

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1393 of 2015**

Mukesh Kumar Sahu S/o Shri Janak Ram Sahu, Aged About 26 Years, R/o Tarun Nagar, Khapra Bhatthi Raipur Tahsil and District Raipur Chhattisgarh.

---- Appellant**Versus**

1. Smt. Rekha Mittal W/o Shri Ashok Kumar Mittal, Aged About 34 Years (Driver of alleged vehicle Motorcycle Activa bearing Registration No. C.G.04-DU-8224).
2. Ashok Kumar Mittal S/o Shri Bhagwan Mittal (Owner of alleged vehicle Motorcycle Activa bearing Registration No. C.G.04-DU-8224).

Respondent No. 1 and 2 both are resident of Gohrapadar, Police Station Deobhog, District Gariyaband Chhattisgarh.

---- Respondents

For Appellant : Mr. A.D. Kuldeep, Advocate

For Respondents : Ms. Sameeksha Gupta and Ms. Anmol Sharma,
Advocate on behalf of Mr. B.P. Sharma, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**Judgment on Board****17.09.2021**

1. Challenge in this appeal is to the impugned award dated 11.09.2015 passed by the First Additional Motor Accident Claims Tribunal, Raipur, District Raipur Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.331 of 2014 whereby learned Claims Tribunal allowed an application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') in part and awarded total sum of Rs.38,035/- after deducting 50% towards contributory negligence, in an injury case.

2. Brief facts relevant for disposal of this appeal, are that, on 05.10.2013, at about 5.15 P.M., appellant was travelling on Motorcycle bearing No.CG-04/CJ/0918, at that relevant time, non-applicant No.1 while driving her two wheeler (Activa) bearing No. CG-04/DQ/8224 dashed Motorcycle of appellant and caused accident. In the said accident, appellant suffered grievous injuries on his head and stomach. He was taken to Aarogya Hospital, Shankar Nagar, Raipur, where he took treatment as inpatient from 05.10.2013 to 18.10.2013.
3. Appellant filed an application under Section 166 of M.V. Act seeking total compensation of Rs.18,60,000/- pleading therein that on the date of accident, he was an able-bodied person, aged about 25 years, working in Hardwares of Computer and earning Rs.10,000/- per month. On account of motor accidental injuries, he became permanently disabled and unable to earn his livelihood.
4. Non-applicants submitted reply to claim application, denying the facts pleaded therein. It was pleaded that accident was a result of rash and negligent driving of claimant himself. In the accident, non-applicant No. 1 and her mother-in-law also suffered injuries. Appellant suffered injuries on his abdomen on account of falling upon handle of his own Motorcycle, hence, non-applicants are not liable to pay any amount of compensation.
5. On appreciation of pleadings, oral and documentary evidence brought on record by the respective parties, Claims Tribunal held that appellant suffered injuries over his person, there was

negligence on the part of driver of both the vehicles; there was contributory negligent on the part of claimant; calculated total compensation of Rs.1,06,070/-; after deducting 50% of amount of compensation towards contributory negligence and Rs.15,000/- towards payment made by non-applicants in the hospital, awarded total sum of Rs.38,035/- as compensation.

6. Mr. A.D. Kuldeep, learned counsel for the appellant/claimant would submit that learned Claims Tribunal erred in awarding meagre amount of compensation. Claims Tribunal erred in deducting 50% of amount of compensation towards contributory negligence without there being any cogent and clinching piece of evidence in this regard. Claims Tribunal further erred in deducting Rs.15,000/- from medical expenses considering that Rs.15,000/- is paid by non-applicants as advance in the hospital. It is further contended that in the final bill issued by Aarogya Hospital of Rs.63,300/-, there is no deduction towards any amount paid in advance, hence, appellant will be entitled for total amount paid by him in the hospital i.e. Rs.63,300/- It is contended that from the medical documents placed on record (Ex.P/11 to Ex.P/13), it is apparent that appellant underwent surgery of the injuries suffered by him, but Claims Tribunal has awarded only Rs.1,000/- towards pain and sufferings, no amount is awarded towards grievous injuries. No amount has been awarded towards loss of amenities and joy in life, attendant and special diet. It is further submitted that only Rs.1,000/- has been awarded towards loss of income overlooking the treatment of

appellant as inpatient from 05.10.2013 to 18.10.2013 and submits that amount of compensation be suitably enhanced.

7. Per contra, Ms. Sameeksha Gupta, learned counsel for the respondents supporting the award passed by learned Claims Tribunal, would submit that learned Claims Tribunal considering entire facts and circumstances of the case, pleadings as well as oral and documentary evidence placed on record by the respective parties, awarded just amount of compensation, which does not call for any interference. She further submits that learned Claims Tribunal justified in arriving at a finding that appellant was also contributory negligent because there was head on collision between the two, two-wheelers and road on which accident took place is a wide road. She contended that non-applicants in support of their evidence placed on record Ex.D/1 and Ex.D/2, which are the money receipts issued by Aarogya Hospital of Rs.15,000/- paid by the non-applicants for treatment of appellant.
8. I have heard learned counsel for the respective parties and perused the record carefully.
9. So far as the submission made by learned counsel for the appellant with regard to finding recorded by Claims Tribunal of contributory negligence on the part of appellant to the extent of 50% is concerned, perusal of pleadings and evidence available on record would show that accident took place on wide road of Raipur city and accident was head on collision between the two, two-wheelers. Considering that pillion rider on the motorcycle of appellant, by name, Harishchandra who could be

the best witness to prove the manner in which accident took place was not examined by the appellant, I do not find any error in the finding recorded by learned Claims Tribunal with regard to contributory negligence on the part of the appellant.

10. So far as the second submission of learned counsel for the appellant with regard to deduction of Rs.15,000/- from total medical expenses to be erroneous is concerned, perusal of record would show that appellant has placed on record final bill of Aarogya Hospital as Ex.P/13. Perusal of document would show that final bill was issued on 18.10.2012 i.e. date of discharge of appellant from the hospital. In the bill (Ex.P/11), it nowhere reflects that any amount came to the hospital as advance has been deducted, but it mentions total payment made at the time of discharge of Rs.63,300/-. Money receipts placed by the non-applicants/respondents as Ex.D/1 and Ex.D/2. In money receipt dated 05.10.2013, name of patient is not mentioned and on the money receipt dated 06.10.2013 name of patient is mentioned as Mukesh Sahu i.e. appellant, which is of Rs.10,000/-. Perusal of Ex.P/13, which is final bill dated 18.10.2013, there is no mention of deduction of advance amount. Therefore, as per documentary evidence placed on record, amount of medical expenses paid by appellant at the time of discharge is clearly mentioned as Rs.63,300/-, for which, claimant is entitled for.
11. Considering the nature of documentary evidence available on record and in absence of any deduction made towards advance payment as stated by non-applicants/respondents

from the bill proved by the appellant, he is entitled for total sum of Rs.1,04,070/- towards medical expenses and in the opinion of this Court, learned Claims Tribunal erred in deducting Rs.15,000/- from the medical expenses.

12. Learned Claims Tribunal overlooking the nature of injuries, period of treatment and procedure of treatment erred in awarding only Rs.1,000/- towards pain and suffering, non-awarding any amount of compensation towards grievous injuries, special diet, attendant and awarding only Rs.1,000/- towards loss of income. Looking to the nature of injuries, period of treatment as inpatient of about 13 days, appellant underwent operation of his abdomen, I find it appropriate to award Rs.10,000/- towards pain and sufferings, Rs.15,000/- towards grievous injuries, Rs.8,000/- towards loss of income for a period of two months, Rs.2,000/- towards attendant and Rs.1,000/- towards special diet. Appellant will further be entitled for a sum of Rs.1,04,070/- towards medical expenses. Now, total compensation comes to Rs.1,40,070/- (10,000 + 15,000 + 8,000 + 2,000 + 1,000 + 1,04,070).
13. As learned Claims Tribunal has arrived at a finding that appellant is also contributory negligent to the extent of 50%, after deducting 50% towards contributory negligence from the total compensation, appellant will be entitled for total sum of Rs.71,035/- (1,40,070 x 50%) instead of Rs.38,035/- as awarded by Claims Tribunal. Amount of compensation shall carry interest at the rate of 7% per annum from the date of

filing of the claim application till its realization. Other conditions of the impugned award shall remain intact.

14. In the result, appeal is allowed in part. The impugned award is modified to the extent as indicated herein above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh