

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A(C) No.325 of 2015****Reserved on 10.01.2020****Pronounced on 17.01.2020**

Trilochan Sahu S/o Banshilal Sahu Aged About 42 Years R/o Albelapara
Kanker District North Bastar Kanker Chhattisgarh

---- Appellant**Versus**

1. Rajesh Mandavi, S/o Baldev Ram Mandavi Aged About 27 Years R/o Mirchipara Shankarnagar Bahnupratappur District North Bastar Kanker Chhattisgarh
2. Shrawan Kumar Yadav S/o Sonauram Yadav R/o Village Kokade Post Durgukondal District North Bastar Kanker Chhattisgarh , District : Kanker, Chhattisgarh
3. The Bajaj Alliance General Insurance Co. Ltd. S/o Satanand Chamber Through Giriraj Builders Shop No. 212, 213 First Floor Station Road Durg District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Respondents

Shri Pravin Kumar Tulsian, counsel for the Appellant.
None for Respondents No.1 & 2, though served.
Shri Ghanshyam Patel along with Shri Vaibhav Maheshwari,
counsel for Respondent No.3.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**C A V Award**

1. This Miscellaneous Appeal has been preferred by the Claimant under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988) questioning the legality and propriety of the award dated 24.12.2014 passed by the Motor Accidents Claims Tribunal, North Bastar, Kanker (CG) (for short 'the Claims Tribunal') in Claim Case No.63/2013 whereby, the Claims Tribunal, while allowing the claim in part, awarded a total sum of Rs.1,55,000/- with 6% interest per annum from the date of filing of the claim Petition till its realization, by exonerating the Insurance company from its liability. The parties to this Appeal shall be referred hereinafter as per their description in the Claims

Tribunal.

2. Briefly stated, the facts of the case are that on 31.10.2011 at 10.30 a.m, Applicant Trilochan Sahu, a *sikshakarmi* was going by his motorcycle to his school. At the relevant time, he was dashed vehemently in front of one Indian Rice Mill from its opposite side by the offending vehicle 'Bolero' bearing its Registration No.CG 19 BA 6025, owned by Non-Applicant No.2-Shrawan Kumar Yadav, insured with Non-Applicant No.3-Bajaj Alliance General Insurance Company Limited, which was being driven in a rash and negligent manner by its driver, Non-Applicant No.1-Rajesh Mandavi. Owing to the alleged accident, the Applicant was injured badly wherein, his ankle and femur bone of the right leg got fractured, as a result of which, he suffered permanent disability to the extent of 40% giving rise to the institution of the claim under Section 166 of the Act of 1988, claiming a total amount of compensation to the tune of Rs.8,36,000/- under various heads.

3. The aforesaid claim has been contested by the Non-Applicants and the Claims Tribunal, upon considering the evidence led by the parties, arrived at a conclusion that the alleged accident has occurred on 31.10.2011 due to rash and negligent driving by the driver of the offending vehicle, in which, the Applicant has sustained grievous injuries as his ankle and femur bone of the right leg got fractured and by relying upon the disability certificate (Ex.P-7), it has been held that he suffered physical disability to the extent of 40%. It has been held further that the vehicle in question insured as a 'Passenger Carrying Commercial Vehicle' was being used without any permit in violation of the provision prescribed under Section 66 of the Act of 1988 and thus, by exonerating the Insurance Company from its liability, awarded a total amount of compensation to the tune of Rs.1,55,000/- with 6% interest per annum from

the date of filing of the claim Petition till its realization.

4. Being aggrieved, the Claimant has preferred this Appeal. Shri Pravin Kumar Tulsiyan, learned Counsel for the Appellant submits that the award impugned as passed by the Claims Tribunal, while disbelieving expenses of Rs.51,830/- as incurred by the Applicant towards medicines by discarding certain medical bills like Ex.P-8, Ex.P-19 to Ex.P-23, Ex.P-25, Ex.P-26, Ex.P-39 and Ex.P-40, is apparently contrary to law. According to him, once these bills and receipts are exhibited without any objection being raised, then its authenticity ought not to have been disbelieved. The Claims Tribunal, therefore, erred in disbelieving these medical bills by awarding a meager amount of compensation to the Claimant. It is contended that a sum of Rs.36,000/- and Rs.15,000/- was incurred by the Claimant towards attendant and travelling expenses respectively. However, the receipts and/or bills i.e. Ex.P-75 to Ex.P-79 and Ex.P-80, Ex.P-81 and Ex.P-83 furnished by the Applicant have not been accepted without any sufficient reasons being assigned. It is contended further that the Applicant while residing in a rented premises at Bhilai for the purposes of carrying out of his physiotherapy, he incurred Rs.52,000/- towards house rent vide Ex.P-69 to Ex.P-74, however, these rent receipts have not been taken into consideration while passing the award impugned. At last, it is contended that the Claims Tribunal, while exonerating the Insurance Company from its liability on finding that the vehicle in question was being used without any permit in violation of the statutory provision, ought to have applied the principles of 'pay and recover'. In support, he placed his reliance upon the decision rendered in the matter of R.V.E. Venkatachala Gounder vs. Arulmigu Vishwesaraswami & V.P. Temple and Another reported in **(2003) 8 Supreme Court Cases 752**.

5. On the other hand, Shri Ghanshyam Patel, learned Counsel for Respondent No.3 has supported the award under Appeal.

6. I have heard learned Counsel for the parties and perused the entire record carefully.

7. It appears from perusal of the record that the Applicant got injured badly on account of the alleged accident occurred on 31.10.2011 and was admitted immediately into the Government Hospital, Kanker and was referred thereafter to Suraj Hospital at Bhilai after his preliminary examination. He was admitted in the said hospital for a period of eleven days commencing w.e.f 31.10.2011 upto 11.11.2011 for his treatment. His ankle and femur bone of the right leg got fractured and was advised bed rest for three months. He suffered physical disability to the extent of 40% as evidenced by the disability certificate marked as Ex.P-7, duly corroborated by Dr. JS. Sahu, Member of the District Medical Board, who was examined as AW-2.

8. According to the Applicant, he incurred a sum of Rs.1,40,830/- for his treatment and produced medical bills, which were marked as Ex.P-8 to Ex.P-68, however, the Claims Tribunal has accepted a sum of Rs.89,000/- only out of it while disbelieving the medical bills, like Ex.P-8, Ex.P-19 to Ex.P-23, Ex.P-25, Ex.P-26, Ex.P-39 and Ex.P-40, which are amounting to Rs.51,829/-. The medical bills i.e. Ex.P-39 and Ex.P-40 are more or less pertaining to one bill and have been disbelieved by the Claims Tribunal while comparing with another bills of said Suraj Hospital i.e. Ex.P-33, Ex.P-38 and by observing further that there is some overwriting on it and were not duly certified as none of the doctors of the said hospital were examined. Likewise, it appears further that the other medical bills amounting to Rs.12,729/- incurred under Ex.P-8, Ex.P-19 to Ex.P-23, Ex.P-25 and Ex.P-26 were disbelieved on the ground that

the Claimant was neither in hospital at the relevant time nor has furnished the prescription based upon which, the alleged medicines were purchased. The Claims Tribunal has thus disbelieved a total sum of Rs.51,830/- incurred by the Applicant towards his treatment. The approach of the Claims Tribunal, while disbelieving all these medical bills appears to be hyper-technical in nature and cannot be held to be sustainable. It is true that there are some over writings in Ex.P-39 and Ex.P-40 but that by itself would not be sufficient to hold that its authenticity is doubtful. Likewise, other medical bills amounting to Rs.12,729/- ought not to have been disbelieved merely on the ground that he was neither in hospital nor has submitted the prescription as the same were not questioned as such during his (Claimant) cross-examination. That apart, all these medical bills were issued in the printed form of said Suraj Hospital, where he has undergone treatment for a considerable period of eleven days and was also advised bed rest for a period of three months. All these bills were duly exhibited without any objection being raised about its admissibility and therefore, its authenticity cannot be doubted subsequently as such. At this juncture, the principles laid down in the matter of *R.V.E. Venkatachala Gounder vs. Arulmigu Vishwesaraswami & V.P. Temple and Another* (supra) are to be seen where at paragraph-20, it has been observed as under:-

“20.....Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is *itself inadmissible* in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has

been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."

9. By applying the aforesaid principles to the case in hand, the Claims Tribunal ought not to have been disbelieved the aforesaid medical bills amounting to Rs.51,830/-. The Claimant is thus entitled to a sum of Rs.1,40,830/- towards medical expenses instead of Rs.89,000/- as awarded by the Claims Tribunal.

10. According to the Applicant, he incurred further sum of Rs.52,000/- while residing in a rented house of one Vishratan Sinha for the purpose of his physiotherapy and has produced the rent receipts (Ex.P-69 to Ex.P-79) issued by him. However, the Claims Tribunal has completely overlooked to consider the same while assessing the amount of compensation. It is true that the

Claims Tribunal has overlooked to take note of it, but a bare perusal of those receipts would however reflect the fact that they were neither bearing a date nor were executed in presence of any of the witnesses. As a consequence, the Applicant has failed to establish the genuineness of these documents and failed to prove that he incurred a sum of Rs.52,000/- while residing in a rented house at Bhilai and as such, he is not entitled to claim this much of amount. In so far as disbelieving the documentary evidence marked as Ex.P-75 to Ex.P-79, whereby the Applicant alleged to have incurred Rs.36,000/- towards Attendant is concerned, it appears that the same has rightly been disbelieved by the Claims Tribunal as all these documents were prepared along with the above mentioned rent receipts (Ex.P-69 to Ex.P-74) on the same day in absence of any of the witnesses. As such, no reliance could be placed upon it. The Claims Tribunal has therefore, not committed any illegality in disbelieving these receipts (Ex.P-75 to Ex.P-79) and therefore, the same does not call for any interference in this regard.

11. It appears further from a bare perusal of the receipts (Ex.P-80 and Ex.P-81) that on the fateful day i.e. 31.10.2011, the Applicant was shifted from Kanker to Nehru Nagar, Bhilai by the vehicle owned by one 'Apna Travels' and was returned to Kanker and thus, he incurred Rs.8,000/- as evidenced by those receipts (Ex.P-80 and Ex.P-81) issued by the said Travels. Upon due consideration of these receipts, which were of the relevant period, I do not find any reason to disbelieve the same. However, in so far as the fact that the receipt (Ex.P-83) was issued by one Prakash Yadu is concerned, I do not find any infirmity in the finding of the Claims Tribunal in disbelieving the same as a bare perusal of the same would show that the Applicant was brought to Nagpur from Kanker for the purpose of meeting Dr. Chandak. However,

neither any plea was taken by the Applicant in this regard nor any evidence was adduced, so as to hold that he went to Nagpur for the said purpose. The Tribunal has, thus, rightly refused to accept this document. The Applicant is thus, entitled to a sum of Rs.8,000/-, instead of Rs.5,000/- as held by the Claims Tribunal towards transportation. Consequently, the Applicant is entitled to a sum of Rs.2,09,830 as under:-

	Mode of Compensation	Amount Rs.
i.	Medical expenses under Ex.P-8 to Ex.P-68	1,40,830/-
ii.	Expenses incurred by the Applicant during examination in hospital as awarded by the Tribunal	11,000/-
iii.	Expenses incurred towards transportation (under Ex.P-80 and Ex.P-81)	8,000/-
iv.	Towards physical and mental agony owing to injury and disability suffered by the Claimant to the extent of 40%, as awarded by the Tribunal	50,000/- (40,000/- + 10,000/-)
	Total	2,09,830/-

12. The aforesaid amount shall carry interest at the rate of 6% per annum from the date of filing of the claim Petition till its realization, payable by the owner and driver of the offending vehicle.

13. Now, the contention raised by learned Counsel for the Applicant that the Claims Tribunal, while exonerating the Insurance Company ought to have applied the principles of 'pay and recover' is acceptable as the said issue has become no more *res integra* in view of the principles laid down in the matter of National Insurance Co. Ltd. vs. Swaran Singh and others reported in **(2004) 3 SCC 297**. In the said matter, it was contended by the Insurance Company that that once the defence taken by the insurer is accepted by the Tribunal, it is

bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, it was held that even if the insurer succeeds in establishing its defence, the Tribunal can direct the Insurance Company to pay the award amount to the Claimants and, in turn, recover the same from the owner of the vehicle. At paragraph 107, it was observed as under:-

“107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.”

14. In the present case, the vehicle in question was undisputedly insured with The Bajaj Alliance General Insurance Company Limited, Respondent No.3. Applying the dictum in ***National Insurance Co. Ltd. vs. Swaran Singh and others*** (Supra), in order to subserve the ends of justice, Respondent No.3-Insurance Company is hereby directed to pay the claim amount i.e. Rs.2,09,830/- along with its interest @ 6% per annum from the date of filing of

the claim Petition till its realization in the first instance to the Claimant, with liberty to recover the same from the driver and owner (Respondent Nos.1 & 2 respectively) of the vehicle in question in accordance with law.

15. The Appeal is allowed in part with the aforesaid observation. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge

Priya