NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 286 of 2015

1. Rajendra Das Dewangan @ Paapu, S/o Gopal Das Dewangan Aged About 19 Years R/o Govindpur, P.S. And Tahsil- Odgi, Distirct- Surajpur, Chhattisgarh (Driver/Rider)
2. Smt Rameshwari, aged about 50 years, wd/o late Dhananjay Dewangan, R/o Haldibadi, Chirmiri, District- Koriya, CG (Owner of the offending Motor Cycle)

---- Appellants

Versus

1. Naseem Ali, S/o Abdul Sattar Aged About 38 Years R/o Village- Sirsi, P.S. Surajpur, Tahsil- Bhaiyatha, Distt.- Surajpur, Chhattisgarh (Claimant)
2. United India Insurance Company Limited Through- Branch Manager, Branch- Ambikapur, District : Surajpur, Chhattisgarh (Insurance Company of the offending vehicle)

---- Respondents

For Appellants	:	Shri Hemant Gupta, Advocate
For Respondent- 1	:	Smt Meena Shastri, Advocate
For Respondent-2	:	Smt Chitra Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

28.10.2020

1. Smt Meena Shastri, learned counsel for the claimant/respondent-1 herein has filed cross-objection under Order 41 Rule 22 of the CPC challenging the impugned award passed by the Claims Tribunal. She submits that application is filed with little delay, but looking to the object of the Motor Vehicles Act, 1988, which is a beneficial piece of Legislation, delay in filing the cross-appeal be condoned and cross-appeal be considered for enhancement of the impugned award.

2. Learned counsel for the appellants Shri Hemant Gupta vehemently opposed the above submission made by learned counsel for the claimant.

He submits that he be granted time to file reply to the application for condonation of delay in filing the cross-objection.

3. Cross-objection and application for condonation of delay in filing the cross-objection was filed on 17.11.2015., copy of this application was received on behalf of the appellants and thereafter, cross-appeal was filed, which is evident from the receipt/endorsement of copy of the application. After receiving copy of application, since last 4 and half years, appellants have not filed any reply to the application for condonation of delay.

4. In view of above facts, I am not inclined to grant time to the appellants to file reply to the delay condonation application.

5. Upon due consideration, the pleadings made in the application for condonation of delay, submissions made by learned counsel for the parties, and also taking into consideration the object of the Act of 1988, which is a beneficial piece of Legislation for awarding just and proper amount of compensation to the claimants, I am inclined to allow the application for condonation of delay in filing the cross-objection.

6. NA1 and 2, who are driver and owner of offending vehicle (Motorcycle bearing No.CG16F-0239) have preferred this appeal challenging impugned award dated 28.02.2014 passed by the Motor Accident Claims Tribunal, Surajpur (for short, 'Claims Tribunal') in Clam Case- 31 of 2011, whereby learned Claims Tribunal allowed the claim application in part and awarded Rs.1,81,427/- as compensation in an injury case.

7. Facts relevant for disposal of this appeal are that on 07.12.2009, respondent-1/claimant was travelling on his Motorcycle (Bajaj Platena) and returning to his house after inspecting the schools of Baijnathpur and Govindgarh. While he was getting down from the Motorcycle near house of village Sarpanch Sawarava, at that relevant time, one other Motorcycle bearing No.CG 16-F/0239 driven by NA1 rashly and negligently, knocked down the claimant and caused accident. In the said accident, claimant suffered grievous injuries over his right eye, right eyebrow and suffered fracture injury over his right jaw. Appellant was taken to Primary Health Centre, Bhaiyathan, from where he was referred to District Hospital, Ambikapur. He thereafter, took treatment from Ramkrishn Care Hospital, Raipur, Speciality Dental Hospital and Implant Centre, Raipur, and Shankar Netralaya, Chennai. Claimant filed an application under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,81,671/- pleading therein that he incurred expenditure towards his medical treatment of about Rs.2,00,897.91ps, Travelling, boarding and lodging expenses Rs.80,774/- and mental pain and suffering Rs.10,00,000/-.

8. NA1 and NA2 submitted reply to the claim application denying the pleadings made therein and further pleaded that the claimant suffered accidental injuries on account of his own negligence. He suffered simple injuries from the accident. It was pleaded that on the dat eof accident NA1 was travelling on Motorcycle along with his maternal uncle Shyamlal, on the way, they stopped their vehicle to answer nature call, at that relevant time, the claimant came there on his Motorcycle, driving it rashly and

negligently and dashed the offending vehicle, on which NA1 was sitting. The accident was witnessed by Mithilesh Rajwade, Kaleshwar, Santlal Devnarayan, Shivprasad Singh, Bandhan Singh (Sarpanch), Navalsai, Hanselal, Tirath Prasad and Purush Lal etc. The injured appellant was taken to the Primary Health Centre by Sarpanch of the village, namely, Bandhan Singh, along with Secretary Shivprasad Singh. Maternal Uncle Shyamlal agreed for compromise and not to lodge any report.

9. NA3/Insurance Company submitted reply to the claim application pleaded that accident was on account of head on collusion between two Motorcycles. There was contributory negligence on the part of claimant himself, the amount of compensation is highly exaggerated. NA1 was not possessed with valid and effective driving license, there was breach of Policy Conditions, hence the Insurance Company is not liable for any amount of compensation.

10. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record, held that NA1 while driving his Motorcycle/offending vehicle rashly and negligently, caused accident; in the accident, claimant received grievous injuries; breach of Policy conditions found to be proved, Insurance Company was exonerated while fastening liability of payment of compensation upon NA1 and 2, driver and owner of offending vehicle awarded Rs.1,81,427/-.

11. Shri Hemant Gupta, learned counsel for the appellants submits that learned Claims Tribunal has awarded Rs.1,03,747/- towards medical expenses without any proof, which is on higher side. The claimant has not

proved medical bills and documents placed on record by examining any Doctor of the hospital. There was negligence on the part of claimant himself, but learned Claims Tribunal has not considered this fact and has erroneously held NA1, driver of offending vehicle solely negligent for the accident. He submits that claimant is also responsible for the accident. He submits that claimant took sudden turn during his riding of Motorcycle, which caused the accident. Thus, there was negligence on the part of claimant himself.

12. Controverting the submission made by learned counsel for the appellants, Smt Meena Shastri, learned counsel for respondent-1/ claimant submits that learned Claims Tribunal based on the evidence available on record, has rightly arrived at a finding that the accident was result of rash and negligent driving of offending vehicle by NA1. Claimant has filed the documents of medical treatment and bills which were not objected on the ground of forged or fabricated document. She further contended that learned Claims Tribunal has awarded very meagre amount of compensation on other heads and not awarded any amount towards loss of amenities and joy of life in the facts of the case. She submits that nature of injuries suffered by the claimant can be ascertained from Ex.A33. Claimant has preferred cross-appeal for enhancement of impugned award on the ground that no amount has been awarded towards the injury, dis-figuration of face of claimant, loss of income during the period of treatment, attendant etc. She further submits that exoneration of Insurance Company from its liability is only on the ground of breach of Policy conditions, as on the date of accident NA1, rider of

offending vehicle was not possessed with a valid and effective driving license and he was below 18 years of age. She submits that in view of aforementioned fact, direction be issued to the Insurance Company to first pay the amount of compensation and thereafter to recover the same from the appellants, driver and owner of offending vehicle.

13. Smt Chitra Shrivastava, learned counsel for respondent-2 /Insurance Company supports the award. She submits that based on the evidence and pleadings on record, learned Claims Tribunal has rightly assessed the amount of compensation, which does not call for any interference. She further submits that learned Claims Tribunal has rightly exonerated the Insurance Company as on the date of accident NA1 was minor, not possessing valid and effective driving license. The fact that NA1 has not attained the age of majority is apparent from Paragraph-11 of impugned award, wherein, learned Claims Tribunal has taken into consideration the criminal case drawn against NA1 under Section 279 and 337 of the IPC was before Juvenile Justice Board, Ambikapur.

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

15. Claimant in support of claim application, placed on record the copy of Final Report as Ex.A1, copy of FIR as Ex.A2, to prove the fact of accident and registration of Criminal Case against NA1, rider of offending vehicle. Registration of Criminal Case was not challenged by the appellants before any higher authority or Court. To prove his case,

claimant examined himself as AW1, Bandhan Singh as AW2 and one Abdul Samad as AW3.

16. NA1, rider of offending vehicle examined himself as NAW1 and one Shiv Prasad as NAW2, to support his pleading. NAW2 Shiv Prasad stated that he has seen the accident and it is the claimant, who dashed the stationary vehicle of Rajendra Das/NA1. He admits in his cross examination that his statement was not recorded by the Police, he was not interrogated during the course of investigation. He was aware of the fact that Criminal case was registered against NA1 under Sections 279 and 337 of the IPC. He has narrated this fact of negligence of the claimant for the first time before the Tribunal.

17. Learned Claims Tribunal while deciding the issue of negligence, has taken into consideration the documents placed on record of the criminal case registered against NA1, the fact that though NA1 has examined Shiv Prasad, NAW2, who in his evidence has stated that he has not given any statement to the Police and further that though maternal uncle of the deceased was present on the spot, as per his pleading and statement, but he has not been examined before the Claims Tribunal. Before this Court also learned counsel for the appellants not made any submission as to why maternal uncle of NA1- Shyamlal who was present on the spot of the accident and pillion rider of the offending vehicle was not examined as witness before the Tribunal.

18. In the above facts of the case, I do not find any error in the finding recorded by learned Claims Tribunal that the accident took place on

account of sole negligence on the part of appellant-1, rider of of offending vehicle.

19. So far as other ground raised by learned counsel for the appellants that amount of compensation awarded is on higher side and medical expenses incurred by the claimant are not proved, the claimant has placed on record Hospital bill of Ramkrishn Care Hospital, Raipur, showing the date of admission on 08.12.2009 (accident was on 07.12.2009). Medical bills have been placed on record in original. Apart from it, medical bill of Shankar Netralaya, Chennai, transport bills and travelling bills also placed on record. Amount awarded towards medical expenses is not stated to be more than the bills placed on record.

20. The claimant has placed on record medical bills, discharge summary and prescription of the hospital from which he took treatment, ie Ram Krishna Care Hospital, Raipur, Shankara Netralay, Chennai, Speciality Dental Hospital and Implant Centre. Claimant also made unequivocal statement about the treatment in his evidence. The Hon'ble Supreme Court has considered the admissibility of documents towards medical treatment and expenses in case of **Rekha Jain Vs National Insurance Company Limited**, reported in (2013) 8 SCC 389 and held thus:

> "21. As could be seen from the record, there are large number of medical bills and vouchers produced by the appellant for having spent the money towards the surgeries conducted upon here and payment made to the various hospitals and nursing homes, namely, V.S.S. Medical Hospital, Burla; Kalinga Hospital, Bhubaneshwar; Nursing Home, Cuttack along with purchase of medicines for the aforesaid

period which run to Rs 17,51,726. The above said factual aspects are stated in unequivocal terms in her statement of evidence, and she has also referred to the documents such as bills, receipts and vouchers obtained by her from various medical stores on the basis of the prescriptions of the doctors who have treated her. Some of the documents were marked in the evidence of PW 3, the appellant herein and she had spoken about the expenses incurred towards her treatment and purchase of medicines.

22. In relation to some other documents, the learned counsel for the Insurance Company has objected for making them exhibits without raising tenable objections. The learned member of the Tribunal neither upheld nor rejected the objection raised by the counsel on behalf of the respondent Insurance Company at the time of making documents through the appellant in her evidence. Nonetheless, the learned member of the Tribunal has taken those documents into consideration and has awarded compensation under pecuniary damages having regard to the clinching evidence on record that the surgeries were conducted and treatment was taken by her in various hospitals and nursing homes for a period of four years.

23. The correctness of the said claim is examined by us with reference to the documents in Annexure P-7 produced in this case, in which date-wise particulars with regard to the name of the institutions and medical stores, the expenses incurred and bill numbers, payment made for the purpose of conducting blood tests, purchase of medicines, purchase of blood from the blood bank and cost of surgeries spent by the appellant are given. The Tribunal, in the absence of rebuttal evidence and the nature of cross-examination of the appellant, PW3 made by the learned counsel on behalf of the Insurance Company and the evidence adduced by the appellant herein and the claim made by her under the pecuniary damages towards the medical expenses, tests, surgeries, etc., and other incidental purposes, has accepted and has rightly awarded a sum of Rs.17,51,726 under the heading of medical expenses.”

21. Taking into consideration the ruling of Hon'ble Supreme Court and that the claimant placed bills of his treatment before the Tribunal showing his admission immediately after the date of accident, I am inclined to accept the same. There is no basis to accept the submission of learned counsel for the appellants that medical bills placed on record have not been proved and said submission of the appellants is repelled.

22. Now, I will deal with the submission made by the claimant with regard to enhancement of amount of compensation.

23. Learned counsel for the claimant could not point out as to which bill has not been awarded by the Tribunal, hence, the submission made by learned counsel for the claimant/respondent-1 herein that entire medical bills have not been awarded is not sustainable and it is hereby repelled.

24. Learned Claims Tribunal has awarded Rs.12,680/- towards travelling expenses and Rs.15,000/- towards special diet, as per the documents placed on record by the claimant. In the facts of the case, it appears to be just and proper. Tribunal further awarded Rs.50,000/- for pains and sufferings. The amount on the head of pains and suffering appears to be on higher side, but as there is no award towards loss of amenities and joy in life, the amount of Rs.50,000/- will be for both ie Rs.25,000/- for pains and sufferings and Rs.25,000/- towards loss of amenities in life. Claims Tribunal has not awarded any amount for the injuries suffered by the claimant/ respondent-1. Medical document Ex.A33 available on record show that claimant suffered head injury with contusion with right eye-ball injury with # Zygoma right. Looking to the

nature of injuries suffered by the claimant, I find it appropriate to award Rs.25,000/- towards the injuries suffered by respondent-1/claimant.

25. Now respondent-1 /claimant will be entitled for total compensation of **Rs.2,06,427/-** (103747 + 12680 + 50000 + 15000 + 25000), instead of Rs.1,81,427/-.

26. Other ground raised by learned counsel for the claimant/ respondent-1 is that a direction be issued to respondent-2/Insurance Company to first pay the amount of compensation and thereafter to recover the same from the appellants/ driver and owner of offending vehicle.

27. Perusal of impugned award would show that exoneration of Insurance Company is only on account of driver of offending vehicle not possessed with valid and effective driving license.

28. Hon'ble Supreme Court in cases of not having valid and effective license, forged license or no license, has considered the prayer made on behalf of claimants for protecting their interest being third party and directed the Insurance Company to satisfy the amount of compensation first and thereafter, to recover the same from the owner of offending vehicle. In case of **Shamanna v. Oriental Insurance Co. Ltd.** reported in **(2018) 9 SCC 650**, Hon'ble Supreme Court has considered the issue of “pay and recover” and held as under:

> “13. Since the reference to the larger Bench in *Parvathneni case (National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785)* has been disposed of by keeping the questions of law open to be decided in an

> appropriate case, presently the decision in *Swarn Singh case (National Insurance Co. Ltd. v. Swarn Singh, (2004) 3 SCC 297)* followed in *Laxmi Narain Dhut (National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700* and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in *Swarn Singh (supra)* and *Laxmi Narain Dhut (supra)* cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment (Shamanna v. Laxman, 2016 SCC On Line Kar 6928) of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored."

29. In view of above law laid down by Hon'ble Supreme Court, I find it appropriate to direct the Insurance Company to first deposit the entire amount of compensation before learned Claims Tribunal and thereafter to recover the amount of compensation so deposited by it from NA1 and 2 ie Driver and Owner of offending vehicle respectively in accordance with law.

30. In view of above, the appeal filed by the driver and owner of offending vehicle is dismissed; cross-appeal filed by the claimant is allowed in part and the award impugned is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

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