his left leg got fractured. He has placed on record MLC report (Ex.P/34), in which, it is mentioned that appellant suffered lacerated wound over left mid thigh, lacerated wound around knee, injury over knee joint and nature of injury to be grievous. The document placed on record along with Ex.P/34 with the seal of Jindal Hospital and Research Centre, Raigarh mentions about the commuted fracture of femur left, fracture of shaft femur left, commuted fracture of head of fibula bone left and commuted fracture of tibial spine left.
12. From the aforementioned two medical documents placed on record, it is apparent that appellant suffered injuries, which are grievous in nature. Appellant has placed on record disability certificate (Ex.P/38) issued by District Medical Board, Raigarh. To prove disability certificate, appellant has examined Dr. Rajkumar Gupta (AW-2), who in his evidence stated that upon examination of the appellant, he found two years old multiple fractures over femur bone, hip and knee, movement of knee was reduced and he found shortening of leg. In cross examination, he admitted that he has not looked into any document of

treatment of appellant and he is unable to state that injuries is of two years old or not. He has recorded the duration of injuries on the basis of information given by the appellant. He admitted that appellant was examined in *Shivir* organized on 03.10.2010 and disability certificate was issued to him. He further admitted that appellant can be cured by physiotherapy exercise and in absence of exercise, disability may remain. Learned Claims Tribunal has discussed the evidence of Dr. Rajkumar Gupta (AW-2) very elaborately in paragraphs-9 and 10 of impugned award and arrived at a conclusion that disability certificate (Ex.P/38) is not proved.

13. In view of the above discussions and upon going through the evidence of Dr. Rajkumar Gupta (AW-2) as well as discussion made by learned Claims Tribunal in paragraphs-9 and 10 of impugned award, we do not find any infirmity in the finding recorded by learned Claims Tribunal that disability certificate (Ex.P/38) was not found to be proved. Hence, the submission made by learned counsel for the appellant in this regard is hereby repelled. We affirm the finding recorded by learned Claims Tribunal with regard to disability of the appellant.
14. So far as deduction of Rs.1,00,000/- from the total amount of compensation is concerned, learned Claims Tribunal has

calculated the total amount of compensation as Rs.1,04,032/- after adding medical bills placed on record as well as compensation on other heads. Learned Claims Tribunal taking into consideration the evidence of appellant, particularly, paragraph-17, wherein he admitted that he took medical reimbursement of Rs.1,00,000/- from his Employer awarded the amount of compensation of Rs.4,032/-.

15. From the admission made by appellant in paragraph-17 that he is entitled for medical reimbursement and he took reimbursement of Rs.1,00,000/-, the submission of learned counsel for the appellant that an amount of Rs.1,00,000/- was given to him as an advance, is not sustainable and is contrary to the admission of the appellant in his evidence. Further, the appellant has not brought on record any evidence to prove Rs.1,00,000/- to be advance and deducted from his monthly salary.
16. The law is well settled in this regard that the person who met with an accident, suffered injuries, incurred expenditure in the treatment is liable to be compensated for the expenditure incurred by him from his own, but if an injured is a Government Servant or employee of any Private Sector, is entitled for medical reimbursement from his/her Department, then he/she cannot claim one amount to two authorities, i.e. one from the Employer under the head of

medical reimbursement and other by owner, driver and insurer of offending vehicle as compensation stating therein that he incurred spent amount towards medical expenditure. In the said circumstance, the appellant cannot be permitted to claim compensation twice for some expenses arising out of one accident.

17. So far as quantum of compensation is concerned, learned Claims Tribunal has awarded Rs.69,032/- towards medical expenditure and Rs.35,000/- towards special diet, attendant and conveyance expenses and thereby calculated the total compensation to the tune of Rs.1,04,032/-.
18. It is a settled law that any Government Servant or an employee of any Institution or Private Sector is entitled for reimbursement of the amount towards medical expenses, to which, he has actually incurred. Learned Claims Tribunal while calculating the medical bills has assessed the expenditure on medical heads as Rs.69,032/-, but erroneously deducted Rs.1,00,000/- as received by the appellant towards medical reimbursement. If as per documents placed on record before learned Claims Tribunal, the amount claimed towards medical expenditure is Rs.69,032/-, then learned Claims Tribunal ought to have deducted only this amount from the total amount of

compensation and not an amount of Rs.1,00,000/- because the excess amount than medical expenditure may not be reimbursable.

19. In view of above, submission made by learned counsel for the appellant that learned Claims Tribunal erred in deducting Rs.1,00,000/- is partly allowed and we hold that the amount of compensation calculated by learned Claims Tribunal towards medical expenditure is only to be deducted from the total amount of compensation.
20. Learned Claims Tribunal has not awarded any amount towards grievous injuries suffered by the appellant, loss of amenities and joy in life, pain and suffering and loss of income during the period of treatment, for which, the appellant would be entitled for. From the documents placed on record, it is not in dispute that the appellant suffered multiple fracture injuries over his left leg. In pleadings and evidence, it is mentioned that appellant took treatment as inpatient from 05.08.2009 to 04.09.2009 at Jindal Hospital, Raigarh, which remained uncontroverted. Though the appellant in his evidence has stated that he could not able to perform his duties for a period of five months, but had not placed on record any document to prove the same. Looking to the nature of work, his employment and nature of injuries suffered by him, we find it appropriate to award

Rs.28,500/- towards loss of income for a period of two months. In the facts and circumstance of the case, we find it appropriate to award **Rs.25,000/-** towards injuries suffered by him, **Rs.25,000/-** towards pain and suffering and **Rs.20,000/-** towards loss of amenities and joy in life. Appellant will also be entitled for a sum of **Rs.35,000/-** towards special diet, attendant and conveyance expenses as awarded by learned Claims Tribunal.

21. In view of above, total computation of compensation is **Rs.2,02,532/-** (28,500 + 25,000 + 25,000 + 20,000 + 35,000 + 69,032/- (medical expenses)). The amount of medical expenses is to be deducted being reimbursable. Now the appellant is entitled for Rs.1,33,500/- (2,02,532 – 69,032) as compensation instead of Rs.4,032/- as awarded by the Claims Tribunal. The aforesaid total amount of compensation shall carry 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 will remain intact.
22. In the result, the appeal is allowed in part and impugned award passed by the Claims Tribunal is modified to the extent as indicated herein-above.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge