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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1243 of 2014**

- Jitendra Tandon S/o Late Kriparam Tandon, aged about 24 years, R/o Gataura, Police Station Masturi, District (Revenue & Civil) Bilaspur (CG)

---- Appellant**Versus**

1. Rakesh Kumar Sharma, S/o Ishwari Prasad Sharma, aged about 40 years, R/o Bhatgaon, Police Station Mungeli, District Bilaspur (CG) [Driver of the Tata Magic No.CG10-F-9128]
2. Ishwari Prasad Sharma, S/o Makhanlal Sharma, R/o Village-Bhatgaon, Police Station Mungeli, District Bilaspur (CG) [Owner of the Tata Magic No.CG10-F-9128]
3. Divisional Manager, The Oriental Insurance Company Limited, Near Rajiv Plaza, Bus Stand, Bilaspur, Tahsil & District Bilaspur (CG) [Insurer of the Tata Magic No.CG10-F-9128]

---- Respondents

For Appellant	:	Mr. Anand Kesharwani, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. Dipak Gupta, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board**Per Parth Prateem Sahu, J****21/08/2020**

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 19.8.2014 passed in Claim Case No.282/2010 by the learned 1st Motor Accident Claims Tribunal, Bilaspur whereby learned Claims Tribunal allowed application in part and awarded a sum of Rs.2,75,571/- as compensation in

an injury case.

2. Facts of the case, in nutshell, are that on 11.6.2010 the appellant was travelling on his motorcycle and going to Mungeli from Bilaspur. When he reached near Khapri Rest House, one Tata Magic bearing registration No.CG10-F-9128 driven by non-applicant No.1, dashed motorcycle and caused accident. In the said accident, the appellant suffered grievous injuries over his person and he was taken to the Community Health Centre, Takhatpur from where he was referred to CIMS Hospital, Bilaspur. Looking to the grievousness of the injuries, claimant was referred to Apollo Hospital, Bilaspur and from where he was shifted to Ramkrishna Care Hospital, Raipur. In the accident appellant suffered fracture injury on his right leg and he underwent operation.
3. After taking treatment, appellant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.7,00,000/- on the heads of pain & sufferings, lost of future income, treatment expenses, loss of earning during the period of treatment, permanent disability and future treatment.
4. Non-applicant Nos.1 & 2, who are driver and owner of offending vehicle, did not chose to appear before the Claims Tribunal and were proceeded ex-parte.
5. Non-applicant No.3 Insurance Company resisted the claim made by the appellant and pleaded that the accident was not on account of rash and negligent driving of offending vehicle by

non-applicant No.1, but the claimant/appellant is responsible for accident. There was no valid and effective driving license with non-applicant No.1 and thereby there was breach of conditions of insurance policy. Insurance Company also took a plea of contributory negligence on part of claimant/ appellant.

6. On appreciation of evidence placed on record by respective parties, the Claims Tribunal held that accident took place on account of rash and negligent driving of offending vehicle by non-applicant No.1 in which appellant suffered grievous injuries. Breach of condition of insurance policy was not found to be proved. There was no negligence on the part of the appellant and awarded a sum of Rs.2,77,571/- as compensation including medical expenses of Rs.2,37,571/-
7. Mr. Kesharwani, learned counsel for appellant submits that the Claims Tribunal has awarded very meagre amount under the heads of mental agony, pain & sufferings, special diet, transportation and further treatment. He further submits that the Claims Tribunal has not awarded any amount towards permanent disability suffered by the appellant and towards loss of amenities, appellant suffered two fracture injuries over his right leg, referred to Ex.P-8, which is radiology x-ray report of Apollo Hospital in which it is mentioned "fracture upper shaft right tibia including articular surface on right and fracture lower pole of right patella". He also pointed out that Ex.P-10, which is CT Scan report of Apollo Hospital, Bilaspur, it is diagnosed 'haemorrhagic contusion in right temporal and both parietal

lobe and hypo-dense area seen in mid brain, diffuse axonal injury'.

8. Mr. Gupta, learned counsel for respondent Insurance Company submits that the Claims Tribunal upon considering the entire material available on record awarded just amount of compensation which does not call for any interference.
9. We have heard learned counsel for the parties and perused the record.
10. Appellant has placed on record discharge summary of Ramkrishna Care Hospital, Raipur as Ex.P-12 which shows that the appellant took treatment as inpatient from 12.6.2010 to 8.7.2010. Similarly, report Ex.P-12 shows that head injury with multiple haemorrhagic contusion with cerebral commuted fracture right tibia upper third with on I/A extension. Appellant was again admitted in the hospital on 23.9.2010 till 28.9.2010 as per Ex.P-14 at Ramkrishna Care Hospital, Raipur wherein it is diagnosed that fracture of IT femur right with OP tibia (r) with head injury. Appellant has also placed on record disability certificate as Ex.P-94 issued by the District Medical Board, Bilaspur showing disability to the extent of 25% mild.
11. Appellant entered into witness box and in his evidence has stated that he suffered grievous injuries over head and on account of which his condition was critical and therefore on the advise of doctor of Apollo Hospital, Bilaspur he was referred to Ramkrishna Hospital, Raipur. In his evidence he has stated

that even after taking days' treatment, he feels headache and sometimes suffer with vertigo and become unconscious. Due to injury, his right knee joint became stiff and he could not be able to stand for long time at one place. In the cross-examination he admits that he is working as Shiksha Karmi Grade-3 and earning Rs.8,254/- per month. He also admitted that there is no medical reimbursement facility to him. He also stated that in his department for leave there is principle of no work no pay. To prove the disability certificate, the claimant has examined Dr. S.S. Bhatia as AW-2 who has stated in evidence that his right leg was shortened by 2.5 cm in comparison to left leg. He also stated that femur bone has been united diagonally.

12. In view of aforementioned evidence, if we consider the amount of compensation awarded by the Claims Tribunal, the Claims Tribunal has awarded Rs.2,35,571/-. The medical bills itself shows the grievousness and nature of injury suffered by claimant and further clear from the medical documents placed on record by him, as mentioned in preceding paragraphs. Learned counsel for appellant has not argued that any of the bills placed on record has not been considered at the time of calculation of medical expenses, therefore, we affirm the amount of award on medical expenses as it is .

13. The Claims Tribunal has awarded only Rs.5,000/- towards pain and sufferings, which in the opinion of this Court is on lower side looking to the nature of injuries suffered by claimant and treatment taken by him from Apollo Hospital, Bilaspur as well

as Ram Krishna Care Hospital at Raipur, the medical documents placed on record by the claimants particularly discharge summary, x-ray & CT Scan reports of Apollo Hospital showing two fracture injuries over right leg and haemorrhage was also found on his head. Therefore, in the facts and circumstances of the case, looking to the nature of injuries suffered by claimant, we find it appropriate to award Rs.25,000/- towards pain and sufferings.

14. The Claims Tribunal awarded only Rs.8,000/- towards permanent disability suffered by claimant which also in the opinion of this Court is on lower side. Appellant-claimant has suffered fracture injury over his right leg and as diagnosed in x-ray at Apollo Hospital, Bilaspur, it is fracture of upper shaft right tibia of right leg and fracture of lower part of right patella. Looking to the nature and number of fracture injuries and part of the body where appellant suffered fracture injury, which may not affect the earning but what cannot be ignored is his part of the body is used for his movement is affected due to disablement and will remain with him till his life, we find it appropriate to award Rs.30,000/- towards permanent disability, as proved vide disability certificate of Ex.P-94.

15. As per material available on record, appellant after accident was taken to Community Health Centre, Takahatpur from where he brought to CIMS Hospital, Bilaspur. He was thereafter referred to Apollo Hospital, Bilaspur and from there he was referred to Ramkrishna Care Hospital, Raipur where he

was admitted twice, first on 12/6/2010 and thereafter on 23.9.2010. Looking to the aforementioned places of treatment taken by the appellant, we find it appropriate to award Rs.10,000/- towards transportation charges instead of Rs.4,000/-.

16. The appellant will have to live with the said disability for whole of his life. Looking to the nature of injury i.e. fracture lower pole of right patella, we find it appropriate to award Rs.20,000/- towards loss of amenities in life for the period when he took treatment and was bedridden and further for whole of his life as he may not be able to do many activities in his life which he wants to do like other ordinary person.

17. Apart from above, claimant is also entitled to get a sum of Rs.5,000/- towards special diet and Rs.18,000/- towards loss of income for a period of four months.

18. For the foregoing reasons, the appeal is allowed in part and now the claimant/appellant will be entitled for a total amount of Rs.3,45,571/- (25000 + 30000 + 10000 + 20000 + 237571+ 5000 + 18000) as compensation instead of Rs.2,77,571/- as awarded by the Claims Tribunal.

19. The impugned award is modified to the extent indicated above.

Sd/-

(PR Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

roshan/-