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HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 876 of 2014**

(Arising out of award dated 25.03.2014 passed in Claim Case No.14 of 2011 by the First Additional Motor Accident Claims Tribunal, Raigarh, Chhattisgarh)

Sunil Kumar Agnihotri @ Banti, aged about 31 years, son of Ram Prakash Agnihotri, resident of Subhash Nagar, Kotra Road, Raigarh, Civil and Revenue District Raigarh, Chhattisgarh.

---- Appellant**Versus**

1. Ibrahim Chikwa son of Jagannath Chikwa, Aged About 24 Years, presently resided at village Jorapali, P.S. Kotra Road, Civil and Revenue District Raigarh C.G., Permanent resident of village Jharmuda, P.S. Farasabahar, District Jashpur, Chhattisgarh.
2. Jagdamba Enterprises Through Amit Agrawal, son of Balmukund Agrawal, resident of Sattigudi Chowk, Raigarh, Civil and Revenue District Raigarh, Chhattisgarh
3. Branch Manager, The Oriental Insurance Company Limited, Branch Office- Itwari Bazar, Raigarh, Civil and Revenue District Raigarh, Chhattisgarh.

---- Respondents

For Appellant	: Shri Rajesh Ranjan Sinha, Advocate
For Respondent No.1 & 2	: Shri Roop Naik, Advocate
For Respondent No.3	: Shri Hanuman Prasad Agrawal, 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****19.08.2020**

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 25.03.2014 passed by the

First Additional Motor Accident Claims Tribunal Raigarh, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.14 of 2011 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.68,000/- as compensation in an injury case.

2. Brief facts relevant for disposal of this appeal, are that, on 07.10.2007 appellant/claimant was returning from village Nalwa along with his nephew Ashwani Kumar Agnihotri, at that relevant time, when they reached in front of VIP Dhaba, one Truck (Dumper) bearing registration No.CG-13/ZC/0523 (herein after referred to as "offending truck") driven by non-applicant No.1 rashly and negligently caused accident. In the aforementioned accident, appellant/claimant suffered grievous injuries and his left leg got fractured. During the course of diagnosis, it revealed that he suffered three fractures on his left leg.
3. Appellant/claimant filed an application under Section 166 of the M.V. Act seeking amount of compensation of Rs.7,59,884.95 as compensation pleading therein that at the time of accident, he was doing the work of Munshi and earning Rs.4,000-7,000/- per month, but after the accidental injuries suffered by him, his work was affected.
4. Respondents No.1 and 2, who are driver and owner of the offending truck submitted reply to claim application and

pleaded that the amount claimed in the claim application is highly exaggerated; appellant/claimant himself was responsible for the accident and injuries; appellant/claimant did not suffer any permanent disability; offending truck was insured with non-applicant No.3/Insurance Company; offending vehicle was not involved in the accident and there was contributory negligence on the part of appellant/claimant also.

5. Non-applicant No.3/Insurance Company submitted reply to claim application and while denying the pleading made in the claim application, pleaded that on the date of accident, offending truck was not insured with Insurance Company, but insurance policy was taken after the date of accident.
6. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as four issues for consideration. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that appellant/claimant suffered motor accidental injuries on account of rash and negligent driving of offending truck by non-applicant No.1; on the date of accident, offending truck was not insured with non-applicant No.3 and awarded a total sum of Rs.68,000/- as compensation to appellant/claimant in an injury case.

7. Shri Rajesh Ranjan Sinha, learned counsel for the appellant/claimant submits that learned Claims Tribunal erroneously not considered the entire medical bills by taking a technical plea of not properly signed by the bill issuing authority/person. He submits that all the bills are issued by Chemist Shop, which is situated within the compound of the Hospital, where the appellant/claimant took treatment and some of the bills are of Raigarh Chemist Shop, where also, appellant/claimant took treatment. He further submits that the bills with respect to treatment given by doctor as doctor fees have been allowed by learned Claims Tribunal, but by taking a technical plea, has not awarded the bills with regard to purchase of medicines from Chemist Shop. It is contended that learned Claims Tribunal erred in assessing the income of appellant/claimant as Rs.100/- per day i.e. Rs.3,000/- per month, which is on the lower side; adding that, learned Claims Tribunal awarded only a sum of Rs.3,000/- in lumpsum towards loss of income, conveyance expenses and special diet ignoring the nature of injuries suffered by him i.e. fracture of left leg at three places/sites and taken treatment at Raigarh and looking to the grievousness of injuries, appellant/claimant has to take treatment in Hospital at Raipur. It is further contended that learned Claims Tribunal has not considered that appellant/claimant has expended much more amount in

transportation from Raigarh to Raipur through private vehicle. He further submits that on account of injuries suffered by appellant/claimant, he could not able to perform the work for a period of six months, therefore, proper amount of compensation towards loss of income during the period of treatment be awarded. It is also submitted that no amount has been awarded towards attendant ignoring the fact that appellant/claimant took treatment as inpatient for about 45 days and prays that amount of compensation be enhanced suitably.

8. Per contra, Shri Roop Naik, learned counsel for respondents No.1 and 2/driver and owner of offending truck submits that learned Claims Tribunal correctly not awarded the bills, which were not signed by the Chemist, because there are chances of placing forged bills for seeking more amount of compensation.
9. Shri Hanuman Prasad Agrawal, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal has taken note of the policy issued with regard to offending truck on 08.10.2007, came effective only from 12.55 pm till midnight of 07.10.2008, whereas the accident admittedly took place on 07.10.2007 at 22.00 hours/10.00 pm in the night, as such, Insurance Company has not issued any policy for the offending truck on the date of accident.

10. We have heard learned counsel for the respective parties and perused the record carefully, which is kept in MAC No.642 of 2014 (arising out of same accident), which has already been dismissed vide judgment dated 19.08.2020 on the ground of maintainability of appeal for not making mandatory deposit as provided under Section 173 of the M.V. Act.
11. So far as the first ground raised by learned counsel for the appellant/claimant for not awarding the amount of entire bills which are placed on record, we have perused the documents i.e. bills of Jai Medical Hall situated at Khemka Hospital compound, Raipur is from the month of October i.e. 16.10.2007 onwards to 05.12.2007 (Ex.P/8 to Ex.P/37), these bills' amount have not been awarded by learned Claims Tribunal on the ground that these bills were not properly signed by a person, who issued the bills. Perusal of these documents would show that these are the receipts of Chemist Shop for purchase of medicine by the appellant/claimant. Chemist Shop is situated within the compound of Hospital at Raipur, where appellant/claimant took treatment i.e. Khemka Hospital. Learned Claims Tribunal awarded the amount of hospital charges, which is shown as Ex.P/49 and Ex.P/50 of the same hospital i.e. Khemka Hospital of Rs.60,000/-. Having done so by learned Claims Tribunal and awarded the amount of hospital

charges, we are of the view that learned Claims Tribunal by taking a technical approach and not considering that the Chemist Shop, from whom, the bills for purchase of medicine are issued is situated within the same compound of treating hospital, we set aside the said finding refusing to award the bills' amount from Ex.P/8 to Ex.P/37 as also Ex.P/48.

12. So far as the cash receipts issued by Khemka Hospital as Ex.P/38 to Ex.P/43, it appears that said cash receipts are included in the total of bill of the Hospital issued vide Ex.P/49 and Ex.P/50, therefore, appellant/claimant will not be entitled for double the amount, of which, he has expended in the Hospital. Similarly, we also find it appropriate to award the bills towards Ex.P/54 to Ex.P/68, which are the bills issued by Chemist Shop and Ex.P/54 is cash receipt of Diagnosis Centre.
13. Looking to the nature of injuries as well as dates mentioned in the bills, the bills cannot be said to have been prepared by forging it and hence, we award the same. These medical expenses will be in the addition to amount of Rs.60,000/- already awarded by learned Claims Tribunal, which are the Hospital charges.
14. Appellant/claimant has filed MLC report, which is part of the record of criminal case as Ex.P/6, in which, it is mentioned

that appellant/claimant suffered crush injury to left leg below 1/3rd and tibia fibula. Initially, he was admitted to the Government Hospital at Raigarh i.e. Kirodimal District Hospital, Raigarh. On the bill issued by Khemka Hospital, Raipur dated 06.12.2007, there is mention of operation of appellant/claimant whereas accident is dated 07.10.2007. After operation also, appellant/claimant may have to take rest for a further period of two months, therefore, we are of the view that appellant/claimant is entitled for loss of income for a period of five months. Learned Claims Tribunal has awarded only Rs.5,000/- towards pain and suffering, which in the facts and circumstances of the case appears to be on the lower side.

15. For the forging reasons as well as the facts and circumstances of the case, we deem it fit and proper to recalculate the amount of compensation as under :

Appellant/claimant will be entitled for a sum of Rs.60,000/- towards medical expenses as awarded by learned Claims Tribunal plus the expenses towards purchase of medicine as Rs.35,309.60 rounded off to Rs.35,310/- mentioned in the documents from Ex.P/8 to Ex.P/37, Ex.P/48 and Ex.P/54 to Ex.P/68. Apart from above medical expenditure, appellant/claimant will be further entitled for a sum of Rs.20,000/- towards pain and suffering, Rs.10,000/- towards conveyance expenses, Rs.3,000/-

towards special diet, Rs.6,000/- towards attendant for two months (3,000 x 2) and Rs.15,000/- towards loss of income during the period of treatment for five months (3,000 x 5).

16. On the basis of above recalculation, now appellant/claimant will be entitled for a total compensation of **Rs.1,49,310/-** (60,000 + 35,310 + 20,000 + 10,000 + 3,000 + 6,000 + 15,000) instead of Rs.68,000/- as awarded by the learned Claims Tribunal. The amount of compensation will carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Liability to satisfy the amount of compensation will be upon respondents No.1 and 2 (driver and owner). Other conditions imposed by learned Claims Tribunal shall remain intact.
17. In the result, appeal is allowed in part. The impugned award is modified to the extent indicated herein above.

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

Sd/-
(Parth Prateem Sahu)
Judge