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HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 173 of 2015**

- Santosh Pandey @ Golu S/o late Kamta Prasad Pandey, aged about 33 years, Occupation-Service (Siksha Karmi) R/o Ring Road Bouripara Ward No. 18 Ambikapur P.S. & Tahsil-Ambikapur Distt-Surguja C.G.

-----Appellant**VERSUS**

1. Yanul Ansari S/o Phajal Ansari aged about 47 years Occupation-Driver presently R/o Bhagwanpur, Subasnagar Ambikapur Distt Surguja Permanent address Village Shankergarh Back Side of Bus Stand P.S. & Tahsil-Shankergarh Distt Balrampur-Ramanujganj C.G.
2. Ashutosh Tiwari S/o D.Tiwari aged about 45 years Occupation-Owner R/o Village Patelpara Ambikapur Distt. Surguja C.G.
3. The Branch Manager Reliance General Insurance Company Limited Anil Dhiru Bhai Ambani Group Branch Office Shop No. 412-413, 4th Floor Ravi Bhawan Jai Stambh Chowk Raipur Distt. Raipur C.G.

-----Respondents

For Appellant	: Mr. A.N. Pandey, Advocate
For Respondent 1	: None.
For Respondent 2	: Mr. Sunil Tripathi, Advocate.
For Respondent 3	: Mr. Rohitasva Singh, 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.****13/01/2021**

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 of the award dated 03.12.2014 by 2nd Additional Motor Accident Claims Tribunal, Ambikapur, Dist. Surguja, Chhattisgarh in claim case no. 183/2013, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act and awarded Rs. 2,57,854/- as total compensation in an injury case.
2. Facts relevant for disposal of this appeal are that, on 31.08.2012, Santosh Pandey *alias* Golu was travelling on a bus bearing registration no. CG15A9533 (hereinafter referred to as "offending Bus") and going to his

duty. At about 6:30 a.m., when offending bus reached near village Karji Chargarh turn, some of the documents of the appellant fell down from the bus. After stopping the bus, he got off from the bus and started picking up his documents, while so, driver of the offending bus rashly and negligently reversed the bus and caused accident to appellant. In the said accident, appellant suffered fracture injury over his person on his right leg, hip, right hand apart from other injuries. After the accident, he was immediately taken to Primary Health Centre, Rajpur, from where he was referred to Ambikapur. Looking to the nature of injuries, he was taken to Hospital of Orthopedic Specialist, Dr. Sanjay Tripathi, from where he was again referred to Hospital of Dr. R.S. Dheer, Orthopedic Specialist, Bilaspur. He took treatment initially from 31.08.2012 to 21.09.2012, as in-patient.

3. Appellant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 8,95,732/- on different heads pleading therein that on account of motor accidental injuries, he took treatment as in-patient in Hospital at Bilaspur, and after discharge, he was again admitted to Hospital and underwent operation of his right leg and waist. Then again, he was admitted to hospital after one month where he again undergone surgery of his right leg. Some more operation is required to be done and he is continuously visiting Bilaspur for his treatment. He is not able to perform his regular and daily work on account of disability suffered by him due to motor accidental injuries. He could not able to sit on two-wheeler.
4. Non-applicant 1 and 2 submitted reply to claim application, while denying the facts pleaded therein, it was further pleaded that claimant was working as Shiksha Karmi and he is entitled of medical reimbursement. Non-applicant 1/ driver of the offending bus was possessed with valid and effective driving licence on the date of accident and the offending bus was

insured with non-applicant 3/ Insurance Company, hence, the liability to satisfy the amount of compensation is upon non-applicant 3/ Insurance Company.

5. Non-applicant 3/ Insurance Company submitted reply to the claim application pleading therein that the offending bus was plied in breach of policy conditions. Non-applicant 1 was not possessed with valid and effective driving licence, appellant has not taken any treatment from any of the hospital, he did not suffer any permanent disability and the amount of compensation claimed is highly exaggerated.
6. Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties held that the appellant-claimant suffered grievous injuries due to rash and negligent driving of offending bus by non-applicant 1. Non-applicant 1 possessed with valid and effective driving licence. All the required and essential documents of the bus were there and awarded Rs. 2,57,854/- as total compensation and fastened liability upon non-applicant 3/ Insurance Company to satisfy the amount of compensation.
7. Mr. A.N. Pandey, learned counsel for the appellant submits that the Claims Tribunal has not considered the entire documentary and oral evidence placed on record by appellant and awarded very meagre amount of compensation. He submits that nature of injuries suffered by the appellant was grievous, documents available on record would show that, claimant suffered fracture injury over his right thigh, hip, avulsion injury on left leg, near hip. He had to take treatment for long time and even on the date of filing application, he was not cured fully. As per the medical documents placed on record by the appellant, he was in continuous treatment since the date of accident till 29.01.2013 as mentioned in Ext. P-15. It is further submitted that in the disability certificate issued by District Medical Board on 11.07.2013, it is mentioned that the appellant may need further surgery

but the Claims Tribunal has not awarded appropriate amount towards future treatment. Claims Tribunal has not awarded entire transportation expenses overlooking the transportation receipts placed on record from Ext. P-91 to P-103. Appellant is resident of Ambikapur, he placed on record receipts issued by private travel agencies as he hired the vehicle from those agencies but the Tribunal has ignored those on technical ground that those bills of private travel agencies have not been proved by examining the author of documents. He contended that the dates of traveling shown in the bills are corresponding to the dates of treatment taken by the appellant at Bilaspur from Dr. R.S. Dhir and therefore the Tribunal could not have taken the technical approach for rejecting genuine transporting bills. The Tribunal has not awarded any amount towards permanent disability or grievous injuries suffered by him, loss of amenities and joy in life and meagre amount has been awarded on the head of physical and mental pain. Claims Tribunal has not awarded any amount towards special diet, attendant, lodging and boarding at Bilaspur for which appellant is entitled. Appellant has placed on record bills of hotel showing his lodging for the purpose of treatment but that has not been considered on technical ground only. He further contended that appellant has placed on record Ext. P-12 disability Certificate issued by Medical Board showing 25% permanent disability but the Claims Tribunal has not awarded any amount under the head of permanent disability.

8. Mr. Sunil Tripathi, learned counsel for Respondent 2 supported the impugned award passed by Claims Tribunal. He submits that Respondent No. 2 is owner of offending vehicle. Vehicle was insured and the Claims Tribunal taking into consideration overall facts and circumstances of the case awarded just compensation which does not call for any interference.
9. Mr. Rohitashva Singh, learned counsel for Insurance Company/ Respondent 3 submits that Claims Tribunal has considered the nature of

injury suffered by the appellant, place of treatment, awarded entire medical bills placed on record by appellant-claimant. He submits that appellant has placed on record transportation bills on letter head of travel agencies but the appellant failed to examine any one of them as witness to prove those bills. Similarly, the lodging and boarding bills were also not proved. Claims Tribunal has awarded Rs. 40,000/- towards mental and physical pain which in the facts of the case cannot be said to be on lower side. It is not a case where the Tribunal rejected entire transportation bills but looking to the facts and circumstances of the case, awarded Rs. 20,000/- in lumpsum towards transportation expenses. Amount of compensation awarded by the Claims Tribunal is just and proper which does not call for any interference.

10. We have heard learned counsel for the respective parties and also perused the record of claim case.
11. Sofar as, the nature of injuries suffered by appellant are concerned. Injuries are very grievous as appearing from medical documents placed on record from Ext. P-6 (MLC report), Ext. P-8 (medical prescription of Dr. Sanjay Tripathi), Ext. P-9 to Ext. P-11(i) and Ext. P-13 to Ext. P-15, Ext. P-20a. Discharge summary of Dr. R.S. Dhir of Tejkaur Nursing Home would show that the accident, dated 13.08.2012, is of running over vehicle while reversing, referred from Ambikapur to hospital at Bilaspur, took treatment from 13.08.2012 till 21.09.2012. Document Ext. P-13 to P-15 would show that since 21.08.2012, appellant was under continuous treatment and admitted to hospital on different dates of which last entry has been shown to be on 29.01.2013. Now, in view of nature of injury as mentioned in the medical documents placed on record, it is to be considered whether the Tribunal has awarded just amount of compensation on the head of physical and mental pain, disability, loss of amenities and joy in life, transportation, attendant, special diet etc. Sofar as the medical expenses

are concerned, learned counsel for appellant has not raised any issue/ground with regard to non-award of any of the medical bills placed on record, hence, we affirm the award of Rs. 1,97,854/- towards medical expenses incurred by appellant. Tribunal has awarded Rs. 40,000/- towards physical and mental pain. Looking to the number of injuries and nature of injuries, in considered view of this Court, Tribunal awarded lesser amount of compensation on the head of physical and mental pain. On account of motor accidental injuries suffered by him, appellant suffered proximal fracture on fragment & shaft; dislocation of hip; fracture of shaft femur exposed; degloving injury, left leg along with other avulsion injuries; acetabulum fracture at hip joint. Document further shows the long time treatment from 31.08.2012 to 29.01.2013 continuously and that too traveling on number of occasions from Ambikapur to Bilaspur in the injured condition. In the aforementioned facts of the case, we find it appropriate to award Rs. 50,000/- towards pain and sufferings instead of Rs. 40,000/-.

12. Now we will consider whether the appellant suffered permanent disability or not. Learned counsel for the appellant submitted that the disability certificate Ext. P-12 is filed by appellant to prove his disability to the extent of 25%. Upon going through document Ext. P-12, it appears that though the formate in which the certificate is issued is a formate to be issued by the District Medical Board but that has been issued under the signature of one doctor ie. Dr. R.S. Dhir, M.S. Ortho, who is treating doctor of appellant, hence, the said disability certificate cannot be said to be issued by District Medical Board. Said doctor was not examined as witness to prove disability certificate, hence, disability certificate Ext. P-12 cannot be taken as admissible piece of evidence to prove permanent disability suffered by appellant-claimant. Claims Tribunal, in paragraph 12, taking into consideration Ext. P-12, has arrived at a finding that looking to the entries made in the certificate Ext. P-12, it cannot said to be permanent disability as in the certificate it is mentioned that "Re-assessment is recommended

after a period of every three months" that means the treatment is still going on. In the same certificate, it is further mentioned that 'may need surgery'. But as the doctor has not been examined and the estimated amount towards the expenditure and surgery has not been assigned and stated, hence, no amount for the surgery can be awarded to appellant. Claims Tribunal has awarded compensation only on three heads ie. medical expenses, physical and mental pain and transportation. Amount of compensation to be awarded in an injury case has been considered by Hon'ble Supreme Court in case of **R.D. Hattangadi v. Pest Control India Ltd.** reported in **1995 (1) SCC 551**, **Rajkumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343**, **Chanappa Nagappa Muchalagoda v. Divisional Manager, New India Insurance Company limited** reported in **(2020) 1 SCC 796**. In case of **R.D. Hattangadi (Supra)**, Hon'ble Supreme Court has considered the heads under which the amount of compensation to be awarded in an injury case and held thus:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

13. Claims Tribunal has not awarded any amount towards the injury suffered by appellant even if appellant failed to prove permanent disability suffered by him but then the claimants are required to compensate for the injury suffered, looking to the nature of injuries. Taking into consideration nature of injuries suffered by appellant which is apparent from medical documents placed on record, we find it appropriate to award Rs. 50,000/- towards the grievous injuries. Claims Tribunal has not awarded any amount towards loss of amenities and joy in life. Appellant on the date of accident was aged about 33 years only, multiple fracture injuries over his person like fracture of femur bone, hip, avulsion injury over his leg, period of treatment was continuously from 31.08.2012 to 13.01.2013, nature of injury as mentioned in the medical documents, appellant may not lead his further life as an ordinary person which he was living prior to the date of accident. He may have to make restrictions on his movement etc., cannot able to perform all his work as he was doing prior to the date of accident,

considering the nature of injuries, part of body, we find it appropriate to award Rs. 50,000/- towards loss of amenities and joy in life. Claims Tribunal has not awarded any amount towards attendant for which appellant is entitled. Looking to the period of treatment as apparent from medical documents placed on record, we find it appropriate to award Rs. 24,000/- towards attendant for a period of six months, Rs. 20,000/- towards special diet. We also find it appropriate to award some of the bills of hotels (lodging) from Ext. P-104 to P-109, showing amount of Rs.3,700/-, Rs.8,800/-, Rs.2,100/-, Rs. 580/-, Rs.530/- and Rs.700/- respectively, total of which comes to Rs.16,410/-. Expenditure on traveling/ transportation for treatment purpose is of Rs.58,500/-, bills of which have been placed on record from Ext. P-91 to P-103. Looking to the nature of injury, period of treatment at Bilaspur, corresponding the dates of treatment which appears from Ext. P-13 to P-15, though the appellant has not examined any witness of travel agencies to prove those documents, but looking to the object of the Motor Vehicles Act, when the injuries and treatment are admitted, we find it appropriate to award the amount of Rs. 58,500/- as transportation expenses as mentioned in the aforementioned documents instead of Rs. 20,000/- as awarded by the Tribunal on this head.

14. Now the appellant-claimant will be entitled for Rs. 1,97,854/- towards medical expenses, Rs. 50,000/- towards mental pain and sufferings, Rs. 50,000/- towards injuries, Rs. 50,000/- towards loss of amenities and joy in life, Rs. 24,000/- towards attendant cost, Rs. 20,000/- towards special diet, Rs. 16,410/- towards lodging and boarding, Rs. 58,500/- for transportation. Total amount of compensation for which the appellant-claimant is entitled is of **Rs.4,66,764/-** [Rs. 1,97,854+ Rs.50,000+ Rs.50,000+ Rs.50,000+ Rs.24,000+ Rs.20,000+ Rs.16,410+ Rs.58,500] instead of Rs. 2,57,854/- as awarded by the Claims Tribunal. Amount of compensation shall carry interest @ 9% p.a. as awarded by the Claims Tribunal from the date of

filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

15. In the result, appeal is allowed in part and the impugned order is modified to the extent as indicated hereinabove.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Pawan