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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 156 of 2015**

Ganga Ram Kaushik, S/o Maan Singh Kaushik, aged about 33 years, R/o Village Kuteli, Post Bamhani, P.S. and Tahsil Kawardha, Civil and Revenue District Kabirdham, C.G.

-----Appellant**Versus**

1. Shyamlal Jaiswal S/o Shri Jaikishan Jaiswal, R/o Daihandeeh Udiyakhurd Tahsil Lohara Civil and Revenue District Kabirdham C.G.
2. Kamlesh Kumar Patel S/o Shri B.R. Patel, R/o Village Daihandeeh Udiyakhurd, Tahsil Lohara Civil and Revenue District Kabirdham C.G.
3. Branch Manager, through The Oriental Insurance Co. Ltd. Near L.I.C. Office, Railway Station, Rajnandgaon, Civil and Revenue District Rajnandgaon, C.G.
4. Mohammed Siddiqui, S/o Shri Abdul Majid, R/o Village House No. 100 of Takiyapar, Beside House of Parshad Gani Bhai, Durg, P.S. Durg Civil and Revenue District Durg C.G.
5. Rakesh Singh S/o Late Gyan Singh R/o J.G. Nagar, in front of Shiv Mandir, Shravan Kirana Store, Ward No. 22, Camp-2, P.S. Bhilai Chawani, Civil and Revenue District Durg C.G.

----Respondents

For Appellant	: Mr. Keshav Dewangan, Advocate.
For Respondent 1 & 2	: Mr. Dharmesh Shrivastava, Advocate.
For Respondent 3	: Mrs. Chitra Shrivastava, 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. 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 15.10.2014 passed by the

Additional Motor Accident Claims Tribunal, Kabirdham, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.68 of 2014 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.3,46,900/- as compensation in an injury case.

2. Facts of the case relevant for disposal of this appeal are that, on 27.05.2012, appellant Ganga Ram Kaushik along with other companions, by name, Dhanraj, Ashwani, Naresh, Sharif Khan, Makhan Sinha, Mahesh Sahu, Ratan Patel and Chain Patel went to Raipur on Tata Spacio Sumo bearing Registration No. CG-09/5105 (hereinafter referred to as 'offending vehicle') to attend group meeting/seminar organized by Sapphire Multirate Pvt. Ltd. While returning from Raipur after attending the meeting, non-applicant No.2/driver of offending vehicle drove his vehicle rashly and negligently and dashed with stationary truck parked on road bearing registration no. CG-04/G/7546 from its back side. In the aforementioned accident, Sharif Khan, Makhan Sinha and one other person died. Appellant and others suffered grievous injuries over their person.
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 head, left knee, waist, left thigh bone and right wrist. He took treatment in the

Apollo BSR Hospital, Bhilai as inpatient from 28.05.2013 to 16.06.2012 and incurred expenditure of Rs.3,01,869/-. It was also pleaded that due to aforementioned injuries suffered by him, he could not able to do agricultural work of that season and thereby suffered loss of income; he was unable to move and work for a period of six months and thereby suffered loss of 70% income from agricultural fields. It was also pleaded that he was earning income as commission from the sale of pesticides of Sapphire Multitrade Pvt. Ltd. and thereby earning Rs.1,20,000/- per annum and claimed Rs.14,35,000/- as total compensation on different heads.

4. Non-applicants No. 1 and 2/driver and owner of the offending vehicle filed reply to claim application pleading therein that on the date of accident, non-applicant No.2 was driving the vehicle with valid and effective driving licence, rash and negligent driving by non-applicant No.2 was denied. They have denied the pleading with regard to nature of injuries suffered by appellant and corresponding treatment taken by him as well as other expenditure incurred during the course of treatment. They have further pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3 and the liability, if any, for payment of amount of compensation would be upon the Insurance Company.
5. Non-applicant No.3/Insurance Company also submitted reply to claim application and denied all the adverse pleadings

made in claim application. It was pleaded that offending vehicle dashed with the stationary truck from its rear side, which was parked on the road without there being any indicators, negligence is on the part of driver of the stationary truck and in alternate, it was pleaded that there was contributory negligence on the part of the driver of the offending vehicle. Denied the income pleaded in the claim application, there was breach of conditions of insurance policy because on the date of accident, offending vehicle was being used as commercial vehicle (Taxi), whereas the policy issued was a 'Private Car Package Policy' and as such, owner and driver of offending vehicle will be liable for the amount of compensation.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties, allowed the claim application in part and awarded sum of Rs.3,46,900/- as compensation to the claimant in an injury case.
7. Shri Keshav Dewangan, learned counsel for the appellant submits that learned Claims Tribunal though awarded a sum of Rs.3,01,869/- towards medical expenditure, but has not awarded entire medical expenditure incurred by him. He further submits that an amount of Rs.10,000/- was awarded consolidatedly on the heads of pain and suffering, attendant and special diet, which is very meager amount in the facts of

the case where the appellant took treatment from 28.05.2012 to 16.06.2012 in Apollo BSR Hospital, Bhilai. It is contended that the appellant suffered severe fracture injuries over femur left, tibia right, fracture and dislocation of hip left side, fracture of radius and ulna as well as head injury, but learned Claims Tribunal even after considering the document (Ex.A/1), which is patient discharge summary mentioning number of severe fracture injuries suffered by him, awarded only a sum of Rs.10,000/- towards pain and suffering. Learned Claims Tribunal has not awarded any amount towards loss of amenities and joy in life and other non-pecuniary damages, for which, appellant is entitled for. It is further contended that learned Claims Tribunal ignoring the documents placed on record of payout statement issued by Sapphire Multirate Pvt. Ltd., for which, the appellant was working, which is filed as Ex.A/94 to Ex.A/96, in which, income/earning of the appellant has been shown for a period from December 2011 to January 2012 as Rs.23,550.00, October 2011 to December 2011 as Rs.28,628.75 and January 2012 to February 2012 as Rs.9,287.50, revenue records of agricultural field as Ex.A/97 to Ex.A/104 were not considered by learned Claims Tribunal for assessing the income of appellant and erred in assessing the income as Rs.3,000/- per month only, which is on the lower side.

8. Per contra, Mr. Dharmesh Shrivastava, learned counsel for

respondents No.1 and 2 and Mrs. Chitra Shrivastava, learned counsel for Respondent No.3 have submitted that learned Claims Tribunal awarded entire bills placed on record by the appellant and further awarded an amount under the heads of loss of income, pain and sufferings, special diet and attendant. They further submit that in the facts and circumstances of the case and looking to the nature of injuries suffered by the appellant, learned Claims Tribunal has passed just and proper amount of compensation, which does not call for any interference.

9. We have heard learned counsel for the respective parties and also perused the record.
10. So far as nature of injuries suffered by the appellant is concerned, appellant has placed on record Ex.A/1, which is patient discharge summary. In the aforementioned document, appellant has been shown to be treated as inpatient from 28.05.2012 to 16.06.2012 and upon diagnosis, it was found as under :

“Principal Diagnosis :

- Compound (Grade-II) comminuted fracture with bone loss at supracondylar- intercondylar area of femur left side.
- Fracture medial condyle of tibia right.
- Posterior fracture dislocation of hip left side (fracture interior head)
- Severely comminuted fracture lower end radius and ulna right side with bone loss.

- Head injury (concussion)”

The process of treatment given by the Hospital is as under :

“Opeartion/Procedure Performed :

- Close reduction and skeletal traction of left hip done under short G.A. on 28.05.2012.
- Open reduction and internal fixation of right ulna with LCP and distractor application on radius done under brachial block on 06.06.2012.
- Close reduction and per cutaneous screw fixation of medial condyle of tibia right side and open reduction condylar plating with bone substitute grafting of lower end femur left side done under S.A. on 12.06.2012.”

11. From the above nature of injuries suffered and treatment undergone by the appellant, it is apparent that appellant has undergone operation for his four fracture injuries, which were very serious in nature, but learned Claims Tribunal apart from the medical expenditure, awarded only Rs.10,000/- towards pain and suffering, special diet and attendant, which in the facts and circumstances of the case as well as looking to the nature of injuries and part of body where appellant suffered injuries is very meager. In the considered opinion of this Court, we find it appropriate to award **Rs.25,000/-** towards pain and suffering. **Rs.30,000/-** is awarded for the grievous injuries suffered by the appellant on his person.

12. Looking to the nature of injuries suffered by the appellant and treatment given to him by the Apollo BSR Hospital, Bhilai i.e. operation of left hip, right ulna, internal fixation of right ulna,

screw fixation of medial condyle of tibia right side and open reduction condylar plating with bone substitute grafting of lower end femur left side would show that appellant suffered severe injuries on different parts of body, which has definitely effected him during the period of treatment and may affect in future also. Taking into consideration the nature of injuries suffered by the appellant and the part of body on which appellant suffered fracture injuries as well as nature of treatment given to him, we find it appropriate to award **Rs.25,000/-** towards loss of amenities and joy in life. We also find it appropriate to award **Rs.8,000/-** towards attendant for a period of two months and **Rs.3,000/-** towards special diet.

13. Learned Claims Tribunal has not awarded any amount towards expenditure incurred by the appellant for purchase of medicines and others by chemist shop, which were filed as Ex.A/35, Ex.A/38, Ex.A/39, Ex.A/41, Ex.A/42, Ex.A/45 to 64 and Ex.A/66 to Ex.A/84. Looking to the nature of injuries and treatment taken by the appellant, we are of the considered view that appellant is entitled for cash memo of purchase for medicines and other articles to be used for treatment vide Ex.A/35, Ex.A/38, Ex.A/39, Ex.A/41, Ex.A/42, Ex.A/45 to 64 and Ex.A/66 to Ex.A/84, which in total comes to **Rs.46,761/-**. The appellant has also placed on record the medical expenditure incurred by him on 11.03.2013, which appears to be X-ray taken at the time of re-checking of appellant as

Ex.A/90 and further the chemist bill paid in cash as Ex.A/91 and Ex.A/92. The appellant is also entitled for the amount incurred by him in Ex.A/90 to Ex.A/92, which in total comes to **Rs.3,585/-** (1530 + 119 + 1936).

14. Learned Claims Tribunal has assessed the income of appellant as Rs.3,000/- per month only for the accident which took place on 27.05.2012. In the considered opinion of this Court, even the person doing manual work, could have earned more than the amount assessed by learned Claims Tribunal. The appellant has placed on record the earning from other sources i.e. from Sapphire Multitrade Pvt. Ltd. and agricultural work. Taking into overall facts and circumstances of the case and nature of earning pleaded and documents placed on record, we find it appropriate to assess the income of deceased as Rs.5,000/- per month. Learned Claims Tribunal held that appellant may not be able to do work for a period of six months due to injuries suffered by him, therefore, loss of income during the period of treatment will come to **Rs.30,000/-** (5,000 x 6). Apart from above, appellant will be entitled for a sum of **Rs.3,01,869/-** towards medical expenses awarded by learned Claims Tribunal.
15. After discharge from the Hospital, the appellant further visited for re-check up to Hospital on 30.06.2012, 30.07.2012, 31.08.2012. He also consulted with Dr. Brijendra Singh, Bilaspur on 06.09.2012, and again visited to Apollo BSR

Hospital, Bhilai on 28.09.2012, 29.09.2012, 01.10.2012 and 03.10.2012 continuously up to 10.10.2012, for which, the appellant has to incur expenditure towards travelling. Looking to continuous visit of appellant from the date of discharge for the Hospital, Bhilai and Bilaspur, we find it appropriate to award **Rs.20,000/-** towards conveyance expenses.

16. Now the appellant-claimant will be entitled for a total sum of **Rs.4,93,215/-** (25,000 + 30,000 + 25,000 + 8,000 + 3,000 + 46,761 + 3,585 + 30,000 + 3,01,869 + 20,000) instead of Rs. 3,46,900/- as awarded by the Claims Tribunal. The aforesaid total amount of compensation shall carry interest at the rate of 8% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.
17. In the result, appeal is allowed in part and impugned award passed by the Claims Tribunal is hereby modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge