

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 186 of 2015**

- Gopal Goyal S/o Shri Balram Goyal age 26 years, R/o Saket Inclave, Mungeli Road, Back Side of Patidar Bhawan, Bilaspur, Tah. Bilaspur, Civil & Revenue Distt. Bilaspur, Distt. Bilaspur Chhattisgarh

-----Appellant/ Claimant**VERSUS**

- Krisan Kumar Shriwas, S/o Chandulal Shriwas R/o Near D.L.S. College, Ashok Nagar- Sarkanda, Thana-Sarkanda, Tahsil & Distt. Bilaspur.

-----Non-applicant 1/ Driver

- Shri Sresth Pathak, S/o Shri Mithlesh Pathak, R/o In front of Jain Mandir, Sarkanda, Thana-Sarkanda, Tahsil-Bilaspur, Distt. Bilaspur, Chhattisgarh

-----Non-applicant 2/ Owner

- The Reliance General Insurance Co. Ltd. through Branch Manager, Branchd Office-Shop No. 412, 413, Fourth Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, Tahsil & Distt. Raipur, Chhattisgarh

-----Respondents

For Appellant	: Mr. Sanjay Agrawal, Advocate
For Respondent 1 & 2	: None.
For Respondent 3	: Mr. Shailesh Tiwari, Adv. on behalf of Mr. Sourabh Sharma, 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.****19/01/2021**

- Challenge in this appeal is to the award dated 29.09.2014 passed by learned Third Additional Motor Accident Claims Tribunal, Bilaspur Chhattisgarh (for short "Claims Tribunal") in claim case no. 26/2011, whereby learned Claims Tribunal allowed the application for grant of compensation in part, awarded Rs. 2,27,500/- as total compensation in an injury case.
- Facts of the case in nutshell are that, on 26.12.2009, when the appellant/ claimant was traveling on a motor cycle bearing registration no. CG10-BB-0182, driven by him, along with his brother Deepak Goyal, reached near

Maharana Pratap Chowk, Bilaspur, one truck bearing registration no. CG10-C-0186 (henceforth "offending truck") dashed with one Maruti Car, upon which, driver of the offending truck jumped out from the truck in running condition. Offending truck, thereafter, dashed the motor cycle and dragged the appellant/ claimant and his brother to some distance. Accident was reported to concerned police station based on which crime was registered against non-applicant 1/ Respondent 1. In the said accident, claimant suffered grievous crushed injuries over his left leg, due to dragging on road, appellant/ claimant suffered injuries of avulsion of skin over the parts of his body. Appellant took treatment at Appollo Hospital, Bilaspur from 26.12.2009 to 06.01.2010, thereafter, at Modern Medical Institute, Raipur from 06.01.2010 to 15.03.2010.

3. Appellant/ claimant filed an application under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs. 63,00,000/- on the grounds mentioned therein.
4. Application for grant of compensation was resisted by non-applicant 3/ Respondent 3/ Insurance Company. It was pleaded that, on the date of accident, non-applicant 1 was not possessed with valid and effective driving licence, as such, there was breach of policy conditions, amount of compensation claimed is highly exaggerated.
5. Non-applicant 1 did not appear before the Claims Tribunal. Non-applicant 2 submitted its reply, denying the entire facts pleaded in the claim application.
6. On appreciation of pleadings and evidence brought on record by the respective party, learned Claims Tribunal held that the appellant/ claimant suffered grievous motor accidental injuries due to rash and negligent driving of offending truck by non-applicant 1. Breach of policy conditions and contributory negligence on the part of claimant was not found to be proved, fastened the liability upon non-applicants jointly and severally to

satisfy the amount of compensation and awarded Rs. 2,27,500/- as compensation including Rs. 2 Lac towards the medical expenses.

7. Mr. Sanjay Agrawal, learned counsel for appellant submits that the Claims Tribunal erred in awarding lesser amount of compensation overlooking the nature of injuries, period of treatment, medical bills and receipts placed on record from Ext. P-3 to P-142. Entire amount of medical expenditure which has been incurred by the appellant has not been awarded. Tribunal has awarded meagre amount of Rs. 1500/- towards attendant and his lodging and boarding, Rs. 1500/- towards special diet, Rs. 10,000/- towards future treatment and special diet (after discharge) and Rs. 10,000/- towards pain and sufferings and mental agony. Tribunal has only awarded Rs. 6,000/- towards loss of income for a period of two-months, whereas looking to the nature of injury, appellant could not have worked for about six-months and the income of appellant has also been assessed only Rs. 3,000/- per month. He further pointed out that no amount of compensation has been awarded towards permanent disability nor any amount of compensation on the head of grievous injuries, even when the Tribunal has arrived at a finding that the appellant suffered grievous injuries over his person. He further pointed out that the Tribunal has not awarded any amount towards loss of amenities and joy in life in view of nature of injuries suffered by the appellant and the part of the body affected, overlooking the age of appellant on the date of accident as 26 years only. No amount of compensation has been awarded towards transportation expenses. He submits that the amount of compensation be suitably enhanced.
8. Mr. Sailesh Tiwari, learned counsel for Respondent 3/ Insurance Company submits that the Claims Tribunal has considered the bills placed on record, apart from the payment made in the final bill of Rs. 19,822/-, Tribunal further taking into consideration evidence of witness Sanjay Thakur, AW-3, Billing in-charge, awarded total sum of Rs. 2,00,000/- which cannot be

said to be on lower side. It is further argued that the Claims Tribunal taking into consideration the entire facts and circumstances of the case, evidence brought on record (documentary as well as oral) has awarded just amount of compensation. Appellant failed to prove his income by placing any admissible piece of evidence on record and in absence of any admissible evidence, Tribunal justified in assessing monthly income of appellant on notional basis. He submits that the award passed by Claims Tribunal is just and proper which does not call for any interference.

9. We have heard learned counsel for the respective parties and also perused the record of claim case.
10. Perusal of document Ext. P-2 which is MLC report of appellant would show that appellant suffered as many as six injuries over his person. Appellant thereafter got himself admitted in the Appollo Hospital, Bilaspur on 26.12.2009 till 09.01.2010 which is evident from Ext. P-132 (Discharge Summary). As per Principal Diagnosis, appellant suffered following injuries:

“Closed fracture shaft of left femur with open fracture shaft of ipsilateral tibia with lacerated wound; left leg and left ankle with multiple deep abrasion right thigh and right ankle.”

11. Appellant underwent surgery and as per the discharge summary, surgery of Tibia Shaft and fracture shaft femur was done. Appellant has placed on record the Disability Certificate as Ext. P-6, issued by District Medical Board mentioning 6% disability and further there is tick-mark that it does not come in the category of disablement. In view of the aforementioned document available on record and the certificate Ext. P-6 placed on record by the appellant/ claimant, it is evident that appellant has not suffered permanent disability but looking to the nature of injury and the treatment taken by him, appellant has suffered grievous injuries over his person ie. on left leg. Claims Tribunal has not awarded any amount towards the

injuries suffered by the appellant. Looking to the nature of injury, appellant is entitled for the amount of compensation on the head of grievous injuries. Claims Tribunal has awarded only Rs. 10,000/- towards pain and sufferings, which, in the facts and circumstances of the case, in the opinion of this Court, appears to be on lower side, which also requires to be enhanced. Claims Tribunal has not awarded any amount towards loss of amenities and joy in life overlooking the fracture injury on thigh and on the tibia shaft which was fixed by interlocking nail. Looking to the age of appellant as 26 years, he may not be able to move with the same efficiency and convenience with which he was walking and moving prior to the date of accident, hence, the appellant may not be able to do all the works which he was doing prior to the date of accident, and is also entitled for the amount on the head of loss of amenities and joy in life. Claims Tribunal has not awarded any amount towards transportation. Appellant after the accident, was taken to CIMS Hospital, from there immediately shifted to Appollo Hospital, Bilaspur. He took further OPD treatment continuously for a long period but no amount of compensation has been awarded towards conveyance and transportation expenses. In the facts of the case, we find it appropriate to award additional amount of compensation on this head as well.

12. Claims Tribunal considering the Bill Ext. P-49 of Rs. 1,29,822/- and further taking into consideration the other bills placed on record had awarded lumpsum amount of Rs. 2 Lacs, adding almost Rs. 70,000/-. Learned counsel for the appellant though argued that the Claims Tribunal has not awarded the entire medical bills but he failed to point out the bills which have not been taken into consideration or which have been left out by the Claims Tribunal, hence, we are of the view that the Claims Tribunal, taking into consideration the evidence of AW-3 had awarded just amount of compensation under the head of medical expenses. Appellant has placed on record the cost of surgery for removing the nail from the femur and the

tibia bone showing the estimated cost of Rs. 25,000/-. Dr. Gauri Shankar Asati, (Ortho.), who issued estimated cost was examined before the Tribunal as AW-2. Considering the fact that the respondents have not put the query to doctor with regard to issuance of estimated cost of surgery for removing femur nail dated 11.06.2013 Ext. P-141, and looking to the nature of surgery which the appellant has already undergone, we find it appropriate to award said amount as compensation of Rs. 25,000/- towards future treatment. Claims Tribunal has awarded meagre amount towards special diet, attendant and loss of income which requires to be enhanced. Tribunal has considered loss of income for a period of two-months only and that too by assessing the income of Rs. 3,000/- per month. True it is that the appellant has not placed on record any admissible evidence with regard to income but then the Tribunal ought to have taken into consideration the date of accident, nature of occupation, age, cost of living and such other factors for assessing notional income. Notional income cannot always to be fixed as the notional income which is to be fixed for the labourer but it is to be fixed considering several factors as mentioned above.

13. Taking into consideration the aforementioned factors ie. date of accident ie. 26.12.2009, we find it appropriate to assess the income of appellant as Rs. 5,000/- per month and the loss of income for a period of 4 months ie. Rs. 20,000/- (Rs.5000x4). In view of the above, amount of compensation awarded by the Claims Tribunal requires recomputation which is as under.
14. Appellant is entitled for Rs. 2,00,000/- towards medical expenditure as awarded by the Tribunal, Rs. 30,000/- towards pain and sufferings, Rs. 30,000/- towards grievous injuries, Rs. 30,000/- towards loss of amenities and joy in life, Rs. 20,000/- towards loss of income during the treatment period, Rs. 25,000/- towards future treatment, Rs. 5,000/- towards transportation, Rs. 5,000/- towards special diet, Rs. 6,000/- towards

attendant, taking into consideration the evidence of doctor AW-2.

15. Now the appellant/ claimant shall be entitled for total sum of **Rs. 3,51,000/-** [Rs.2,00,000+Rs.30,000+Rs.30,000+Rs.30,000+Rs.20,000+Rs.25,000+Rs.5,000+Rs.5,000+Rs.6,000] as compensation instead of Rs. 2,27,500/- as awarded by the Claims Tribunal. The amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions of the award imposed by the Claims Tribunal shall remain intact.
16. In the result, appeal is allowed in part and the impugned award passed by the Claims Tribunal stands modified to the extent as indicated herein-above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge