

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 154 of 2015**

- Naresh Patel S/o Jagat Ram Patel, aged about 34 years, R/o Village Minminiya Maidan, Post, P.S. and Tahsil Bordla, Civil and Revenue District Kabirdham, C.G.

-----Appellant**VERSUS**

1. Shyamlal Jaiswal S/o Shri Jaikishan Jaiswal, R/o Daihandeesh Udiyakhurd Tahsil Lohara Civil and Revenue District Kabirdham C.G.
2. Kamlesh Kumar Patel S/o Shri B.R. Patel, R/o Village Daihandeesh 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, J.****01/09/2020**

1. This is Claimant's appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of amount of compensation awarded by the Additional Motor Accident Claims Tribunal, Kabirdham vide impugned award dated 15-10-2014 in claim case no. 25/14 whereby Claims Tribunal awarded a total sum of Rs. 1,10,400/- as compensation in an injury case.

2. Facts of the case relevant for disposal of this appeal are that, on 27-05-2012, appellant Naresh Patel was traveling on Tata Spacio Sumo bearing Registration No. CG09 5105 (referred to as “offending vehicle”) along with his other companions by name, Dhanraj, Ashwani, Naresh, Sharif Khan, Makhan Sinha, Mahesh Sahu, Ratan Patel and Chain Patel and returning to his village from Raipur after attending group meeting/seminar organized by Sapphire Multitrade Pvt. Ltd., on the way non-applicant No.2/driver of offending vehicle drove his vehicle rashly and negligently and dashed with rear side of stationary truck parked on road bearing registration no. CG 04G 7546. In the said accident, appellant suffered grievous injuries over his person and he was taken to Life Worth Diagnostics Hospital, Raipur for his treatment. During treatment, upon diagnosis, it was found that the appellant suffered head injury resulting in swelling, fracture of *Cervical Vertebra*, some injury on main nerve of backbone along with other injuries.
3. After taking treatment of the injuries suffered by him, he filed an application under Section 166 of the Motor Vehicles Act, seeking compensation of Rs. 11,35,000/- mentioning therein that he expended Rs. 2 Lac for his treatment at Lifeworth Diagnostic Hospital, Rs. 1 Lac for his future treatment and on other such heads. It was also pleaded that on account of the accidental injuries, he suffered permanent disability on his right leg and hand.
4. Respondent 1 and 2/ Non-applicant 1 and 2 driver and owner of the offending vehicle filed reply to the claim application pleading therein that Respondent 1/ Non-applicant 1 driver of the offending vehicle was driving the offending vehicle with valid and effective driving licence, rash and negligent driving by Respondent 1/ Non-applicant 1 was denied, they have denied the pleading with regard to nature of injury suffered by the appellant and corresponding treatment taken by him and other

expenditure incurred during the course of treatment. They have further pleaded that on the date of accident, offending vehicle was insured with Respondent 3/ Non-applicant 3-Insurance Company and the liability, if any, for payment of amount of compensation would be upon the Insurance Company.

5. Non-applicant 3/ Respondent 3-Insurance Company also submitted reply to the claim application and while denying the adverse pleadings made in the claim application pleaded that the offending vehicle dashed with the stationary truck from its rear side which was parked on the road without there being any indicators and the negligence is on the part of the driver of the truck. In alternate, it was pleaded that there was contributory negligence on the part of the driver of both vehicles. It was pleaded that the claimant has not filed any disability certificate in support of his pleading that the appellant suffered permanent disability on account of accidental injuries suffered by him. Denied the income pleaded in the claim application and further pleaded that 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 Insurance Company issued the policy as Private Car Package Policy. Nine persons were traveling on jeep. There was breach of policy conditions.
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. 1,10,400/- as compensation in an injury case.
7. Mr. Keshav Dewangan, learned counsel for the appellant submits that the learned Claims Tribunal failed to consider the fact of permanent disability suffered by the appellant. Appellant had placed all the medical documents on record with regard to the injuries suffered by him and

also the treatment taken by him. He submits that the appellant-claimant has placed on record the MLC report as Ext. A-1, Discharge ticket of Life Worth Hospital as Ext. A-4, showing the date of admission as 28-05-2012 and date of discharge as 10-06-2012. Referring to Ext. A-4, he argued that the appellant suffered *Cervical Spinal Injury* which itself supports the pleadings of the appellant-claimant. While pointing out document Ext. A-5 (a receipt of name and bill of Lifeworth Diagnostic Hospital) wherein it is mentioned about the injury and surgery as also the implantation, argued that the learned Claims Tribunal has erroneously held that permanent disability is not proved. It is further contended that the Claims Tribunal has taken note of nature of injury suffered by the appellant-claimant in paragraph 23 of the award but has not awarded any amount towards the permanent disability suffered by him. He submits that the Claims Tribunal awarded only Rs. 1,00,400/- towards hospital charges and other medical expenditure incurred by claimant. It is also argued that the Claims Tribunal erred in awarding only Rs. 10,000/- towards mental pain and agony, special diet and for the attendant charges consolidately. Learned counsel further contended that the Claims Tribunal has not awarded any amount towards loss of wages during the period of his treatment, not awarded any amount towards pain and sufferings and conveyance expenses.

8. Per contra, learned counsel for the Respondents submits that the Claims Tribunal, in the facts and circumstances of the case, looking to the nature of injury and also that no disability certificate has been placed on record, has awarded 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. Perusal of claim application filed by the appellant-claimant would show that the appellant suffered injury on head resulting in swelling, there was fracture of *Cervical Vertebra* and the main nerve of spinal bone was also affected due to accidental injuries. Medical documents placed on record as Ext. A-4 issued by the Life Worth Diagnostic Hospital, Raipur by Department of Neuro Surgery mentions about the *Cervical Spinal Injury*, this document also mentions about *Rt. Hemiplegia*. Appellant-claimant also produced Ext. A-5, bill of Life Worth Hospital showing the medical expenditure to the tune of Rs. 84,400/-.
11. True it is that, the claimant has not appeared or put himself before the Medical Board for obtaining any permanent disability certificate for the disability suffered by him due to motor accidental injuries, but at the same time, other medical documents placed on record which remained uncontroverted. Claimant has not placed on record any documentary evidence to prove the plea of permanent disability but at the same time it is the duty of the Tribunal and the Court to award just amount of compensation taking into consideration the nature of injury, part of the body affected and its impact. Perusal of document Ext. A-4 which is discharge ticket of Life Worth Hospital would show that the appellant suffered *Cervical Spine injury* in road traffic accident. It also mentions the injury suffered *C4-5 listhesis, cord contusion*, surgery of C4-5 and bone grafting. There is further mention of right hemiplegia and left hemiplegia. Perusal of aforementioned document would show that nature of injury suffered by appellant was grievous in nature, we are of the view that the amount of just compensation is to be awarded taking into consideration the overall facts and circumstances of the case.
12. Learned Claims Tribunal, apart from the medical expenses, awarded Rs. 16,000/- that too towards the amount of bills of medicine and Rs. 10,000/- towards non-pecuniary damages like mental pain and agony,

attendant and special diet, which in the opinion of this Court is on lower side. Learned counsel for the appellant-claimant could not able to point out that any medical bill placed on record was not considered or overlooked by Tribunal, therefore, we are of the view that the learned Claims Tribunal has rightly assessed the medical expenditure of Rs. 84,400/- and Rs. 16,000/- based on documentary evidence. Learned Claims Tribunal awarded consolidated amount of Rs. 10,000/- towards pain and sufferings, special diet and attendant charge which is on lower side looking to the nature of injury suffered by him.

13. Learned Claims Tribunal overlooking the nature of injury and treatment taken by the appellant has not awarded any amount towards the loss of income during the period of treatment, towards grievous injury and very meagre sum of Rs. 10,000/- is awarded towards pain and sufferings, special diet and attendant charges. For the foregoing reasons, the amount of compensation to be awarded to the appellant requires re-consideration and re-computation which is as under.
14. Claims Tribunal has already awarded Rs. 84,400/- towards hospital charges, Rs. 16,000/- towards purchase of medicine based on the documentary evidence. In addition to the aforementioned medical expenses we find it appropriate to award Rs. 25,000/- towards pain and suffering, Rs. 27,000/- towards loss of income for a period of six months upon assessing monthly income of the appellant as Rs. 4,500/-, Rs. 20,000/- towards grievous injury, Rs. 3,000/- towards conveyance as the appellant is resident of Tahsil Bordla District Kabirdham whereas he took treatment in hospital at Raipur, Rs. 3,000/- towards special diet and Rs. 4,000/- towards attendant cost as the appellant might have taken assistance for some time even after discharging from hospital as he suffered Cervical spine injury in the accident.

15. Now the appellant-claimant will be entitled for total sum of **Rs. 1,82,400/-** [Rs.1,00,400 + Rs.25,000 + Rs.27,000 + Rs. 20,000 + Rs.3,000 + Rs.3,000 + Rs.4,000] instead of Rs. 1,10,400/- as awarded by the Claims Tribunal. The aforesaid total amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

16. Consequently, the appeal filed by the claimant is allowed in part and the 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