

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1157 of 2015

- Ku.Chetna Sahu, D/o. Late Mahendra Sahu, Aged About 8 Years, Minor Represented By Her Mother Smt. Sandhya Sahu, Wd/o Late Mahendra Sahu, R/o Village Dargahan, Tahsil Kurud, District Dhamtari Chhattisgarh

---- Appellant

Versus

1. Tikaram Ogre S/o. Chhannu Ogre, Aged About 42 Years R/o Village Nayakbandha, Police Station Abhanpur, District Raipur ChhattisgarhDriver Of Alleged Vehicle Bearing Registration No. C. G. - 04 -T A 2669
2. Jagat Ram S/o. Bhakadu Dhritlahre, Aged About 48 Years R/o. Village Gotiyardih, Police Station Abhanpur, District Raipur ChhattisgarhRegistered Owner Of Alleged Truck Bearing Registration No. C. G. - 04 -T A - 2669
3. Insurance Company, Bhartiya Exa General Insurance Company Limited, 1st Floor, Chawla Complex, Devendra Nagar Road, Sai Nagar, Raipur, District - Raipur ChhattisgarhInsurer of Alleged Truck Bearing Registration No. C. G. - 04 - T A /2669

---- Respondents/Non-Applicants

For Appellant	: Shri Anil Gulati, Advocate
For Respondents- 1 and 2	: None appears
For Respondent-3	: Shri NK Thakur, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

16.08.2021

1) Claimant has preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 01.07.2015 passed by the Chief Motor Accident Claims Tribunal, Dhamtari, CG (For short, 'Claims Tribunal') in Claim Case No.110 of 2014, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded Rs.45,615/- as compensation in an injury case with interest @ 6% and fastened liability upon Non-Applicants jointly and severally to satisfy amount of compensation.

2) Facts of the case in nutshell are that on 21.04.2014, appellant/claimant was travelling on motorcycle along with his father and mother and going to Sejbahar, Raipur. On the way, near Semra turn of Bhakhara Main Road, one Tata Magic bearing No.CG04-TA-2669 (for short,'offending vehicle') driven by NA1 rashly and negligently, dashed motorcycle driven by her father Mahendra Sahu and caused accident. In the accident, appellant and her father suffered grievous injuries. They were taken to Christian hospital, Dhamtari, where during the course of treatment, her father died. She suffered fracture injury on her right leg along with other injuries on her person.

3) Injured appellant/claimant filed an application under Section 166 of Motor Vehicle Ac, 1988 seeking compensation of Rs.4,95,000/- pleading therein that she suffered fracture injury on her leg along with other injuries. On account of motor accidental injuries, her education was affected, she became permanently disabled as she could not able to fold her legs and sit on ground properly.

4) NA1 and 2, driver and owner of offending vehicle submitted reply to claim application, denying pleadings made in claim application except the fact pleaded with regard to driver and owner of offending vehicle. It is driver of motorcycle, who was rash and negligent in his driving and met with an accident. Offending vehicle was insured with NA3, Insurance Company, as such, liability to pay the amount of compensation, if any, will be upon NA3 Insurance Company.

5) NA3/Insurance Company submitted its reply pleading that on the date of accident, NA1 was not possessed with valid and effective driving license, there

was no valid permit and fitness of offending vehicle, as such there was breach of policy conditions.

6) Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, held that appellant suffered grievous motor accidental injuries on her person due to rash and negligent driving of offending vehicle by NA1. Breach of policy conditions was not found to be proved, awarded Rs.45,615/- as total compensation, and fastened liability upon Non-Applicants jointly and severally to satisfy amount of compensation.

7) Shri Anil Gulati, learned counsel for the appellant would submit that on the date of accident, appellant was 8 years of age. She was student of Class-3, suffered fracture injury on her right femur. As per medical bills placed on record, she expended Rs.42,615/- towards treatment, which was awarded by learned Claims Tribunal and additional amount of only Rs.3,000/- is awarded on other heads. He submits that appellant took treatment for about 13 days, but learned Claims Tribunal has not considered nature of injuries, period of treatment and the heads on which appellant was entitled for grant of compensation in appropriate manner and awarded meagre sum. He submits that amount of compensation be suitably enhanced.

8) Shri NK Thakur, learned counsel for respondent-3, Insurance Company submits that claimant/appellant has only submitted medical documents showing nature of injury, treatment and amount expended for treatment. She has not examined any doctor to prove nature of injuries and permanent disability as pleaded in claim application. Learned Tribunal awarded additional sum of Rs.3,000/- towards pain and suffering looking to age of child, which cannot be

said to be on lower side. He also submits that compensation awarded to the appellant/claimant is just and proper, which does not call for any interference.

9) I have heard learned counsel for the parties and also perused record of claim case.

10) In this appeal, appellant has sought for enhancement of amount of compensation in an injury case. Appellant, in support of her pleading, has placed on record admission history and her physical examination dated 21.04.2012 (ie date of accident) of Dhamtari Christian Hospital, as Ex.P6. This document would show that appellant suffered fracture of right femur, Md shaft along with other injuries on her person. Appellant submitted Discharge Ticket of Christian hospital as Ex.P7 and after discharge from hospital, she took treatment from Shree Narayana Hospital, Raipur as inpatient from 26.08.2014 to 28.08.2014. Apart from it, other medical bills are also enclosed. Ex.P19, Discharge summary of Shree Narayana Hospital would show that appellant underwent operation of shaft femur. But learned Claims Tribunal awarded only Rs.3,000/- towards pain and sufferings. No amount has been awarded for grievous injuries, conveyance expenses, attendant, diet charges, special diet and loss of amenities and joy in life.

11) Award of compensation in an injury case has been considered by Hon'ble Supreme Court in case of **R.D. Hattangadi vs M/s Pest Control (India) Pvt. Ltd. and others** reported in AIR 1995 SC 755.

12) Taking into consideration aforementioned ruling of Hon'ble Supreme Court and facts and circumstances of the case, in the opinion of this Court, learned Claims Tribunal erred in awarding only Rs.3,000/- towards pain and

suffering, apart from medical expenses, which definitely is on lower side. Hence, I propose to re-compute the amount of compensation.

13) Appellant is entitled for medical expenses as calculated by learned Claims Tribunal of Rs.42,615/-, Rs.10,000/- towards grievous injuries, Rs.5,000/- towards pain and suffering. Appellant was resident of village Dargahana, District Dhamtari. She initially took treatment at Christian Hospital, Dhamtari and thereafter, Shree Narayana Hospital, at Raipur. Hence, I find it appropriate to award Rs.4,000/- towards conveyance expenses. Rs.2,000/- towards attendant and his/her diet, Rs. 2000/- for special diet for appellant/claimant, Rs.5,000/- towards loss of amenities and joy in life.

14) Now, appellant/claimant shall be entitled for total sum of **Rs.70,615/-** (42615 + 10000 + 5000 + 4000 + 2000 + 2000 + 5000) instead of Rs.45,615/- as awarded by Claims Tribunal.

15) Aforementioned amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions of the award will remain intact.

16) Appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE