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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 291 of 2015

Jahid Ali S/o Hamid Ali Aged About 30 Years R/o Chhorbhatti Khurd, P.S. Chakarbhata Tahsil Takhatpur, Distt. Bilaspur Chhattisgarh.

---- Appellant/claimant

Versus

1. Sheikh Shahadat Mohammad S/o Azeem Mohammad Aged About 33 Years R/o Village- Bhunada, P.S. Kota, Dist. Bilaspur, Chhattisgarh.
2. Branch Manager Bajaj Allianz General Insurance Company Ltd. Vidhansabha Road Pandri Distt. Raipur Chhattisgarh.

-------Non-applicant Nos.1 & 2/Respondents

For Appellant	:	Mr. Akhtar Hussain, Advocate.
For Respondent No.1	:	None.
For Respondent No.2	:	Mr. D.L. Dewangan, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

06/11/2020

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned 3rd Additional Member to 1st Additional Motor Accident Claims Tribunal, Bilaspur, (CG) (for short, 'the Tribunal) vide award dated 08.01.2015 passed in Claim Case No.33/2013, whereby the Tribunal partly allowed application under Section 166 of the Act of 1988 in part and awarded Rs.64,000/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 09.08.2011, claimant was going to village -Chorbhatti on motorcycle bearing registration No.CG10/EA/0424. When he reached near Aleem Dhaba, one Auto Rickshaw bearing Registration No.CG10/T/2098 (for short 'offending vehicle'), driven by non-applicant No.1 rashly and negligently, dashed him. In the aforesaid accident, claimant suffered grievous injuries over his

leg, hand and head. He was taken to CIIMS Hospital, Bilaspur, but for want of proper treatment he was firstly shifted to Care N Cure, Multispeciality Hospital, Bilaspur and thereafter to Sanjeevani Hospital & Research Centre, Bilaspur, where he underwent operation of femur and a rod was implanted.

3. Claimant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.10,00,000/- on the ground that prior to the date of accident, he was engaged in selling chicken broiler and thereby earning Rs.250 –300/- per day, however, on account of motor-accidental injuries suffered by him he became permanently disabled.

4. Non-applicant No.1/owner-cum-driver of offending vehicle, submitted reply to application and pleaded that claimant, who was under the influence of liquor, drove his motorcycle rashly and negligently and dashed with offending vehicle and as such, he himself was liable for the accident. Claimant took free of cost treatment at Government Hospital and no proof or certificate has been produced with regard to nature of occupation of claimant. On the date of accident, offending vehicle was insured with non-applicant No.2/Insurance Company, hence, liability, if any, to satisfy the amount of compensation would be of Insurance Company. After filing of reply, non-applicant No.1 did not appear, therefore, he was proceeded ex-parte.

5. Non-applicant No.2/Insurance Company submitted its reply to application and denied the fact of accident from offending vehicle. It was pleaded that claimant neither suffered any injury in the accident nor any expenditure was incurred in his medical treatment. Report has been lodged against non-applicant No.1 on false and fabricated grounds. Accident was on

account of his own negligence. On the date of accident, non-applicant No.1 was not possessing valid and effective driving licence, as such, there was breach of policy condition; Insurance Company is not having any liability to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that claimant suffered grievous injuries due to rash and negligent driving of offending vehicle by non-applicant No.1. Breach of policy condition was found to be proved. The Tribunal allowed application in part, awarded a sum of Rs.64,000/- as total compensation along with interest @ 6% p.a., exonerated the Insurance Company from its liability, non-applicant No.1 is held liable to satisfy the amount of compensation.

7. Learned counsel for the appellant/claimant submits that the Tribunal erred in awarding very meager amount towards medical expenses ie Rs.25,000/- for operation charges, ignoring the pleadings and evidence that he incurred expenditure of Rs.1,12,585/-. He further submits that amount awarded under other heads like temporary disability, pain and sufferings & future medical expenses are also on lower side. Tribunal exonerated Insurance Company from its liability only on the ground that offending vehicle being the 'passenger carrying vehicle' was not having valid permit on the date of accident. Even if the Tribunal arrived at a finding that offending vehicle was driven without permit on public road, resulting in breach of policy condition then also in such a situation a direction ought to have issued to Insurance Company to pay and recover.

8. Controverting the submission made by learned counsel for the appellant, learned counsel for respondent No.2/Insurance Company submits that the

Tribunal has taken note of the fact that some of the bills placed on record by claimant do not bear signature of Issuing Authority. He further submits that requirement of permit under the Act of 1988 is mandatory for transport vehicle ie 'goods carrying vehicle or 'passenger carrying vehicle'. The vehicle involved in accident is a 'passenger carrying vehicle' ie. Auto Rikshaw, hence, permit under Section 66 of the Act of 1988 issued by the Competent Authority is mandatory for plying the vehicle. The Tribunal has rightly recorded finding that there was breach of policy condition and exonerated Insurance Company from its liability, which does not call for any interference. The Tribunal considering the medical bills placed on record by claimant awarded just and proper amount of compensation, which cannot be said to be on lower side.

9. I have heard learned counsel for the respective parties and perused the record of claim case.

10. So far as first submission with regard to non-consideration of the entire medial bills is concerned, claimant has placed on record documents Ex.P-92 to 112 ie medical bills and Ex.P-4 MLC report. Perusal of Ex.P-4 would show that claimant suffered following grievous injuries :-

> "*crushed injury above right knee; bone and muscles exposed right leg above knee; swelling right side eyebrow; blackness of right eye; bleeding from nose*."

11. Claimant further placed on record Ex.P-7 final bill of Care N Cure, Multispeciality Hospital, Bilaspur, in which he has been shown to be admitted on 10.08.2011 and discharged on 27.10.2011. Admission of claimant is on the very next date of accident. Other documents placed on record as Ex.P-8 shows that claimant took treatment as in-patient at Sanjeevani Hospital & Research Centre from 27.08.2011 to 10.09.2011,

wherein it is mentioned that '1 month old compound commuted fracture lower head femur; head injury & anemia'; Documents Ex.P-9 to Ex.P-91 is the cash memo of purchase of medicines and other articles from Care N Cure, Chemist-shop. These bills including Ex.P-7, which is final bill of Care N Cure, Multispeciality Hospital would show the date of admission, discharge and nature of treatment given in the hospital. Looking to the above medical bills and other documents, in the considered opinion of this Court, these medical bills/medical documents cannot be ignored or treated as forged or fabricated.

12. Other bills available on record are with regard to payments made to Bilaspur Blood Bank, Sanjeevani Hospital & Research Centre and Sanjeevani Pharmacy for which claimant is also entitled for. Looking to the nature of injuries suffered by claimant, as mentioned in Ex.P-4, Ex-7 & Ex.P-8, and the medical bills from Ext. P-9 to Ext. P-112 (except P-98), in the considered opinion of this Court, appellant is entitled for award of entire medical expenses incurred by him during his treatment. The total of the medical expenses including bills of chemist comes to Rs. 1,43,495/-.

13. The Tribunal has awarded Rs.9,000/- towards temporary loss of income, which can be considered as loss of income during the period of treatment. Looking to the nature of injuries, in the considered opinion of this Court that amount of compensation awarded towards loss of income during the period of treatment is on lower side. Claimant is entitled for loss of income for a period of 4 months. Date of accident is of 09.08.2011, hence, income of claimant is assessed on notional basis as Rs.4,000/- per month. The loss of income during the period of treatment now comes to Rs.16,000/- (4000 X 4).

14. The Tribunal has rightly awarded Rs.10,000/- towards attendant, special died and transportation. The Tribunal has awarded Rs.5,000/- towards pain and sufferings, which, in the considered opinion of this Court, is on lower side. Looking to the nature of injuries, he is entitled for Rs.20,000/- instead of Rs.5,000/- towards pain and sufferings. It is ordered accordingly. The amount of Rs.15,000/- towards future medical treatment appears to be just and proper which does not call for any interference.

15. For the foregoing reasons, I propose to recompute the amount of compensation awarded by the Tribunal.

16. Claimant is entitled for a sum of Rs.1,43,495/- towards medical expenses, Rs.20,000/- towards pain & sufferings, Rs.16,000/- towards loss of income during the period of treatment, Rs.15,000/- towards future medical treatment & Rs.10,000/- towards attendant, special diet & conveyance expenses as awarded by the Tribunal.

17. Now, appellant/claimant shall be entitle for a total sum of **Rs.2,04,495/-** (Rs.1,43,495+ Rs.20,000 + Rs.16,000 + Rs.15,000 + Rs.10,000) instead of **Rs.64,000/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

18. So far as submission with regard to issuance of direction of pay and recover to Insurance Company is concerned, it is not in dispute that exoneration of Insurance Company is on the ground of not having valid permit of offending vehicle on the date of accident. Claimant was a third party. The Hon'ble Supreme Court has considered the issue with regard to breach of policy condition on the ground of not having valid permit with offending transport vehicle on the date of accident. Considering that not

having valid permit with offending transport vehicle is a fundamental breach has issued a direction to Insurance Company to first deposit the entire amount of compensation and, thereafter, to recover the same from the owner and driver of offending vehicle.

19. Recently, in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in **(2018) 7 SCC 558**, Hon'ble Supreme Court while dealing with similar issue has held thus:-

> "24. ...We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle."

20. Considering the ratio laid down in above decision of Hon'ble Supreme Court and also looking to the fact the claimant was a third party, this Court is of the view that it will be in larger interest of justice to direct respondent No. 2/insurer to first deposit entire amount of compensation with Claims

Tribunal. The Insurance company, thereafter, will recover the same from owner of offending vehicle i.e. Respondent No.1 in accordance with law.

21. In the result, appeal is allowed in part and the impugned award passed by the Tribunal stands modified to the extent as indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-