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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1495 of 2015

- The Oriental Insurance Company Ltd Divisional Office-Raipur, Madina Manzil Zail Road, Katchary chowk, Raipur Insurer of vehicle offending Motor Cycle No. Bajaj Platina No. CG06D3383

---Appellant/Non-applicant 3

VERSUS

1. Jagannath Prasad Tiwari S/o late Radheshyam Tiwari, aged about 52 years, Thana & Tahsil Saraipali, Zila-Mahasamund C.G.
2. Dharmendra Giri Goswami S/o Durga Giri Goswami, aged about 38 years Thana & Tahsil Saraipali, Zila Mahasamund Chhattisgarh. Owner and Driver of offending Motor Cycle No. TVS Star Sports CG06P7786
3. The United India Insurance Co. Ltd. Branch Office- Krishna Complex, Katchary Chowk, Raipur (Insurer of offending vehicle motor no. TVS Star Sport No. CG06P7786.

----Respondents

WITH

MAC No. 1095 of 2015

- Jagannath Prasad Tiwari S/o late Radheshyam Tiwari, aged about 52 years, R/o village Saraipali, police station & Tahsil Saraipali, District Mahasamund Chhattisgarh

------Appellant/ Claimant

VERSUS

1. Dharmendra Giri Goswami S/o Durga Giri Goswami, aged about 38 years Thana & Tahsil Saraipali, Zila Mahasamund Chhattisgarh. Driver & owner of alleged Motor Cycle No. TVS Star Sports CG06P7786
2. The United India Insurance Co. Ltd. Branch Office- Krishna Complex, Katchary Chowk, Raipur (Insurer of alleged vehicle motor no. TVS Star Sport No. CG06P7786.
3. The Oriental Insurance Company Ltd Divisional Office-Raipur, Madina Manzil Zail Road, Katchary chowk, Raipur Insurer of vehicle alleged Motor Cycle No. Bajaj Platina No. CG06D3383

-----Respondents

MAC No. 1495/2015

For Appellant : Ms. Chitra Shrivastava, Advocate
For Respondent 3 : Mr. Dashrath Gupta, Advocate

MAC No. 1095/2015

For Appellant : Mr. A.D. Kuldeep, Advocate
For Respondent 2 : Mr. Dashrath Gupta, Advocate
For Respondent 3 : Ms. Chitra Shrivastava, Advocate

(*proceedings through Video Conferencing)*

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

12/08/2021

1. In both the appeals challenge is to the award dated 05.08.2015 passed by First Additional Motor Accident Claims Tribunal, Baloda Bazar, Chhattisgarh (for short “Claims Tribunal”) in claim case no. 107/2012, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short Act of 1988”) in part, awarded Rs.96,480/- as total compensation in an injury case with an interest @ 7% pa. from the date of filing of claim application till its realization. Tribunal further apportioned 50% of the liability of amount of compensation upon insurer of motor cycle of claimant and 50% upon insurer of motor cycle of non-applicant 1.

2. MAC 1495/2015 is filed by insurer of motor cycle bearing registration no. CG06 D 3383 owned by claimant Jagannath Prasad Tiwari. MAC No. 1095/2015 is filed by injured Jagannath Prasad Tiwari seeking enhancement of amount of compensation and further challenging the finding recorded by Claims Tribunal with respect to contributory negligence of the appellant to the extent of 50% in the accident.

3. Facts relevant for disposal of these appeals are, that on 02.08.2012, Jagannath Prasad Tiwari was travelling on his motor cycle bearing registration no. CG06B3383 and going to Saraipali. When he reached near village Narbandgatadih one another motor cycle bearing registration no. CG06 P 7786 (henceforth “offending vehicle”) driven by non-applicant 1/ Respondent 1 dashed the motor cycle of appellant/ claimant. In the accident claimant suffered severe fracture injuries over his right wrist and arm. He was taken to Kishori Nursing home, Bargarh where he took treatment as in-patient and underwent operation of right hand, iron plate and iron rod was implanted. Accident was reported to concerned police station, based upon which, crime 119/2012 was registered against non-applicant 1/ owner of offending vehicle.

4. Appellant filed application under Section 166 of the Act of 1988 seeking total compensation of Rs. 8,80,000/- pleading therein that on the date of accident he was working as Sub-postmaster and earning Rs. 35,000/- per month towards salary, further earning Rs. 6,000/- from other sources but on account of motor accidental injuries suffered by him he became permanently disabled.

5. Non-applicant 1 submitted reply to the claim application denying the facts pleaded therein. Further pleaded that he was possessed with valid and effective driving licence and offending vehicle driven by him was insured with non-applicant 2/ Insurance Company, as such, non-applicant 1 is not having any liability to satisfy the amount of compensation.

6. Non-applicant 2/ Insurance Company, insurer of offending vehicle, submitted its reply denying the facts pleaded in the claim application, it was further pleaded that non-applicant 1 was not possessed with valid and effective driving licence to drive the category of vehicle which he was driving, as such, there was breach of policy conditions. Non-applicant 3/ Insurance Company of the motor cycle driven/ owned by appellant/ claimant submitted its reply pleading therein driver of the offending vehicle was not possessed with valid and effective driving licence, as such, there was breach of policy conditions. There was no negligence on the part of claimant, hence, the principle of contributory negligence would not apply. Claimant has not submitted copy of insurance policy along with claim application, hence, right of insurance company is reserved to reply to claim after looking into the contents of insurance policy

7. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties held that claimant Jagannath Prasad Tiwari suffered grievous injuries on his person on account of rash and negligent driving of offending vehicle by non-applicant 1. There was contributory negligence on the part of claimant to the extent of 50%. He suffered 40% permanent disability awarded total Rs. 96,480/- on different heads and further apportioned the amount of compensation between insurer of offending vehicle and insurer of motor cycle owned by claimant.

8. Ms. Chitra Shrivastava, learned counsel for the appellant-claimant (in MAC No. 1495/2015) would submit that the Claims Tribunal erred in fastening liability upon Insurance Company of motor cycle

driven by appellant/ claimant to the extent of 50% overlooking the copy of insurance policy as available on record which is ‘liability only policy’ as the claimant himself was driving the motor cycle insured by appellant. It would not fall within the category of third party but the claimant was owner/ driver, no premium is paid by the appellant for covering the risk of owner/ driver. When once owner of the vehicle himself not chosen to cover the risk of owner/ driver, he cannot claim any benefit under the policy for his own accidental injuries. It is further submitted that apportionment of amount of compensation calculated by Claims Tribunal between appellant/ insurance company and Respondent 3 (insurer of offending vehicle) is not sustainable.

9. Mr. A.D. Kuldeep, learned counsel for Respondent 1 submits that he has filed separate appeal on behalf of claimant challenging the impugned award seeking enhancement of amount of compensation and further challenging the finding of contributory negligence recorded by Claims Tribunal. He submits that the accident was result of sole negligence on the part of Respondent 2/ non-applicant 1 owner and driver of offending vehicle insured by Respondent 3. Accident was reported to concerned police station by appellant/ injured. Based upon which crime was registered against driver of offending vehicle ie. Respondent 2 for offence under Section 270 and 337 of IPC. After due investigation, charge-sheet is also filed against him before the court of competent jurisdiction. In claim application it is specifically pleaded that the accident was result of rash and negligent driving of motorcycle by non-applicant 1. Tribunal without considering the nature of evidence placed on record has erroneously arrived at a finding that appellant

was also contributory negligent in the accident. In evidence also, appellant stated the cause of accident is rash and negligent driving of motor cycle by Respondent 2. Respondent 2/ owner of offending vehicle did not led to any evidence in support of pleadings of his reply even the insurer of motorcycle of Respondent 2 ie. United Insurance Company examined any witness. The finding recorded by learned Claims Tribunal with regard to contributory negligence on the part of appellant to the extent of 50% is erroneous and not sustainable. He further submitted that Claims Tribunal erred in awarding meagre amount of compensation and no amount is awarded towards permanent disability. As the appellant suffered permanent disability to the extent of 40% due to fracture of head of humorous bone, disability certificate is placed on record as Ext. A-66, proper compensation was to be awarded. In alternate, he submits that if for any reason, Tribunal came to conclusion that the appellant failed to prove permanent disability then also Tribunal ought to have awarded amount of compensation towards grievous injuries. Tribunal has not awarded entire medical bills placed on record and very meagre sum is awarded on other heads like conveyance expenses, attendant, pain and sufferings etc. He submits that the amount of compensation be suitably enhanced and finding recorded by Claims Tribunal with regard to contributory negligence to the extent of 50% be set aside.

10. Mr. Dashrath Gupta, learned counsel for Respondent 3/ Insurance Company/ Insurer of offending vehicle supports the award passed by Claims Tribunal. He submits that learned Claims Tribunal on appreciation of pleadings and evidence and also evaluating the evidence brought on record has passed just and proper

compensation which does not call for any interference. He further submits that as there was head on collision between two motor cycles on main road, Claims Tribunal justified in holding that the appellant-claimant was also contributory negligent in the accident to the extent of 50%, hence, impugned award does not call for any interference.

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

12. Sofar as the grounds raised in MAC 1495/2015 filed by Insurance Company of motor cycle driven by injured claimant with regard to fastening liability upon it is concerned, appellant has taken a ground that the insurance policy of motor cycle driven by claimant was a liability only policy and risk of owner driver is not covered under the policy. Appellant/ Oriental Insurance Company has filed copy of insurance policy Annexure A-1, perusal of it would show that the policy was issued for a period from 15.09.2011 to midnight of 14.09.2012 in the name of Jagannath Prasad Tiwari (injured claimant), vehicle insured was Bajaj Platina 125 ES having registration no. CG06D3383. Policy issued in favour of insurer was "<u>Two wheelers liability only policy-Zone B".</u> Along with Annexure A-1 schedule of premium is also attached wherein total premium charged by insurance company was Rs. 330/- towards basic third party cover. Charge of Rs. 50 was towards "PA for Owner Driver-GR36A", perusal of schedule of premium would show that the insurance policy not only cover the risk of third party but also cover the risk of owner driver and undisputedly the injured is owner and driver of vehicle insured by appellant-insurance company.

13. In view of the documents placed on record by appellant-insurance company as Annexure A-1, it is clear that the appellant-insurance company entered into a contract with the insurer for covering risk of owner driver and also has charged premium towards it. Annexure A-1, IMT GR36-A reads as under.

SCHEDULE OF PREMIUM

A. OWN DAMAGE	B. LIABILITY	
	Basic TP Cover	330.00
	Basic TP Total	330.00
	Add.PA for Owner Driver-GR36A	50.00
	TP Total	380.00
	Total Premium	380.00
	Add:Service Tax	39.00
	Stamp Duty	0.50
	Total Amount	419.00

14. Though the heading of insurance policy mentions as liability only policy-Zone B, but from perusal of schedule of premium it is clear that risk of owner driver of motor cycle insured is also covered to the extent of Rs. 1 Lakh, hence the submission made by learned counsel for appellant-Oriental Insurance company that the policy being liability only policy, no liability can be fastened upon it is not sustainable and it is hereby repelled.

15. Consequently, the appeal MAC No. 1495/2015 is liable to be and is hereby dismissed.

16. Sofar as, the grounds raised in appeal MAC No. 1095/2015 filed by appellant (injured) seeking enhancement of compensation of impugned award and the finding recorded of contributory negligence by Claims Tribunal is concerned, appellant/ injured raised a ground that the Claims Tribunal has not awarded appropriate amount of compensation towards pain and sufferings, loss of amenities and joy in life, compensation towards loss of

holidays, permanent disability and award of amount of compensation on other heads is on lower side. Sofar as the amount of compensation awarded by Claims Tribunal is concerned, perusal of record of claim case would show that appellant suffered commuted fracture right FA distal end; fracture of wrist. Appellant-claimant took treatment as in-patient from 02.08.2012 to 07.08.2012 at Kishori Nursing Home which is evident from Ext. A-4. Claimant further continued with the treatment which is appearing from documents Ext. A-39 to A-46. Photocopy of medical prescription of hospital at Raipur is also available on record wherein it is mentioned as 'Mal-united fracture of distal radius', fixation of distal rod done.' Claims Tribunal awarded total sum of Rs. 85,980/- towards medical treatment. Learned counsel for appellant-claimant could not able to point out as to which of the bills proved, exhibited and admissible in evidence are not awarded by the Tribunal.

17. For the foregoing reasons, I do not find any error on the part of Tribunal in calculating and awarding Rs. 85,980/- towards medical expenses. Claims Tribunal awarded Rs. 2,000/- towards conveyance expenses. Appellant-claimant has placed on record the medical documents showing admission on 2.8.2012 to 7.8.2012, thereafter, further medical prescription of Kishori Nursing home, Bargarh Orrisa dated 15.08.2012, 22.08.2012, 29.08.2012, 19.09.2012, 30.10.2012, 14.11.2012, 09.01.2013 and photocopy of medical prescription of Medishine hospital, Raipur. These documents would show that the appellant-claimant had to visit hospitals on many occasions situated at Bargarh and Raipur whereas he is resident of Saraipali, district Mahasamund. Upon considering the entire facts and circumstances of the case as also

the documents of treatment placed on record in the opinion of this Court, learned Claims Tribunal erred in awarding meagre sum of Rs. 2,000/- towards conveyance expenses which is not sustainable and it is hereby set aside. Upon considering the entire facts as also the medical documents, I find it appropriate to award Rs. 6,000/- towards conveyance expenses. It is ordered accordingly.

18. Learned Claims Tribunal has awarded only Rs. 1500/- towards attendant overlooking the period of treatment, nature of injuries and also expense on food charges, I find it appropriate to award Rs. 3000/- towards attendant with his/ her food expenses at the place of treatment. Apart from above, Tribunal has awarded only Rs. 1000/- towards pain and sufferings, loss of amenities and joy in life which is much on lower side. Appellant-claimant suffered two fracture injuries on his hand, he underwent operation and even after taking treatment, he suffered with malunited of distal bone which might continuously affect the life of appellant. Considering the nature of injuries and treatment taken by appellant, I am of the view that appellant is entitled for Rs. 15,000/- towards pain and sufferings and Rs. 20,000/- towards loss of amenities and joy in life.

19. Though the appellant-claimant could not able to prove permanent disability by producing doctor before the Claims Tribunal but even then looking to the documents of treatment available on record, it is apparent that appellant-claimant suffered grievous injuries on his person, hence this Court is of the opinion that appellant-claimant, even if not suffered any permanent disability leading it to loss of income, but looking to the nature of injuries I find it appropriate to award Rs. 20,000/- towards grievous injuries. Claims Tribunal

awarded amount of Rs. 85,980/- towards medical bills from Ext. P-15 to P-37 which are the bills towards purchase of medicines of Tripathy medicines, Kishori Nursing Home, Bargarh, but Tribunal has not awarded any amount towards future treatment issued by treating doctor for removal of fixation. Considering the entire facts and circumstances of the case, treatment taken by appellant at Kishori Nursing home of Dr. Ashwani Kumar Bhoi, Claims Tribunal ought to have awarded the amount of estimate of surgery in the facts of the case, hence, in the opinion of this Court, appellant-claimant is further entitled for Rs. 15,000/- towards future treatment.

20. Sofar as the second submission of learned counsel for appellant-claimant with regard to finding recorded by Tribunal with regard to contributory negligence is concerned, accident was head of collision between two motor cycles on main road which is wide enough and further the fact that appellant is not, in any manner, affected from the said finding, I do not find it appropriate to interfere with the said finding recorded by learned Claims Tribunal.

21. In the result:

- Appeal filed by Insurance Company ie. MAC No. 1495/2015 is dismissed.

- Appeal filed by claimant (injured) ie. MAC No. 1095/2015 is allowed in part and now the appellant-claimant shall be entitled for **Rs. 1,64,980/-** [Rs. 85,980+ Rs. 6,000+ Rs. 3,000+Rs. 15,000+Rs. 20,000+Rs. 20,000+Rs. 15,000] as total compensation instead of Rs. 96,480/-. Aforesaid amount of compensation shall carry interest @

7% p.a. from the date of filing of claim application till its realization. Other conditions of the award passed by Claims Tribunal shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan