

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 539 of 2014**

- Rupendra Kumar S/o Shyam Lal, aged about 04 years, through natural guardian father Shyam Lal, aged about 50 years, R/o Village Pusla, Post Katgodi, Police Station and Tahsil Sonhat, District Koriya, C.G.

-----Appellant/ Claimant**VERSUS**

1. Principal, Saraswati Shishu Mandir Baikunthpur, District Korea C.G.
2. Surendra Kumar S/o Heera Lal, aged about 28 years, R/o village Haliya, Jampara (niche mohalla) Police Station and Tahsil Baikunthpur, District Korea C.G.
3. Branch Manager, the Oriental Insurance Company Limited Ambikapur District Surguja, C.G.

----Respondents

For Appellant	:	Mr. Samir Singh, Advocate.
For Respondent 3	:	Mr. Deepak Gupta, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****18/09/2020**

1. This instant appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 seeking enhancement of the award challenging the impugned award dated 10-03-2014 passed by Motor Accident Claims Tribunal, Baikunthpur, district Korea in claim case no. 45/2011 whereby learned Claims Tribunal allowed the application in part and awarded a sum of Rs. 9,164/- as compensation in an injury case.
2. Facts relevant for disposal of this appeal are that on 24-09-2010 when appellant aged about 04 years was going to bus stand Baikunthpur with his parents, at that relevant time, one Tata Magic bearing registration no. CG 16B 1186 driven by Respondent 2/ Non-applicant 2 rashly and negligently dashed the appellant. In the said accident, appellant suffered fracture injury over his

leg. After recovery from the injury, appellant filed an application under Section 166 of the Motor Vehicles Act, seeking compensation of Rs. 3,00,000/- on account of the injury suffered by him pleading therein that the appellant undergone operation of his leg, was bedridden for three months and suffered permanent disability.

3. Respondent 1 and 2/ Non-applicant 1 and 2 who are owner and driver of the offending vehicle submitted their reply to the claim application, pleading therein, that Respondent 2 was driving the vehicle cautiously and it is the appellant himself who suddenly ran over the road and met with an accident. Appellant suffered normal injuries. Respondent 2 driver of the vehicle himself took the appellant to hospital in his vehicle. Respondent 1 and 2 have borne all the medical expenses. Respondent 2 was possessing valid and effective driving licence on the date of accident. He was acquitted from the criminal charges. The appellant has not suffered any permanent disability but only simple injuries.
4. Respondent 3/ Non-applicant 3 also submitted reply to the claim application pleading therein that the appellant took treatment at Government hospital Baikunthpur where treatment is provided free of cost. He did not incur expenditure of more than Rs. 2,500/-. It is the appellant who himself came running on the road and met with the accident. The appellant has not suffered any permanent disability. Respondent 2/ Non-applicant 2 was not possessing valid and effective driving licence, there was no valid permit, as such, there was breach of conditions of insurance policy.
5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that the accident took place on account of rash and negligent driving of offending vehicle by Respondent 2/ Non-applicant 2 and dashed the appellant. Appellant did not suffer permanent disability. Respondent 2/ Non-applicant 2 was possessed with valid and effective driving licence. There was no breach of conditions of insurance

policy and awarded Rs. 9,164/- as compensation.

6. Learned counsel for the appellant submits that the learned Claims Tribunal erred in awarding very meagre amount of Rs. 7,000/- consolidately on the head of pain and sufferings, discomfort to parents on account of the accidental injuries suffered to their son. He submits that no amount towards the injuries is awarded, no amount is awarded towards the special diet and other non-pecuniary damages. He further submits that the appellant has placed on record the disability certificate where it is mentioned that the appellant suffered disability but the Claims Tribunal held that the appellant failed to prove the same.
7. Per contra, Mr. Deepak Gupta, learned counsel for the Respondent 3- Insurance Company submits that the Claims Tribunal considering overall facts and circumstances of the case has awarded just amount of compensation which does not call for any interference. He further submits that the treatment taken by the appellant in government hospital is not disputed which is provided free of cost. He submits that the disability certificate produced by the appellant mentions only temporary disability and further Dr. examined by the appellant as AW-2, in his evidence, very specifically stated that the injury suffered by the appellant was of minor in nature and by taking proper treatment, the appellant will be cured fully. He also submits that in government hospitals, treatment is given free of cost and for the injury suffered by the appellant, proper treatment is available in government hospital.
8. We have heard learned counsel for the respective parties and also perused the record of the case.
9. Taking into consideration the nature of the injuries suffered by the appellant. Evidence of the parent of the deceased and also the Dr. R. Bansariya AW-2 who is a Doctor in government hospital, Baikunthpur, district Korea, it is

apparent that the appellant suffered grievous injury and not the fracture injury. Perusal of the discharge ticket of the said hospital would show that the appellant was admitted in the hospital on 24-09-2010 and discharged on 27-09-2010 but discharge ticket only shows that the appellant suffered *Lacerated wound over his rt ankle/leg*. The document also shows that the appellant took treatment at government hospital where the treatment is given free of cost as admitted by Doctor AW-2 in his evidence.

10. In view of the aforementioned evidence available on record i.e. oral and documentary, it is apparent that the appellant took treatment at government hospital and the Claims Tribunal has awarded the amount of expenditure incurred by the appellant towards purchase of medicines or other treatment stuff etc. Learned Claims Tribunal has awarded Rs. 2,164/- towards medical expenses which, in absence of any material placed on record, is affirmed to be correctly awarded. The Tribunal has awarded Rs. 7,000/- consolidately on the head of pain and sufferings on account of injury, discomfort in life to the injured as well as the parents which in the opinion of this Court is on lower side. Looking to the nature of injury that he suffered temporary disability and further the care required by the parents to their minor child aged about 04 years only, we find it appropriate to award Rs. 15,000/- on the aforementioned heads.
11. Learned Claims Tribunal has not awarded any amount for the injuries suffered by a minor child aged about 04 year. Doctor was examined as claimants' witness AW-2. In his evidence, he has stated before the Claims Tribunal as under:

“...परीक्षण में मैंने पाया कि उसके दायें टखने तथा पैर का घाव भर गया था, जिस पर चोट का निशान बन गया था | टखने के जोड़ को हिलाने में कठिनाई हो रही थी | दुर्घटना तथा इलाज के पश्चात दायें टखने में थोड़ी सी जकड़न आ गयी थी | आहत पर 15 प्रतिशत की अस्थायी विकलांगता पाया गया था | विकलांगता प्रमाण पत्र प्र पी० 27 है, जिसके असेअ भाग पर मेरे हस्ताक्षर हो |”

12. From his evidence, it appears that the permanent mark has been left on his leg on account of injury suffered by him, there was stiffness on ankle joint though it is mentioned the temporary disability, but looking to the nature of injury, part of body on which the minor child aged 04 years suffered injury i.e. ankle joint rt, we find it appropriate to award Rs. 10,000/- towards the injury suffered by the appellant. Now the appellant-claimant will be entitled for a total sum of **Rs. 27,164/-** [Rs.2164+Rs.15000+Rs.10000] instead of Rs. 9,164/- as awarded by the Claims Tribunal. The said additional amount of compensation will carry interest @ 6% from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.
13. In the result, the appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge