

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 569 of 2015

- Subasho S/o Shivbhajan Yadav, Aged About 35 Years, R/o Village Darripara, Police Station And Tahsil Bhaiyathan, Revenue And Civil District- Surajpur, Chhattisgarh

---- Appellant

Versus

1. The Oriental Insurance Company Limited, Through Branch Manager, The Oriental Insurance Company Limited Ambedkar Chowk, Ambikapur, District- Surguja, Chhattisgarh (Insurer of offending vehicle)
2. Manmohan Gupta, S/o Ambika Prasad Gupta, Aged About 20 Years, Caste:Teli, R/o Village Darripara, Police Station And Tahsil, Bhaiyathan, District- Surajpur, Chhattisgarh (Owner of offending vehicle)
3. Kunjbihari Gupta S/o Ambika Prasad Gupta Aged About 25 Years, Caste: Teli, R/o Village Darripara, Police Station And Tahsil, Bhaiyathan, District- Surajpur, Chhattisgarh (Driver of offending vehicle)

---- Respondents/Non-Applicants

For Appellant : Shri Dashrath Kushwaha, Advocate
For Respondent- 1 : Shri Sudhir Agrawal, Advocate
For Respondents- 2 and 3 : None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

13.08.2021

1) Claimant has preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 20.04.2015 passed by the 1st Additional Motor Accident Claims Tribunal, District Surajpur, Chhattisgarh (For short, 'Claims Tribunal') in Claim Case No.65 of 2012, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded lumpsum amount of Rs.15,000/- as compensation in an injury case and fastened liability upon NA2 and 3, driver and owner of offending vehicle to satisfy the amount of compensation with a direction to Insurance Company to first pay entire amount of compensation and thereafter, to recover the same from driver and owner of offending vehicle.

2) Facts of the case in nutshell are that on 23.06.2012, appellant-Subaso was travelling on Tata Magic bearing No.CG15 AC-0616 (hereafter, referred to 'offending vehicle'), owned by NA2. He was travelling along with goods purchased for marriage purpose. On the way, offending vehicle driven by NA3 rashly and negligently, turned turtle and caused accident. Appellant/claimant suffered grievous injury on her head and chest.

3) Appellant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.1,15,000/- on the ground that she suffered grievous injuries on her head, took treatment as in-patient at District Hospital, Ambikapur from 23.06.2011 to 30.06.2011.

4) NA2 and 3 ie owner and driver of offending vehicle submitted reply to claim application denying the facts pleaded therein. It was further pleaded that on the date of accident, NA3 was possessed with valid and effective driving license and offending vehicle was insured with NA1. Liability to satisfy the amount of compensation, if any, would be upon NA1.

5) NA1/Insurance Company submitted its separate reply denying the facts pleaded in claim application. Offending vehicle was insured as Goods Vehicle. On the date of accident, about 10-15 persons were travelling on offending vehicle, including claimant/appellant, as such, there was breach of policy conditions. NA3 was not possessed with valid and effective driving license on the date of accident. Insurance Company be exonerated from its liability.

6) Learned Claims Tribunal, on appreciation of pleadings and evidence brought on record by respective parties, held that appellant/claimant suffered grievous injuries on account of rash and negligent driving of offending vehicle by NA3. NA3 was possessed with valid and effective driving license. Tribunal recorded a finding that at the time of accident, more persons were travelling than of sitting capacity, as offending vehicle was being plied in breach of policy conditions, awarded lump sum amount of Rs.15,000/- as compensation.

7) Shri Dashrath Kushwaha, learned counsel for the appellant would submit that learned Claims Tribunal erred in awarding lump sum amount of Rs.15,000/- as compensation, overlooking nature of injuries, period of treatment, amount expended towards treatment which is supported by the bills, money receipts placed on record, and not awarding compensation on each head separately, for which appellant is entitled for. He submits that amount of compensation be suitably enhanced in facts and circumstances of the case.

8) Shri Sudheer Agrawal, learned counsel for Insurance Company submits that appellant did not suffer any fracture injury, not examined any doctor to prove nature of injuries suffered by her, he submits that in view of above, learned Claims Tribunal justified in assessing amount of compensation on lump sum basis. Compensation awarded by learned Claims Tribunal is just and proper in facts and circumstances, which does not call for any interference.

9) No one appeared on behalf of respondents-2 and 3.

10) I have heard learned counsel for the respective parties.

11) Only question raised by learned counsel for appellant is with regard to awarding suitable amount of compensation by enhancing compensation awarded by learned Claims Tribunal. Perusal of record of claim case would show that appellant, while travelling on offending vehicle, suffered lacerated wound on her head, which was found to be grievous in nature. Appellant took treatment as in-patient for a period of one week, which itself is sufficient to show the nature of injuries suffered by her. Learned Claims Tribunal has not assessed amount of compensation separately on the heads of compensation towards grievous injuries, pains and suffering, special diet, transportation expenses, loss of income during the period of treatment etc., where the appellant pleaded herself to be working as agriculture labourer, but awarded Rs.15,000/- lump sum amount of compensation.

12) True, it is that appellant has not examined any doctor to prove nature of head injuries, but taking into consideration documents placed on record in respect of injuries and treatment, amount of compensation awarded by learned Claims Tribunal appears to be on little lower side.

13) Considering entire facts and circumstances of case, documentary evidence placed on record with regard to nature of injuries and treatment as in-patient for about one week, I find it appropriate to award additional sum of **Rs.10,000/-** as compensation apart from Rs.15,000/- as awarded by learned Claims Tribunal.

14) Now, appellant /claimant shall be entitled for sum of **Rs.25,000/-** as total compensation.

15) Aforementioned amount of compensation shall carry interest @ 7% from the date of filing of the claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

16) Appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma