

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 109 of 2015**

- Bulaki Lal Sonwani, son of Santram Sonwani, aged about 18 years, resident of village-Alekhunta, Chowki Birjher, P.S. Kurud, Tahsil-Kurud, District Dhamtari, C.G.

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

1. Mukesh Chouhan son of Komal Singh Chouhan, Occupation-Driver, residence of Anand nagar, Telibandha, Raipur C.G.
2. Yogesh Chourasia, son of Pradip Singh Chourasia, Residence of Janta Colony, Pahadi Chowk, Gudiyari, Raipur, P.S. Gudiyari, District-Raipur C.G.
3. Divisional Manager, Divisional Office, United India Insurance Co. Ltd. Kachahari Chowk, Jail Road, Raipur, District Raipur C.G.

-----Respondents

For Appellant	: Mr. Malay Jain, Advocate on behalf of Mr. R.S. Patel, Advocate
For Respondent 1 & 2	: None.
For Respondent 3	: Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, 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") challenging the impugned award dated 17.10.2014 passed by Additional Motor Accident Claims Tribunal, Dhamtari in claim case no. 107/2014, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988, awarded Rs.68,838/- after deducting 20% of calculated amount of compensation towards contributory negligence on the part of appellant in an injury case.
2. Facts of the case relevant for disposal of this appeal are that, on 09.07.2012, at about 05:00 p.m., appellant-claimant, along with one

Jagmohan, was traveling on a motor cycle bearing registration no. CG04LU7382, returning to his village Alekhunta from village Maroud. When he reached near bus stand of village Kodebod, one Vista car bearing registration no. CG04HB6582 (henceforth "offending car") driven by non-applicant 1, dashed the motor cycle of appellant from its front side. In the said accident, appellant suffered grievous injuries over his head and other parts of body. He was taken to Christian hospital, Dhamtari. Looking to the condition of appellant, he was referred to the hospital at Raipur, where he took treatment as in-patient from 10.07.2012 to 27.07.2012.

3. Appellant filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident, he was aged about 18 years, pursuing studies in Class-11th at Government Higher Secondary School, Sirri. On account of accidental injuries suffered by him, he occasionally loses his memory and thereby became permanently disabled. He had to quit his studies and had to fully dependent upon his parents. Appellant sought total compensation of Rs. 34,00,000/- on different heads.
4. Non-applicant 2/ owner of the offending car submitted reply to the claim application, while denying the pleadings made therein further pleaded that the accident was with some unknown vehicle, Vista car (offending car) has been falsely implicated in the accident. Amount of compensation is highly exaggerated. Offending car was insured with non-applicant 3/ Insurance Company, hence, the liability to satisfy the compensation is upon non-applicant 3.
5. Non-applicant 3/ Insurance Company submitted reply to claim application denying the pleadings made therein and it was further pleaded that non-applicant 1 was not possessed with valid and effective driving licence. There was breach of policy conditions. Accident was between two motor vehicles, hence, driver, owner and insurer of both the vehicles are liable.

6. Claims Tribunal, upon appreciation of pleadings and evidence placed on record by respective parties held that accident was result of contributory negligence between drivers of both the motor vehicles ie. offending car and motor cycle, in the ratio of 80:20. Permanent disability of appellant and breach of policy conditions of offending car was not found to be proved, calculated total sum of Rs. 86,048/- and awarded Rs. 68,838/- as compensation (after deducting 20% of amount towards contributory negligence).
7. Mr. Malay Jain, learned counsel for the appellant submits that the Claims Tribunal erred in awarding very meagre amount of compensation. He submits that the Claims Tribunal has awarded consolidated amount of Rs. 15,000/- towards injuries, pain, sufferings and special diet etc. This amount, looking to the nature of injury, period of treatment, is on lower side. He further contended that the Claims Tribunal has not awarded any amount towards convenience/ transportation expenses, overlooking the fact that the appellant was taken to Christian Hospital, Dhamtari, immediately after the accident from where he was referred to hospital at Raipur. He pointed out that the place of accident is about more than 30 Kms from Dhamtari, where he initially took treatment and the distance between Raipur to Dhamtari is about more than 80 Kms, hence appropriate amount towards the transportation ought to have been awarded. Tribunal erred in not awarding any amount towards attendant and compensation towards his food and stay, overlooking the period of treatment as in-patient of about 17 days at Kanwar Nursing Home, Raipur. It is further contended that the Claims Tribunal erred in holding the appellant to be contributory negligent to the extent of 20% overlooking the class of vehicle involved in the accident and without proper appreciation of documents and evidence available on record and further not awarding any amount towards permanent disability.

8. Per contra, Mr. H.B. Agrawal, Sr. counsel appearing for Respondent 3/ Insurance Company, supporting the award passed by Claims Tribunal submitted that the Claims Tribunal, considering the entire material available on record, awarded just compensation to the appellant-claimant. He further contended that the place of accident is on National Highway in between Raipur and Dhamtari which is a wide road. Accident was head-on-collision between two motor vehicles, shown on middle of the road, as appears from the spot map, time of accident, looking to the date, cannot be said to be accident at night. Claims Tribunal has taken lenient view and held the appellant to be contributory negligent to the extent of 20% only.
9. We have heard learned counsel for the respective parties and also perused the record of the claim case.
10. Learned counsel for the appellant does not dispute with the award of amount of compensation. To appreciate the submissions made by the learned counsel for the appellant with regard to the award of Rs. 15,000/- only consolidately on all heads like pain and sufferings, special diet and grievous injuries, we have perused the documents available on record as Ext. P-23, P-24 and other medical documents. Ext. P-23, dated 09.07.2012, is first CT Scan report of brain wherein it has been detected "*Diffuse cerebral edema.*" Second CT Scan report dated 16.07.2012 mentioned, under the heading 'observations and impression', as under:

"OBSERVATIONS AND IMPRESSION:

- *Present study has been compared and correlated with previous CT scan films dated 09/07/2012.*
- *Two tiny foci of subtle hyperdensity are noted in left frontal lobe; more apparent in previous CT scan dated 09/12/2012- suggests diffuse axonal injury.*
- *Minimal intraventricular and subarachnoid haemorrhage seen in previous CT scan dated 09/01/2012 has is NOT apparent in present scan.*
- *There is diffuse effacement of cerebral sulci and chinking of ventricles-diffuse cerebral oedema. No significant change in comparison to previous CT scan. Rest of scan features remain unchanged."*

CT Scan reports available on record would show that, appellant suffered grievous internal injury on his head, but the Claims Tribunal has not awarded any amount separately towards grievous injuries but for the consolidated amount of Rs. 15,000/- under all other non-pecuniary and pecuniary damages other than the medical bills, considering the nature of injuries, period of treatment, shifting to hospitals for treatment, we are of the view that the amount of compensation of Rs. 15,000/- awarded consolidately is much on lower side.

11. Perusal of documents would show that the place of accident to be near Kodebod bus stand. Cash memo receipts of Christian hospital, Dhamtari dated 10.07.2012 are also available on record which shows that after accident, appellant was taken to Christian hospital, Dhamtari. Other documents available on record is the discharge ticket of Kanwar Nursing Home, Shankar Nagar, Raipur showing the date of admission on 10.07.2012 and discharge on 27.07.2012. From the aforementioned documents, it is apparent that the pleadings and averments made by the learned counsel for the appellant that he took treatment initially at Christian hospital and thereafter at Raipur is found to be proved. Appellant definitely has expended the amount towards transportation from Kodebod to Dhamtari and from Dhamtari to Raipur and return back, hence, he is entitled for transportation expenses also which the Claims Tribunal has not awarded. Appellant took treatment, as evident from Ext. P-6, Discharge Ticket, for 17-18 days but no amount has been awarded towards attendant, his food and other expenses for which the appellant is also entitled. The appellant has not placed on record any certificate issued by competent authority to prove disability.
12. For the foregoing reasons, we find it appropriate to re-compute and re-calculate the amount of compensation.

13. Medical expenses as incurred by the appellant is of Rs. 71,048/-. Looking to the nature of internal head injury suffered by the appellant and treatment, we find it appropriate to award Rs. 25,000/- towards grievous injuries, Rs. 15,000/- towards pain and sufferings. Appellant was admitted in hospital for about more than 17 days and looking to the nature of injury, we find it appropriate to award Rs. 8,000/- towards loss of income during treatment period for two-months, Rs. 10,000/- towards loss of amenities and joy in life, Rs. 7,000/- towards Transportation, Rs. 3,000/- towards special diet, Rs. 3,000/- towards attendant; total of which comes to **Rs. 1,42,048** (Rs.71,048+ Rs.25,000+ Rs.15,000+ Rs.8,000+ Rs.10,000+ Rs.7,000+ Rs.3,000+ Rs.3,000).

14. Now, we will deal with the second submission made by the learned counsel for the appellant with regard to 20% deduction towards contributory negligence. There is no dispute with respect to place of accident ie. on National Highway at middle of the road near village Kodebod bus stand; time of accident is shown in the document as 06:00 pm on 09.07.2012. The time of accident as shown in the F.I.R. and other documents, is of evening time and presumably there must have been some day light on that date. Spot map is placed on record as Ext. P-4 by appellant himself. As per the pleadings, appellant was returning home from Maroud to his village Alekhunta and the offending car was coming from opposite direction. Going by the spot map, appellant had to take turn towards his right side to take the way to village Alekhunta from square of village Kodebod, road, as being a National Highway, is a wide road. Considering the entire facts and evidence of the case particularly the spot map, time of accident, had the appellant vigilant and have taken care, could have avoided the accident.

15. From the overall facts and circumstances of the case, appellant like a prudent man, could have taken due care and precaution to avoid head-on-

collision when he had seen the offending car coming from opposite direction from a long distance, as from the spot map it is apparent that the place, where the accident took place, is a straight National Highway road. Taking into consideration the overall facts and circumstances of the case, place of accident shown in the spot map, time of accident, we do not find any reason to interfere with the finding recorded by the Claims Tribunal that the appellant is also contributory negligent in the accident to the extent of 20%, submission of the learned counsel for the appellant that the Claims Tribunal erred in holding the appellant to be contributory negligent to the extent of 20%, is repelled. Now the appellant shall be entitled for 80% of the aforementioned total calculated amount of compensation ie. Rs. 1,13,638.4/- [80% of Rs. 1,42,048/-] rounded off to as **Rs. 1,13,638/-**. Above amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the Claims Tribunal shall remain intact.

16. In view of the above, appeal is allowed and the impugned award is hereby modified to the extent as indicated herein-above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge