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HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 539 of 2015**

Abdul Rahim Khan @ Rahim Khan, S/o Late Rahman Khan, aged about 63 years, R/o Kailash Nagar, Jamul, P.S. Jamul, Bhilai, Tahsil and District Durg, Chhattisgarh.

---- Appellant**Versus**

1. Jasbir Singh, S/o Avtar Singh, aged about 32 years, R/o Home No.8, House No.27/462, New Shanti Nagar, P.S. Civil Line, Raipur, District Raipur, Chhattisgarh.
2. Vasan Singh, S/o Joginder Singh, R/o Mahindra Travels, New Bus Stand Pandri, Raipur, Tahsil and District Raipur, Chhattisgarh.
3. The Oriental Insurance Company Limited, Through Divisional Manager, Division Office Parmanand Bhawan near Dr. Rajendra Park Chowk, G.E. Road, Durg, Tahsil and District Durg, Chhattisgarh.

---- Respondents

For Appellant	: Shri Arvind Dubey, Advocate
For Respondents No.1 & 2	: None
For Respondent No. 3	: Shri Raj Awasthi, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, Judge****18.03.2021**

1. Appellant/claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 20.01.2015 passed by the Additional Motor Accident Claims Tribunal, Durg, District Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.121 of

2013 whereby learned Claims Tribunal allowed the application for grant of compensation in part and awarded Rs.1,90,210/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal, are that, on 11.02.2012, appellant/claimant along with his wife was travelling from Bhilai to Jagdalpur on a Bus bearing No.CG-04/E/4731 (hereafter referred to as 'offending vehicle'). On the way, when offending vehicle reached near Charama, at about 3.30 AM at night, non-applicant No.1/driver of offending vehicle due to his rash and negligent act, lost his control over the vehicle, dashed with a tree standing beside the road and caused accident. In the aforementioned accident, appellant, his wife and other passengers suffered grievous injuries over their persons and some of the passengers also died. Appellant suffered grievous injuries over his head, legs and other parts of body. He was initially taken to hospital at Charama, but looking to the nature of injuries, he was referred to Christian Hospital, Dhamtari, from where, he was taken to Jawaharlal Nehru Hospital and Research Centre, Bhilai. Appellant also took treatment at Ramkrishna Care Hospital, Raipur. He suffered 11 stitches over his head and underwent operation of his leg.
3. Appellant/claimant filed an application under Section 166 of the M.V. Act seeking total compensation of Rs.11,75,000/- pleading therein that on account of motor accidental injuries

suffered by him, he became permanently disabled to perform his work. After retirement from A. C. C. Jamul Factory, he was working as driver and earning Rs.15,000/- per month. He incurred huge amount towards treatment and claimed compensation on different heads.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application, while denying the facts pleaded therein, pleaded that accident was not a result of rash and negligent driving of offending vehicle by non-applicant No.1. Claimant did not suffer any permanent disability. Offending vehicle was insured with non-applicant No.3/Insurance Company, as such, liability, if any, to satisfy the amount of compensation would be upon Insurance Company.
5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made therein, pleaded that amount of compensation claimed is highly exaggerated. The fact of employment of appellant/claimant as driver and earning Rs.15,000/- per month was false and fabricated. Discharge tickets of hospitals have not been placed on record. There was breach of policy conditions, hence, Insurance Company is not liable to satisfy the amount of compensation.
6. Claims Tribunal on appreciation of pleadings, evidence and

material placed on record by the respective parties arrived at a finding that appellant/claimant suffered permanent disability on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions were not found to be proved and awarded Rs.1,90,210/- as total compensation including Rs.53,410/- towards medical expenditure and purchase of medicines.

7. Shri Arvind Dubey, learned counsel for the appellant/claimant submits that learned Claims Tribunal erred in not considering the entire facts and evidence available on record and awarded meagre amount of compensation. It is contended that learned Claims Tribunal erred in awarding only Rs.53,410/- towards medical expenditure and purchase of medicines overlooking the documents available on record with regard to medical treatment and purchase of medicines as well as expenditure incurred by the appellant/claimant is of more than Rs.2 Lacs. It is further contended that learned Claims Tribunal has erred in not awarding any amount towards loss of income during the period of treatment and further assessing loss of earning capacity to the extent of 20% overlooking the nature of employment i.e. driver and part of body of which appellant suffered permanent disability. He pointed out that though learned Claims Tribunal has awarded the amount on

different heads towards pecuniary and non-pecuniary damages, but amount of compensation awarded is much on lower side. In view of above, he submits that appeal be allowed and amount of compensation be suitably enhanced.

8. Per contra, Shri Raj Awasthi, learned counsel for respondent No.3/Insurance Company while opposing the submissions made by learned counsel for the appellant/claimant, submits that learned Claims Tribunal while taking into consideration age of appellant/claimant, nature of injuries, awarded just amount of compensation, which does not call for any interference. It is contended that disability certificate (Ex.P/30) placed on record is not of by Medical Board, but issued by a single doctor of District Hospital, Durg. It is further contended that employment and earning of appellant/claimant has not been proved by placing cogent and reliable piece of evidence, but for a salary certificate (Ex.P/1) and oral evidence of one Rajesh Kunwar (AW-1) claiming him to be a Transporter.
9. We have heard learned counsel for the respective parties and perused the record carefully.
10. So far as the submission made by learned counsel for the appellant/claimant with regard to awarding of Rs.53,410/- towards medical treatment and purchase of medicines is concerned, perusal of record would show that learned

Claims Tribunal has taken into consideration Exs. P/34, P/36, P/37, P/38, P/39, P/41, P/62, P/63, P/64, P/65 and P/67 and recorded a finding that total expenditure to be Rs.53,410/-. Considering the arguments raised by learned counsel for the appellant that total bills available on record was of more than Rs.2 Lacs and huge difference between the amount of award and amount claimed, based on the medical bills and documents available on record, we have directed learned counsel for the appellant and respondent No.3/Insurance Company to go through the record and verify as to which of medical bills were not considered by learned Claims Tribunal while passing the award. After going through the record, both counsels jointly submitted before this Court that Exs. P/33, P/37, P/38, P/39, P/40 were not considered, which is amounting to Rs.80,359/-. Bill of Rs.31,282/- of Ramkrishna Care Hospital, Raipur (Ex.P/62) and Rs.2,003/- of Jawaharlal Nehru Hospital and Research Centre, Bhilai (Ex.P/66) were also not considered. They have also stated that bill of Rs.6,277/- (Ex.P/34, P/35, P/36) was also not considered. Upon going through the medical bills which have been stated to be not awarded, advance amount of Rs.15,000/- has been adjusted in final bill of Rs.31,282/- and balance has been shown to Rs.16,282/- is considered by Claims Tribunal for awarding it. Claims Tribunal has further awarded Rs.20,359/- towards

medical expenditure (Ex.P/40) as final settlement.

11. For the aforementioned reasons, we are of the considered view that amount of Rs.20,359/- has been taken into consideration by learned Claims Tribunal and appellant shall be entitled for the amount which has not been considered by learned Claims Tribunal considering it to be advance payment towards Exs. P/37, P/38, P/39 and Ex.P/62 i.e. Rs.10,000/-, Rs.25,000/- and Rs.25,000/- and Rs.15,000/-, total of which comes to Rs.75,000/-. The amount as mentioned in chart prepared by learned counsel for the appellant and accepted by learned counsel for respondent No.3/Insurance Company showing as Rs.31,282/- for not considering in view of above, does not appear to be correct. Hence, we hold that learned Claims Tribunal has not awarded above amount of Rs.75,000/- only towards medical expenditure of Ramkrishna Care Hospital, Raipur. The other medical expenditure incurred while taking treatment at Jawaharlal Nehru Hospital and Research Centre, Bhilai has been considered by learned Claims Tribunal as Rs.6,277/-. In view of aforementioned discussions, we are of the view that appellant/claimant will be entitled for Rs.75,000/- towards medical expenditure in addition to amount of compensation of Rs.53,410/- towards medical expenditure awarded by learned Claims Tribunal.

12. So far as the next submission made by learned counsel for

the appellant that Claims Tribunal committed error in assessing the income of appellant to be on lower side as on the date of accident, appellant was working as driver is concerned, we have gone through the evidence of Rajesh Kunwar (AW-1) as also the salary certificate placed on record as Ex.P/1. Salary certificate (Ex.P/1) is issued in a plain paper whereas in evidence, Rajesh Kunwar (AW-1), has admitted that he is having letter-pad of Shweta Transport as also the seal, but he has not issued the certificate on the letter-head affixing the seal of the firm. In evidence, he has further admitted that he filed income tax return, but there is no mention of payment of salary to the appellant and he has not placed on record the income tax return. He also admitted that in the salary certificate (Ex.P/1), there is no mention of name of firm nor there is any seal.

13. In view of aforementioned evidence available on record and admission made by Rajesh Kunwar (AW-1), we are of the considered view that learned Claims Tribunal is correct in not accepting the income as pleaded and stated by Rajesh Kunwar (AW-1). Considering the age of appellant on the date of accident as also the date of accident i.e. 11.02.2012, we do not find any error in the income assessed by learned Claims Tribunal. We affirm the income assessed by learned Claims Tribunal as Rs.6,000/- per month.

14. So far as other submission made by learned counsel for the appellant that learned Claims Tribunal has not awarded the loss of income during the period of treatment is concerned, on going through the record and nature of injuries suffered by the appellant, he might not be able to perform any work at least for a period of four months, hence, we find it appropriate to award Rs.24,000/- (6,000 x 4) towards loss of income during the period of treatment.
15. With regard to submission made by learned counsel for the appellant/claimant that appellant suffered permanent disability to the extent of 28%, whereas learned Claims Tribunal has assessed loss of earning capacity to the extent of 20%, we do not find any error in view of the discussions made in preceding paragraphs with regard to income, age and occupation of appellant on the date of accident.
16. So far as the last submission made by learned counsel for the appellant/claimant that Claims Tribunal has awarded meagre amount of compensation towards pecuniary and non-pecuniary damages is concerned, perusal of record would show that Claims Tribunal has awarded only Rs.15,000/- towards pain and suffering but looking to the age of appellant, period of treatment as discernible from medical documents available on record continuously for a period of more than one year, we find it appropriate to award Rs.30,000/- towards pain and suffering instead of

Rs.15,000/-. The appellant met with an accident at Charama from where he was shifted to Dhamtari, from there, Bhilai and further he took treatment at Raipur. In view of aforementioned undisputed facts of travelling for treatment, we find it appropriate to award Rs.10,000/- towards conveyance expenses.

17. For the aforementioned reasons and discussions, the amount of compensation awarded by Claims Tribunal to the appellant/claimant requires re-computation, which is as under :

The appellant is entitled for Rs.1,00,800/- towards loss of future income, Rs.2,000/- towards nutritious diet, Rs.2,000/- towards attendant, Rs.15,000/- towards loss of amenities and joy in life as awarded by Claims Tribunal. In addition to above, appellant/claimant will be entitled for Rs.53,410/- + Rs.75,000/- = Rs.1,28,410/- towards medical expenditure, Rs.24,000/- towards loss of income during the period of treatment, Rs.30,000/- towards pain and suffering and Rs.10,000/- towards conveyance expenses.

18. Now, appellant/claimant will be entitled for Rs.3,12,210/- (1,00,800 + 2,000 + 2,000 + 15,000 + 1,28,410 + 24,000 + 30,000 + 10,000) instead of Rs.1,90,210/- as awarded by Claims Tribunal. The amount of compensation shall carry interest at the rate of 9% per annum from the date of filing of claim application till its realization (as awarded by Claims

Tribunal). Other conditions of the award shall remain intact.

19. In the result, appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh