

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 837 of 2015**

- Deepak Goyal, S/o Shri Balram Goyal, Aged About 32 Years, R/o Saket Inclave Mungeli Road, Back Side of Patidar Bhawan, Bilaspur, Tah-Bilaspur, Civil And Revenue District- Bilaspur, District- Bilaspur, Chhattisgarh

---- Appellant/Claimant**Versus**

1. Krisan Kumar Shriwas, S/o Chandulal Shriwas, R/o Near D.L.S. College, Ashok Nagar- Sarkanda, Thana- Sarkanda, Tahsil And District- Bilaspur, Chhattisgarh (NA1) (Driver)
2. Shri Sresth Pathak, S/o Shri Mithlesh Pathak, R/o In Front of Jain Mandir, Sarkanda Thana-Sarkanda, Tah. Bilaspur, District- Bilaspur, Chhattisgarh (NA2) (Owner)
3. The Reliance General Insurance Co. Ltd., Through Branch Manager, Branch Office-Shop No. 412,413 Fourth Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, Tahsil and District- Raipur, Chhattisgarh (NA3) (Insurance Company)

----Respondents

For Appellant	: Shri Sanjay Agrawal, Advocate
For Respondent- 1 & 2	: None appears
For Respondent- 3	: Shri Shailesh Tiwari, Advocate on behalf of Shri Saurabh Sharma, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
19.01.2021

1. Appellant/claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 30.04.2015 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal') in Claim Case- 137 of 2014, whereby learned Claims Tribunal allowed the application for grant of compensation in part and awarded Rs.9,28,447/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 26.12.2009, appellant was returning to his house on Motorcycle bearing No.CG 10 BB 0182, driven by his brother Gopal. When they reached near Maharana Pratap Chowk, one Truck bearing No.CG 10 C-0186 (hereafter, referred to offending vehicle) driven by NA1 rashly and negligently, dashed a Maruti Car and thereafter, he jumped out from the offending vehicle, leaving it in running condition. Offending vehicle went uncontrolled and dashed the Motorcycle on which appellant and his brother were travelling and caused accident and finally, it collided with a pillar of entry gate and stopped. In the aforementioned accident, appellant suffered grievous injury over his ribs, right scapula, left thigh, knee and injury on his right thigh, apart from other injuries on different parts of body. He initially took treatment at Apollo Hospital, Bilaspur from 20.09.2009 to 06.01.2010 and thereafter, at MMI Hospital, Raipur till 15.03.2010. Appellant thereafter, filed an application under Section 166 of the Act of 1988, seeking compensation of Rs.73,00,000/- on different heads.

3. NA2, owner of offending vehicle submitted reply to the claim application, denying the entire pleadings made therein.

4. NA3/Insurance Company submitted reply to the claim application and further pleaded that accident was result of contributory negligence on the part of driver of Motorcycle/appellant. NA1, driver of offending vehicle was not possessed with valid and effective driving license. There was no valid permit and fitness certificate of offending vehicle, as such, there was breach of policy conditions. The nature of injuries suffered by the appellant were denied.

5. Learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties, held that appellant suffered motor

accidental injuries on account of rash and negligent driving of offending vehicle by NA1/Driver, appellant did not suffer any permanent disability but suffered grievous injuries; contributory negligence and breach of policy conditions were not found to be proved and awarded Rs.9,31,447/- as total compensation including Rs.8,92,447/- towards medical expenses.

6. Shri Sanjay Agrawal, learned counsel for the appellant submits that learned Claims Tribunal erred in awarding meagre amount of compensation, in view of entire facts and circumstances of the case, nature of injuries, period of treatment and the permanent disability suffered by him. He further contended that learned Claims Tribunal awarded meagre amount of compensation on the head of special diet, attendant, travelling, loss of income during the treatment, over looking the fact that appellant initially took treatment at Apollo Hospital, Bilaspur from where, he was shifted to MMI Hospital, Raipur, where he took treatment for more than two months. Tribunal also erred in not awarding any amount towards permanent disability, towards loss of amenities and joy in life, pains and suffering. Amount awarded towards medical expenses is also on lower side as the entire bills/claimed has not been awarded to the appellant. He submits that learned Claims Tribunal has not considered evidence of treating doctors AW2, AW3, AW4, and AW6 in its entirety, and erred in computing the amount of compensation on lower side.

7. Per contra, Shri Shailesh Tiwari, learned counsel for respondent/Insurance Company submits that learned Claims Tribunal after analysing entire facts and circumstances of the case, documents placed on record, has awarded just amount of compensation, which does not call for any interference. Learned

counsel further submits that, in fact, Tribunal has awarded excess amount of compensation in the facts and circumstances of the case, as the medical bills placed on record have not been properly proved and further, Tribunal has not granted proper opportunity to prove breach of policy conditions.

8. We have heard learned counsel for the respective parties and perused the record of claim case.

9. This appeal is for enhancement of the amount of compensation. To appreciate the submissions made by learned counsel for the respective parties, we have perused the record carefully. So far as the submissions made by learned counsel for the appellant with regard to not awarding any amount towards the permanent disability, perusal of record would show that the appellant has placed on record Ex.A6 Disability Certificate issued by the District Medical Board, Bilaspur. Medical team has assessed his disability to the extent of 10%. In the Certificate, Board has mentioned in one column, that *"this do not come under category of disablement"*. Treating doctor Dr Lunic Yadu was examined as AW5. In his evidence, it is stated that after removing the rod, claimant/appellant will be able to walk easily and he will not face any problem with regard to the bone.

10. In view of the aforementioned evidence available on record, it is evident that appellant has not suffered any permanent disability.

11. In his evidence, appellant (AW1) has not shown specifically as to how he suffered loss of income. When it was mentioned in his affidavit that he was doing the work through the workers employed by him, at the most, it can be said that

appellant had suffered loss of income during the period of treatment when he could not able to visit his business premises.

12. For the foregoing reasons, we do not find any force in the argument of learned counsel for the appellant that learned Claims Tribunal erred in not awarding any amount towards loss of earning due to permanent disability.

13. The other submissions by learned counsel for the appellant with regard to awarding meagre amount towards medical expenses and not awarding any amount towards pains and suffering, loss of amenities and joy in life is concerned, appellant/claimant has filed medical documents Ex.P5 to Ex.P225 to prove the nature of injuries, treatment and expenses incurred by him and nature of injuries suffered by him. Ex.A225 is 'Discharge Ticket', in which it is mentioned that appellant was discharged against medical advice in stable condition; he suffered fracture shaft of Lt femur and fracture of ribs Lt with pneumothorax. In this document, date of admission has been shown as 26.12.2009 at 8.47 pm and date of discharge on 06.01.2010 at 5.01 pm.

14. Appellant also placed on record Ex.P93, document of Billing Section, MMI Hospital, Raipur, showing the bills from 06.01.2010 to 15.03.2010. Taking into consideration the charges mentioned in the bills of MMI Hospital, Raipur and the Apollo Hospital Bilaspur, appellant has proved that he underwent several surgeries for treating accidental injuries suffered by him. To prove his injuries and treatment, appellant has examined AW2- Dr Gouri Shankar Asati of Apollo Hospital, wherein he has stated that appellant was admitted to Apollo Hospital on 26.12.2009; he found fracture over left thigh which was fully crushed, injuries

over waist, and chest. Appellant was advised plastic surgery of skin of his right thigh.

15. AW5, Dr Lunic Yadu has treated the appellant at MMI Hospital, Raipur. He in his evidence has stated with regard to operation and further the expenditure of Rs.40,000/- to be incurred for removing rod implanted in his leg. Dr MC Jain was examined as AW6, who in his evidence stated that appellant has suffered injuries over the hip, thigh, which got infected. He in his statement further stated that for proper treatment of injuries suffered by the appellant on his hip, he requires further operation/surgery, for which, estimated cost would be Rs.1,00,000/-.

16. Taking into consideration nature of injuries suffered by the appellant and parts of body, we are of the view that learned Claims Tribunal erred in not awarding any amount towards pains and suffering and loss of amenities and joy in life. Though the treating doctor Dr Lunic Yadu in his evidence stated that after removing the implanted rod, appellant will be able to walk easily, it will not be sufficient in itself to deny loss of amenities and joy in life, looking to crush injury on thigh and injury on hip, more so, when age of appellant is only 32 years. After treatment, appellant might be able to walk freely, but looking to the nature of injuries he might not be able to perform all the work which he was doing prior to the date of accident. There might be restrictions in doing certain works due to which appellant may not enjoy his life as a normal person.

17. Taking into consideration the entire facts and circumstances, nature of injuries, treatment, we find it appropriate to award **Rs.40,000/-** towards pains and suffering and **Rs.40,000/-** towards loss of amenities and joy in life.

18. Learned Claims Tribunal has not awarded any amount towards injuries suffered by him. Tribunal even if upon considering the evidence of Dr Lunic Yadu, treating doctor Dr ML Jain and also considering evidence of appellant wherein there is no specific averment with regard to loss of income, learned Claims Tribunal ought to have awarded amount of compensation towards grievous injuries suffered by appellant and loss of income during period of treatment.

19. In the facts and circumstances of the case, nature of injuries and evidence of treating doctors of appellant, we find it appropriate to award **Rs.40,000/-** towards the injuries suffered by him.

20. Learned Claims Tribunal has awarded only Rs.6,000/- towards loss of income during the period of treatment mentioning it to be for a period of two months and assessing income of appellant as Rs.3,000/- per month.

21. Learned Claims Tribunal for awarding amount of compensation to appellant for loss of income, has not considered the period of treatment as inpatient, nature of injuries and part of the body on which appellant suffered injuries. From the medical documents itself it is apparent that appellant took treatment as inpatient since 26.12.2009 to 15.03.2010. The period of treatment in the hospital itself is near about more than two months ie 79 days. Any person, who suffered injuries like the present appellant, may not start going to his job immediately after his discharge from the hospital. Appellant might have taken bed rest for further period, hence, in the facts and circumstances of the case, we find it appropriate to award loss of income during the period of treatment for five months.

22. With regard to proof of income, appellant has not placed on record any document to show the nature of his occupation and income to consider the same. Even if the appellant failed to prove his income by producing admissible piece of evidence, then also, it is to be assessed on notional basis keeping in mind nature of occupation of appellant pleaded before the accident, wage structure, cost of living and such other factors.

23. In the case at hand, taking into consideration the facts of the case and other aspects, we find it appropriate to assess income of the appellant on the date of accident as Rs.5,000/- per month and total loss of income during the period of treatment comes to **Rs.25,000/-** (5000 x 5) ie for five months.

24. Learned Claims Tribunal has awarded only Rs.10,000/- for future treatment which in the opinion of this Court is on lower side, taking into consideration evidence of treating doctors AW5 Dr Lunic Yadu and AW6 Dr ML Jain and we find it appropriate to award **Rs.1,50,000/-** towards future treatment.

25. Amount of compensation awarded towards attendant and travelling expenses is also on lower side and it is appropriate to award **Rs.10,000/-** towards attendant and **Rs.20,000/-** for travelling expenses.

26. Learned counsel for the appellant submits that Tribunal erred in not awarding entire bills placed on record which comes to Rs.10,02,051/- and only **Rs.8,92,447/-** has been awarded for medical expenses.

27. In view of persuasive submissions made by learned counsel for the appellant that Tribunal has not considered the entire bills of medical treatment and purchase of medicines, thereby awarded only Rs.8,92,447/- towards medical

expenses which was on lower side, we have examined the documents available on record minutely and upon totalling of bills, total amount of medical bills comes to Rs.9,29,119.79 (rounded off to **Rs.9,29,120/-**) for which the appellant is entitled for. It is ordered accordingly.

28. For the foregoing reasons, amount of compensation to be awarded to the appellant is re-computed as under:

Head	Amount (in rupees)
Medical expenses	9,29,120/-
Additional sum for medical expenses	1,00,000/-
Future treatment	1,50,000/-
Pains and suffering	40,000/-
Amenities and joy in life	40,000/-
Injuries suffered by him	40,000/-
Attendant	10,000/-
Travelling expenses	20,000/-
Loss of income during the period of treatment	25,000/-
TOTAL	12,54,120/-

29. Now, appellant shall be entitled for a total sum of **Rs.12,54,120/-**, instead of Rs.9,28,447/- as awarded by the Tribunal.

30. So far as the ground raised by respondent-Insurance Company in its cross-objection, regarding award of medical bills is concerned, appellant has placed on record Discharge Ticket of Apollo Hospital, Bilaspur, Final Bill of MMI Hospital, Raipur and also many other medical bills. Medical bills and nature of injuries were proved by four treating doctors, who were examined on behalf of the appellant. In view of the evidence brought on record by the appellant, we do not find that learned Claims Tribunal has awarded excess amount towards the

medical expenses, rather it appears that amount awarded towards medical expenses on lower side and accordingly, it is held in preceding paragraph. Hence, the 1st submission on behalf of Insurance Company in cross-objection is hereby repelled.

31. So far as 2nd submission of cross-objector / Insurance Company with regard to breach of policy conditions, and non-granting proper opportunity to prove the same, are concerned, perusal of Order sheet would show that, for recording evidence of Non-applicants, Tribunal has fixed the case on 28.10.2014. Thereafter, proceedings of several dates were recorded by Tribunal. On 31.01.2015, NA3/Insurance Company filed an application seeking time for producing witnesses. Learned Claims Tribunal recorded that several opportunities have been given to the non-applicants to produce their evidence but they failed to examine any witness, but had allowed their application for grant of time with a cost of Rs.100/- with a specific note, mentioning very specifically, that if on the next date NA1 failed to produce the evidence, right to lead the evidence will be closed. Thereafter, fixed the case on 06.02.2015 on which non-applicant/Insurance Company again filed an application under Order 17 Rule 1 of CPC to seek adjournment, instead of producing their witness and evidence. Then, learned Claims Tribunal has closed the right of NA3/Insurance Company to lead evidence and fix the case for final argument. Final arguments in the claim case was heard on 22.04.2015.

32. Insurance Company has not challenged the order passed by learned Claims Tribunal closing their right to lead evidence in appeal before any higher forum. Hence, in the facts and circumstances of the case, we do not find that

learned Claims Tribunal has not granted proper opportunity to the Insurance Company to lead their evidence. In view of above, the submission of learned counsel for the Insurance Company that proper opportunity was not granted to them is also not sustainable and it is hereby repelled.

33. In the result, appeal filed by the claimant is allowed in part and impugned award is modified to the extent as indicated above. Cross-objection filed by respondent-3/ Insurance Company is dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge