

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 148 of 2014**

IIFCO Tokio General Insurance Co. Ltd, 3rd Floor, Shop No. 345-347
Ganga Shopping, G.E. Road, Raipur, Tah and Distt. Raipur C.G.

---- Appellant**Versus**

1. Jagdish Prasad Sahu S/o Radheshyam Sahu Aged About 50 Years R/o. Sarwani, Thana- Baradwar, Tah. Sakti, Distt. Janjgir-Champa C.G. (Claimant).
2. Rajesh Singh Rajput S/o Ajadi Singh Rajput Aged About 30 Years R/o. Gadidumra, Thana- Jassidih, Distt. Devdhar Jharkhand, Presently R/o. Transport Nagar, Jindal Parking Raigarh Office, VIPL (Pvt) Ltd., Raigarh, Distt. Raigarh C.G. (Driver).
3. M/s. Venkatesh Logistics Private Ltd. B 89, Vrindavan Garden, Bhagwanpur, Raigarh, Thana- Raigarh, Distt. Raigarh C.G. (Owner).

--- Respondents

For Appellant	: Mr. P. Acharya, Advocate.
For Respondent No.1	: Mr. H.P. Agrawal, Advocate.
For Respondent No.2 & 3	: None.

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****Order on Board****Per Parth Prateem Sahu, J****21/09/2020**

1. Appellant -Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988) challenging the impugned award dated 07.12.2013 passed by the learned 1st Additional Motor Accident Claims Tribunal, Sakti, CG (for short, 'the Tribunal') in Claim Case No.28/2012, whereby the Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded total sum of Rs.3,50,725/- in an injury case.

2. Fact relevant for disposal of this appeal are that on 10.08.2011 at about 3:05 pm, claimant -Jagdish Prasad Sahu was returning from State Bank, Baradwar Branch on his Hero Honda motorcycle bearing Registration No.CG-11-B-8474. On the way, one Tractor Truck bearing registration No.CG-13-D-

0945 (for short, 'offending vehicle') driven by non-applicant No.1 rashly and negligently dashed his motorcycle and caused accident. In the aforesaid accident, claimant suffered grievous injuries over his right leg, ankle of left leg and injuries on other parts of the body. He was taken to B.D.M Hospital at Champa from where he was referred to Apollo Hospital, Bilaspur where he took treatment as in-patient from 10.08.2011 to 07.08.2011 and thereafter from 12.10.2011 to 22.10.2011. Accident was reported to concerned police station based upon which crime was registered against non-applicant No.1.

3. Claimant filed an application under Section 166 of the Act of 1988 before the Tribunal seeking compensation of Rs.14,11,109/- pleadings therein that on account of motor accidental injuries suffered by him, he incurred medical expenses of Rs.3,78,473/- and suffered permanent disability. He also incurred expenditure towards transportation and attendant during the course of treatment at Bilaspur.

4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, did not appear before the Tribunal, as such they were proceeded ex-parte.

5. Non-applicant No.3/Insurance Company submitted its reply to application and denied the pleadings made therein. It was pleaded that accident was result of collusion between two motor-vehicles but owner and Insurance Company of motorcycle was not arrayed as party to claim application. Claimant himself was responsible for the accident. On the date of accident, neither claimant nor non-applicant No.1 was having valid and effective driving license. There was no valid permit and fitness certificate with offending vehicle, there was breach of policy condition. Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that non-applicant No.1 while driving offending vehicle rashly and negligently dashed the motorcycle and caused accident, in which claimant suffered grievous injuries and became permanently disabled. Insurance Company failed to prove breach of policy condition. The Tribunal allowed application in part, awarded a sum of Rs.3,50,725/- as total compensation along with interest @ 6% p.a, fastened liability to pay the amount of compensation upon Non-applicants jointly or severally.

7. Learned counsel for the appellant -Insurance Company submits that the Tribunal erred in awarding excess amount of compensation; not granted proper opportunity of hearing, by illegally dismissing application filed by Insurance Company under Order 26 Rule 1 & 5 of CPC. Said application was filed for examining employee/officer of RTO Office, Beltala, Kolkatta, West Bengal on commission. He further submits that claimant is employed as "Upper Division Teacher" and entitled for medical reimbursement but even then the Tribunal has awarded the entire medical expenses.

8. Controverting the submission made by the learned counsel for the appellant -Insurance Company, learned counsel for respondent No.1/claimant submits that the Tribunal erred in not awarding just amount of compensation to claimant in the facts and circumstances of the case, therefore, claimant has filed cross-objection seeking enhancement of amount of compensation on different heads. He further submits that claimant has not taken reimbursement from his employer and in support thereof he filed an affidavit as per direction issued by this Court, stating that he has not made any application seeking reimbursement of amount of medical expenditure. He further submits that the Tribunal awarded Rs.3,45,725 towards medical expenses, which itself shows grievousness of injuries suffered by claimant. The Tribunal has awarded very

meager amount of compensation ie Rs.2,000/- towards special diet, Rs.3,000/- towards conveyance expenses; erred in not awarding any amount of compensation towards attendant; pain and sufferings; loss of amenities and joy in life & loss of income during the period of treatment. He further submits that claimant has very specifically stated in his statement that after first discharge from the hospital, he is required to stay at Bilaspur itself because he has been asked to visit hospital for the purpose of dressing regularly, therefore, he stayed at Turning Point Hotel near Apollo Hospital at Bilaspur for which he expended Rs.19,836/- but the Tribunal has not awarded the same.

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

10. So far as first submission made by learned counsel for the appellant -Insurance Company with regard to quantum of compensation is concerned, the Tribunal has awarded only Rs.5,000/- in addition to medical expenses incurred by claimant on other pecuniary damages. Medical expenses incurred by respondent No.1/claimant is not disputed but it has been argued by learned counsel for the appellant that medicals bills ought not be awarded to claimant, as he is working as 'Upper Division Teacher' and employee of the State Government and entitled for reimbursement of the amount of compensation from his employer. Upon going through the records, we find that medical bills have been filed in original. Had claimant submitted application for medical reimbursement than he might be required to file the bills in original before the Department. On the earlier date of hearing looking to the submission of learned counsel for the appellant, we directed claimant to submit an affidavit that he has not filed any application for reimbursement of amount of medical expenses, which was filed before this Court on 07.09.2020. Looking to the original medical bills and affidavit available on record, stating that he has not claimed medical

reimbursement from department, we are of the view that claimant has not claimed any amount of compensation towards medical reimbursement from his employer. Hence, first submission made by learned counsel for the appellant with regard award of excessive amount of compensation to claimant is not sustainable and it is hereby repelled.

11. So far as second submission with regard to not granting proper opportunity of hearing to appellant -Insurance Company is concerned, we have perused the proceeding drawn by the Tribunal while deciding the application under Order 26 Rule 1 & 5 of CPC vide order dated 29.11.2013. Upon perusal of said proceeding, it reveals that the Tribunal has taken note of the fact that appellant has not placed on record any license verification report said to be issued by the RTO office, Beltala, Kolkatta, West Bengal, which is required to be proved by examining any of employee of that office. Before this Court also, appellant has not placed on record any verification report in support of his pleadings that on the date of accident, non-applicant No.1 -driver of offending vehicle was not possessed with valid and effective driving license, but for his pleadings that as per information given by the Investigator appointed by it, that RTO office has not supplied license verification report of License bearing No.WB-012004162250 and has not accepted prescribed Government fee of Rs.70/- Office from which the license of non-applicant No.1 is to be verified is a Government office and if for any reason application is not accepted for issuance of driving license verification report then appellant could have filed an application under Right to Information Act but no such application was moved. In view of the fact that appropriate proceedings in accordance with law has not been pursued by appellant, we are unable to accept the submission made by the learned counsel for the appellant that even after approaching the authorities of the Motor Vehicle Department Beltala, Kolkattta, (WB) they have refused to

supply the same. For the foregoing reasons, we do not find any error in the order passed by the Tribunal vide order dated 29.11.2013 rejecting the application under Order 26 Rule 1 & 5 of CPC on the ground that appellant failed to place on record any document/material to show that it is to be proved by examining the employee of Transport Department of Beltala, Kolkatta, (WB). Hence, second submission made by learned counsel for the appellant that proper opportunity of hearing is not granted to appellant -insurance Company is also not sustainable and it is hereby repelled.

12. In view of above, we do not find any merit in the appeal filed by Insurance Company which is liable to be and hereby dismissed.

13. Now we will consider the cross-objection filed by claimant for enhancement of amount of compensation.

14. Learned counsel for the claimant could not able to point out that any of the medical bills placed on record has not been considered by the Tribunal, hence, we upheld the award of amount of compensation of Rs.3,45,725/- towards medical expenses.

15. Claimant has placed on record discharge summary of Apollo Hospital as Ex P-10 showing date of admission on 10.08.2011 and discharge as 07.09.2011. Second discharge summary of Apollo Hospital is placed on record as Ex.P-11 in which date of admission has been shown as 12.10.2011 and discharge on 22.010.2011. Claimant filed disability certificate as Ex.P-14 mentioning 40% permanent disability. In view of aforementioned documents, it is crystal clear that claimant took treatment for 38 days as in-patient. Even after discharge from the hospital, claimant may not be in a position to resume his work immediately looking to the nature of injury but the Tribunal has not awarded any amount of compensation towards loss of income during the period

of treatment. Further not awarding any amount of compensation towards attendant for which claimant is entitled for in the facts of the case. The Tribunal has not awarded any amount of compensation towards pain and suffering which was suffered by claimant on account of accidental injuries suffered by him, where he has to undergo operation took treatment for 38 days as in-patient. The Tribunal has awarded only Rs.3,000/- towards transportation charges disbelieving the bills placed on record by claimant towards transportation expenses and overlooking the fact that claimant is the resident of village -Sarwani, Tahsil Sakti, Distt. Janjgir Champa, whereas he took treatment as in-patient at Apollo Hospital Bilaspur, thereafter, he also took treatment at Ramkrishna Care Hospital, Raipur and Kalra Hospital, Raipur. In view of aforementioned facts supported by the documents available on record, we are of view that the Tribunal erred in awarding very meager amount of compensation of Rs.3,000/- towards transportation.

16. The other submission with regard to non-awarding any amount towards boarding and lodging is concerned, perusal of examination-in-chief filed under affidavit under Order 18 Rule 4 of CPC would show that claimant has very specifically mentioned that he has been advised by the doctor to visit hospital in every alternate days for dressing. Since, he is the resident of other district and about more than 50 Km away it was not feasible for him to travel Bilaspur in alternate days. Therefore, he stayed at Turning Point Hotel at Bilaspur from 07.09.2011 to 13.10.2011 for which he has expended Rs.19,836/-. The aforementioned statement of claimant does not appear to be false, in view of the fact that after first discharge from Hospital claimant was again admitted in Apollo Hospital from 12.10.2011 to 22.10.2011. The condition of injuries mentioned in discharge tickets would also support the submission of claimant that he has been advised to visit the hospital in every alternate days for

dressings. Documents/bills of Turning Point Hotel is not marked as exhibited for the reasons best known to claimant, but original bills is available on record at Page No.45 of un-exhibited documents along with record. In view of aforesaid fact and circumstance of the case, we find it appropriate to award Rs.19,836/- towards boarding and lodging charges keeping in mind that the object of the Act of 1988 is to award just and proper amount of compensation to claimant.

17. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal.

18. Claimant is entitled for entire medical bills as assessed by the Tribunal ie Rs.3,45,725/- and further entitled for Rs.30,000/- towards pain and sufferings; Rs.10,000/- towards transportation expenses; Rs.30,000/- towards loss of amenities and joy in life; Rs. 10,000/- towards attendant and diet charges. Claimant also entitled for Rs.19,836/- towards lodging and boarding charges.

19. Now claimant will be entitled for a total sum of **Rs.4,45,561/-** (Rs.3,45,725 + Rs.30,000 +Rs.10,000 + Rs.30,000 + Rs.10,000 + Rs.19,836) instead of **Rs.3,50,725/-** 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.

20. In the result :- * appeal filed by appellant -Insurance Company is dismissed.

* Cross-objection filed by claimant is allowed in part and impugned award stands modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-