HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1296 of 2015

Sapura Bai W/o Vedram Shikari, Aged About 30 Years, R/o Village - Matiyari, Thana - Sipat, District -Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Mohammad Yashin S/o Ilahi Khan, Aged About 34 Years, R/o Near Jhalmala Masjid, Thana Sipat, District -Bilaspur, Chhattisgarh.
2. Mo. Ilahi Khan S/o Chand Khan, Aged About 40 Years, R/o Near Jhalmala Masjid, Thana Sipat, District -Bilaspur, Chhattisgarh.
3. Branch Manager, Chola Mandalam General Insurance Company Ltd. Branch Office 2nd Floor, Simran Tours, Pandri, Behind LIC Building, District -Raipur Chhattisgarh.

--- Non-applicant Nos.1 to 3/Respondents

For Appellants	:	Mr. Samir Singh, Advocate.
For Respondent Nos.1 and 2	:	None.
For Respondent No.3	:	Mr. Ghanshyam Patel, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

12/08/2021

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') challenging the award dated 10.08.2015 passed by learned 8th Additional Motor Accident Claims Tribunal, Bilaspur, District -Bilaspur, (CG) (for short 'Tribunal') in Claim Case No.292/14, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.14,500/- in injury case alongwith interest @ 6% per annum. While exonerating Insurance Company from its liability, fastened liability upon non-applicant Nos.1 & 2/driver and owner of offending vehicle to satisfy the amount of compensation.

2. Facts relevant for disposal of this appeal are that on 05.03.12 appellant (injured) was going to Matiyari from Bilaspur on Auto Rickshaw bearing registration No.CG-10-T-2726, (for short 'offending vehicle'). On the way, near Nutan chowk, Bilaspur, offending vehicle turned turtle due to rash

and negligent driving of non-applicant No.1. In the aforementioned accident, appellant suffered grievous injuries on her left leg, waist, head and shoulder.

3. Appellant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.3,90,000/- pleading therein that on the date of accident, she was working as labourer and earning Rs.3,000/- per month. She has incurred Rs.50,000/- towards her treatment. Require further treatment for which she has claimed Rs.50,000/- alongwith compensation on other heads.

4. Non-applicant Nos.1 & 2/driver and owner of offending vehicle, submitted reply to application, denying facts pleaded therein. It was further pleaded that non-applicant No.1 was driving offending vehicle cautiously and slowly. Accident was not occurred on account of rash and negligent driving of non-applicant No.1. On the date of accident, non-applicant No.1 was possessed with valid and effective license and offending vehicle was insured with non-applicant No.3, hence liability, to pay amount of compensation, if any, would be of non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted its reply and resisted the claim. It was further pleaded that injuries suffered by appellant are simple in nature. She did not suffer any permanent disability. Offending vehicle was plied in breach of policy condition as on the date of accident non-applicant No.1 was not having valid and effective driving license to drive offending vehicle. Hence, Insurance Company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that appellant suffered injuries on account

of rash and negligent driving of offending vehicle by non-applicant No.1. Breach of Policy condition was found to be proved. Tribunal allowed application in part, awarded total compensation of **Rs.14,500/-.**

7. Learned counsel for appellant submits that appellant suffered grievous injuries on her person while traveling on offending vehicle, in support of her claim, she has placed on record MLC report as Ex.P-4, X-ray report as Ex.P-5, admission sheet of Chhattisgarh Institute of Medical Science, Bilaspur as Ex.P-6(A), but Tribunal has not considered nature of injuries in proper manner, erred in not awarding any amount of compensation towards injuries and awarded meager amount of compensation under other heads. He further submits that exoneration of Insurance company on the ground that non-applicant No.1 was not possessed with valid and effective driving license on the date of accident is erroneous. Witness examined on behalf of Insurance Company as NAW-3(1) Umesh Tripathi in his evidence stated that license issued to non-applicant No.1 on 17.12.05 is for light motor vehicle (LMV) non-transport and it was valid upto 16.12.2025, as per license particulars placed on record by **NAW-1**. Offending vehicle is LMV hence, in the light of judgment passed by Supreme Court in case of **Mukund Dewangan v. Oriental Insurance Company Limited**[1] and **M.S. Bhati v. National Insurance Company**[2] finding recorded by Tribunal that there was breach of policy condition is erroneous and is liable to be set aside. In alternative, he submits that in view of aforementioned facts at-least direction be issued to Insurance company to first make payment of amount of compensation and thereafter to recover the same from driver and owner of offending vehicle ie Non-applicant No.1 and 2.

1 (2017) 14 SCC 663
2 (2019) 12 SCC 248

8. Learn**ed c**ounsel for respondent No.3-Insurance Company opposes the submission made by learned counsel for the appellant and submits that Tribunal after considering pleadings, evidence and documents available on record has awarded just amount of compensation, which does not call for any interference. In alternative, he submits that as liability is not challenged by Non-applicants No.1 & 2, it cannot be set aside in an appeal filed by claimant/appellant seeking enhancement of amount of compensation. Appellant cannot be held to be aggrieved person with respect of fastening of liability upon Non-applicant Nos.1 and 2 to satisfy the amount of compensation. If at all, interest of appellant is to be protected then a direction can be issued to insurance company to first deposit entire amount of compensation and thereafter to recover the same from Non-applicant No.1 and 2..

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

10. So far as submissions of learned counsel for appellant with respect to enhancement of amount of compensation, perusal of record shows that appellant suffered injuries on her person. After accident, she was immediately taken to Chhattisgarh institute of Medical Sciences, Bilaspur for treatment where it was diagnosed that she suffered injury on right forearm, left foot, ankle joint and waist. Upon x-ray, no bone injury was found on foot or forearm. Appellant did not examine the doctor to prove plea of requirement of future treatment. Tribunal has awarded Rs.3,000/- towards loss of income for a period of 1 month, Rs.8,467/- towards medical expenses, Rs.3,000/- towards pain and sufferings and calculated total amount of compensation as Rs.14,500/-. Looking to the nature of injuries, period of treatment, the fact that appellant neither examined any

doctor nor placed on record permanent disability certificate, Tribunal justified in not awarding any amount of compensation towards future treatment as claimed by appellant. Further Tribunal justified in not awarding amount of Rs.50,000/- towards medical expenses, as claimed to be expended by claimant in her treatment, because in support thereof appellant has not placed on record any medical prescription of Dr. Lalchandani.

11.Tribunal has awarded R**s.8,467/-** towards medical bills. It is not argued by learned counsel for the appellant that any of bills placed on record and marked as exhibit, has not been awarded by Tribunal.

12. Considering entire facts and circumstances of this case, nature of injuries, part of body of appellant on which she suffered injuries, in the considered opinion of this Court, amount of compensation assessed by Tribunal is on litter lower side.

13.Tribunal has awarded consolidated amount of Rs.3,000/- towards special diet, pain and sufferings, conveyance, which in the facts and circumstances of this Court is on lower side. Tribunal has awarded Rs.3,000/- towards loss of income for period of 1 month only, overlooking date of accident ie 05.03.2012.

14.Considering the entire facts and circumstances of this case, I find it appropriate to award lumpsum additional sum of Rs.10,500/-, which makes total amount of compensation to Rs.25,000/-.

15.Now, appellant is entitled for a total compensation of R**s.25,000/-** instead of **Rs.14,500 /-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

16.The owner and driver of offending vehicle have not challenged the finding of exoneration of Insurance Company from its liability, this appeal is filed by claimant, hence to protect the interest of claimant, I find it appropriate to direct insurance company to first deposit the entire amount of compensation along-with interest and thereafter, to recover the same from non-applicant Nos.1 and 2/driver and owner of offending vehicle in accordance with law.

17. In result, appeal is allowed in part and impugned award stands modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-