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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 594 of 2014

- Sukhdev Singh S/o Jodhan Ram, aged about 24 years, R/o Village: Keshavpur, Police Station & Tehsil: Ramanujnagar, Revenue and Civil District Surajpur C.G.

------Appellant/Claimant

VERSUS

1. United India Insurance Company Limited, Bramhroad, Ambikapur, District Surguja, C.G.
2. Nohar Sai S/o Sohan, aged about 28 years R/o Village-Keshavpur, Police Station & Tahsil Ramanujnagar, District Surajpur C.G.

--------Driver

3. Gopal Prasad Gupta S/o Ratan Prasad Gupta, aged about 45 years R/o Village: Kaushalpur, Police Station & Tahsil Ramanujnagar, District Surajpur C.G.

-----Owner

-------Respondents

For Appellant	:	Mrs. Nandkumari Kashyap, Advocate
For Respondent 1	:	Mr. R.N. Pusty, Advocate.
For Respondent 2 and 3	:	Ms. Pushplata Khalko, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

27/11/2020

1. Appellant-claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “Act of 1988”) seeking enhancement of amount of compensation challenging the impugned award dated 31.03.2014 passed by learned 2nd Additional Motor Accident Claims Tribunal, Surajpur, District Surajpur C.G. in claim case no. 70/2012 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 and awarded sum of Rs. 3,030/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 30.03.2012 at about 08:30 PM Sukhdev Singh was returning to his house from his agricultural

field after finishing his agricultural work, at that relevant time, one tractor bearing registration no. CG 15A 5669 (hereinafter referred to as "offending vehicle") owned by non-applicant 3/ Respondent 3 and driven by non-applicant 2/ Respondent 2 rashly and negligently dashed him and caused accident. In the said accident, Sukhdev Singh suffered grievous injury over his person, he was immediately taken to Ramajunganj hospital from where he was shifted to Ambikapur Mission Hospital. Accident was reported to concerned police station based upon which crime was registered against non-applicant 1 driver of offending vehicle. Injured/ claimant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 1,40,000/- pleading therein that on account of motor accidental injury suffered by him, he suffered disability and not able to perform his work as he used to do prior to the date of accident. He took treatment as an in-patient at district hospital Ambikapur from 30.03.2012 to 09.04.2012 and has incurred expenditure of Rs. 40,000/-.

3. Non-applicant 1-Insurance Company submitted reply to the claim application, while denying the pleadings made therein, it was further pleaded that at the time of accident injured along with three other persons were traveling on tractor (offending vehicle) which over-turned and Mantru alias Ramsingh died due to motor accidental injuries suffered by him and claimant Sukhdev suffered injuries over his person. Claimant was traveling on the offending vehicle whose risk was not covered under the policy, he does not come within the purview of 3rd party; on the date of accident, offending vehicle was registered and insured for agricultural purpose but it was being used for commercial purpose (other than agricultural purpose) as such there was breach of policy conditions. Insurance Company is not having any liability to pay compensation.

4. Non-applicant 2 and 3 who are driver and owner of the offending vehicle have admitted the fact of accident as pleaded in the claim application and also admitted that the case is pending before the Court at Surajpur,

against the driver, with regard to motor accident. Rest of the pleadings were denied and pleaded that the accident was result of negligence on the part of injured/ claimant himself. Offending vehicle was insured with non-applicant 1-Insurance Company, hence, liability to pay amount of compensation would be upon Insurance Company.

5. Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties arrived at a finding that the claimant suffered motor accidental injury on account of rash and negligent driver of the offending vehicle by non-applicant 2. Non-applicant 2 was possessing valid and effective driving licence, there was no breach of policy conditions, assessed income of the claimant as Rs. 3,000/- per month and awarded Rs. 3,030/- as total compensation.

6. Mrs. Nandkumari Kashyap, learned counsel for the appellant submits that the Claims Tribunal erred in awarding meagre amount of compensation overlooking documentary and oral evidence brought on record by the claimant before the Claims Tribunal. She further contended that the Claims Tribunal has recorded an erroneous finding that the claimant failed to produce any document to show that he took treatment from any hospital after 31.03.2012 and has held that claimant took treatment only for two days. Claims Tribunal based upon the aforementioned finding has held that the claimant could not able to do his work for a period of two days only. She further stated that as per pleadings in application, documents placed on record, evidence of the appellant, he took treatment as in-patient for a period from 30.03.2012 to 09.04.2012. Claimant has also filed medical document in support of his claim case but the said document has been overlooked by the Claims Tribunal. She further contended that the document available on record would also show that the appellant suffered grievous injuries over his person but no amount has been awarded towards grievous injuries and meagre amount has been awarded towards pain and sufferings. She submits that the amount of compensation be

suitably enhanced.

7. Controverting the submission made by the learned counsel for the appellant, Mr. Ratan Pusty learned counsel for Respondent 1 submits that the Claims Tribunal based upon the evidence available on record has rightly assessed the amount of compensation which does not call for any interference. He further contended that the finding recorded by the Claims Tribunal with regard to breach of policy conditions is erroneous as the amount of compensation awarded by the Tribunal is below Rs. 10,000/-, hence the Insurance Company has not filed any appeal challenging the finding recorded by the Claims Tribunal with regard to breach of policy conditions. He further contended that Respondent 3-owner of the offending vehicle himself lodged F.I.R. in which there is specific mention that on the date of accident, Tractor trolley (offending vehicle) was loaded with sand and the claimant along with other persons, after loading sand, was returning his house. Non-applicant 2 and 3 driver and owner of the offending vehicle have not very specifically pleaded as to the manner in which the accident took place. Owner of the offending vehicle, in his evidence, has stated that the accident took place when tractor was returning back after ploughing field of some agriculturist of other village and knocked the claimant who was a pedestrian. Defence taken in the evidence by the owner of the offending vehicle was afterthought which cannot be accepted as a gospel truth. He places his reliance in case of ***Oriental Insurance Company Limited v. Premlata Shukla and others*** reported in **(2007) 13 SCC 476**. He further contended that when the owner of the offending vehicle himself has lodged the F.I.R. then he cannot be permitted to turn around and canvass different story. Accident took place while the claimant along with other persons were traveling on a tractor trolley as labourers and returning back after loading sand on the vehicle. Insurance Company cannot be held liable as no risk of gratuitous passengers was covered under the insurance policy. He

places his reliance in the cases of ***New India Assurance Co. Ltd. v. Asha Rani*** reported in **(2003) 2 SCC 223,** ***Oriental Insurance Company Limited v. Brij Mohan and others*** reported in ***(2007) 7 SCC 56*** ***Shivaraj v. Rajendra and another*** reported in ***(2018) 10 SCC 432*** in support of his submission. He submits that if the amount of compensation is to be enhanced then the liability to satisfy the amount of compensation to be fastened upon non-applicant 2 and 3 driver and owner of the offending vehicle.

8. Ms. Pushplata Khalko, learned counsel representing Respondent 2 and 3 submits that the claimant has very specifically pleaded the manner in which the accident took place. Claimant while returning from agricultural field walking towards, offending tractor dashed him and caused accident. Claimant is a third party and when the insurance of the offending vehicle is not denied then liability to satisfy the amount of compensation would be upon the Insurance Company to which the Claims Tribunal has rightly held. The impugned award passed by Claims Tribunal is just and proper which does not call for any interference.

9. We have heard learned counsel for the respective parties and also perused the record of the case.

10. Sofar as the first submission made by the learned counsel for the appellant with regard to award of meagre amount of compensation, we have perused the record of the claim case. Claimant in support of his case has placed on record the Final Report Ext. A-1, copy of F.I.R. Ext. A-2, Naksha Panchayatnama Ext. A-3, Crime Details Form Ext. A-4, Property Seizure Memo Ext. A-5, MLC Report Ext. A-6. Claimant has also placed on record the medical documents ie. Medical prescription (Admit Card) of Raghunath District Hospital, Ambikapur as Ext. A-7 and Ext. A-9. Ext. A-6 MLC report placed on record would show that fracture of Rt rib 7,8,9 and 10 and fracture of *sub lumber Rt*. Document Ext. A-9 would show that the

appellant was admitted in the hospital on 31.03.2012 at mid night 12:12 AM and further document shows the treatment till 09.04.2012 where the doctor has recorded the fracture injury of *lumber* and also advised absolute bed rest. From the aforementioned documents available on record would show that the appellant-claimant suffered fracture injury over his fibs and lumber bone. Claims Tribunal has not taken into consideration the documents available on record and has erroneously recorded a finding that the claimant has not suffered any fracture injury and treatment taken only for two days. The said finding recorded by the Tribunal is perverse and not sustainable. From the medical document which is not disputed by the Respondents, it is apparent that the claimant suffered fracture injury, he took treatment as in-patient from 31.03.2012 to 09.04.2012. Injury shown therein are grievous in nature. For the injuries, appellant might have taken bed rest for considerably long period which was also not considered. Claims Tribunal has awarded Rs. 200/- towards loss of income for a period of two days by considering the income of the claimant as Rs.3,000/- per month; Rs. 400/- towards special diet, Rs. 2,000/- towards pain and sufferings and Rs. 420 towards medical expenses. Amount of compensation computed by the Claims Tribunal, in the opinion of this Court, is much on lower side which needs to be re-computed.

11. Documents available on record would show fracture injury over ribs and spine lumber, hence, we find it appropriate to award Rs. 10,000/- towards grievous injury, Rs. 5,000/- towards transportation of appellant from residence to hospital and returning back, Rs. 3,000/- towards attendant and special diet, Rs. 5,000/- towards pain and sufferings. Looking to the nature of injury appellant might not have able to perform his work for a period of 3 months, hence, appellant-claimant is also entitled for loss of his income for a period of three months. Claims Tribunal assessed the income of the appellant as Rs. 3,000/- per month on notional basis. Taking into consideration the date of accident, age of appellant-claimant, we find

it appropriate to assess income of the appellant-claimant as Rs. 4,000/- per month, hence, he will be entitled for Rs. 12,000/- (Rs.4000x3) towards loss of income during treatment period.

12. Now the appellant-claimant will be entitled for **Rs. 35,000/-** [Rs.10,000+ Rs.5,000+ Rs.3,000+ Rs.5,000+ Rs.12,000] as compensation instead of Rs. 3,030/- as awarded by the Claims Tribunal. Enhanced amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization.

13. Now we will consider the submission of learned counsel for Respondent 1-Insurance Company with regard to breach of policy conditions. The appeal for enhancement of the amount of compensation is filed on 16.06.2014. Case was admitted on 06.10.2020. Notice was served on 31.10.2020. Respondent 1 filed Vakalatnama on 10.11.2020 and thereafter the case came up for hearing on 27.11.2020. Insurance Company did not file cross objection or appeal challenging the finding of “no breach of policy conditions”. Even if, we accept the submission of learned counsel for respondent 1 that the award was not challenged as it was below Rs. 10,000/-, but then when the notice of appeal seeking enhancement of amount of award was served upon it, respondent 1 could have filed cross objection, which was not done. In absence of any challenge to the finding recorded by Claims Tribunal with regard to issue no. 3 ie. breach of policy condition, we are not inclined to interfere with the said finding.

14. In view of the above, appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Pawan