

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1488 of 2015**

Amarjeet Singh S/o Shri Dalveer Singh, Aged About 41 Years R/o MIG-2 -234, HUDCO Sector, Amdi Nagar, Tehsil and District Durg Chhattisgarh.

---- Appellant**Versus**

1. Mohan Sahu S/o Salik Ram Sahu, Aged About 24 Years R/o Kodekera, Rajim, P. S. Rajim, District then Raipur, Now Gariaband Chhattisgarh.
2. Smt. Asha Singhai (Jain) W/o Late Shri Anil Kumar Jain, R/o Nawapara, Rajim, District then Raipur, Now Gariaband Chhattisgarh.
3. I.C.I.C.I. Lombard General Insurance Company Limited Zenith House, Keshavrao Khadye Marg, Mahalaxmi, Mumbai 400034 (Maharashtra)

---- Respondents

For Appellant	: Shri Jaydeep Singh Yadav, Advocate
For Respondent 1	: None
For Respondent No. 2	: Ms. Anuja Sharma, Advocate on behalf of Shri Manay Nath Thakur, Advocate
For Respondent No.3	: Shri Sourabh Sharma, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**Judgment on Board****09.09.2021**

1. Challenge in this appeal is to the impugned award dated 19.08.2015 passed by the 6th Additional Motor Accident Claims Tribunal, District Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.13 of 2012 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 Rs.3,47,954/- as total compensation in a claim of third party property damage case.

2. Facts relevant for disposal of this appeal, are that, on 26.01.2010, at about 5.45 PM, Mini Bus bearing No.CG-07/E/1261 was returning from Raipur to Bhilai, when it reached in front of Ganga Steel, Bhathagaon, Raipur on Ring Road, one Truck bearing No.CG-04/ZC/6948 (hereinafter referred to as 'offending vehicle') dashed the Mini Bus. In the said accident, Mini Bus got damaged badly, front portion of Mini Bus got bend inside and driver of Mini Bus died in the accident.
3. Appellant/owner of Mini Bus filed an application under Section 166 of M.V. Act seeking total compensation of Rs.8,13,892/- pleading therein that claimant has purchased Mini Bus for commercial purpose, earning his livelihood. It was running in between Durg to Raipur on valid permit having its seating capacity of 22. Claimant expended Rs.4,88,892/- towards repairing of Mini Bus, Rs.50,000/- towards mental agony, Rs.50,000/- towards future loss and Rs.2,25,000/- towards loss of income for a period of 5 months when Mini Bus was standing in Garage for its repairing.
4. Non-applicants No.1 and 2/driver and owner of offending vehicle did not appear before the Claims Tribunal and were proceeded *ex parte*.
5. Non-applicant No.3/Insurance Company submitted its reply, while accepting to be insurer of offending vehicle, further

pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective licence. It was further pleaded that claimant is not entitled for any compensation towards future loss. Accident was head on collision between two motor vehicles, but driver, owner and insurer of other motor vehicle are not arrayed as party non-applicants, as such, there was non-joinder of necessary party. Offending vehicle was being plied in breach of policy conditions, hence, Insurance Company be exonerated from its liability.

6. On appreciation of pleadings, oral and documentary evidence brought on record by the respective parties, Claims Tribunal held that Mini Bus got damaged in motor accident due to rash and negligent driving of offending vehicle by non-applicant No.1 and awarded total compensation of Rs.3,47,954/- (Rs.3,27,954/- towards repairing charges and Rs.20,000/- towards loss of income) to the claimant.
7. Shri Jaydeep Singh Yadav, learned counsel for the appellant/claimant would submit that learned Claims Tribunal erred in not awarding entire repairing charges of Mini Bus. Some of the bills of repairing expenses and purchase of parts of Mini Bus are not considered while computing compensation. Bus kept standing in Garage for its repairing for long period of 5 months, due to which, appellant suffered loss of income. Mini Bus which got damaged in the motor accident, is the source of earning of appellant, hence,

Claims Tribunal ought to have awarded appropriate amount of compensation on this head. It is further contended that due to damage of Mini Bus as a result of accident, appellant suffered mental pain and agony, for which, learned Claims Tribunal has not awarded any amount of compensation. The interest awarded on the amount of compensation is 6% only, Claims Tribunal has not considered that on account of damage of Mini Bus, it kept standing idle in workshop for long period, therefore, appellant suffered loss of income which is a commercial loss, hence, Claims Tribunal ought to have awarded interest at the rate of 12% on the amount of compensation awarded.

8. Ms. Anuja Sharma, learned counsel for respondent No.2 supports the impugned award.
9. Per contra, Shri Sourabh Sharma, learned counsel for respondent No.3/Insurance Company while supporting the award, would submit that Claims Tribunal in the facts and circumstances of the case awarded just amount of compensation, which does not call for any interference. All the proved and exhibited bills of repairing is awarded and if for any reason, bills of repairing charges or purchase of parts of vehicle are not exhibited as argued by learned counsel for the appellant, then documents which are not proved, cannot be considered for awarding the amount of compensation towards any expenses.

10. I have heard learned counsel appearing for the respective parties and perused the record carefully.
11. So far as the submission made by learned counsel for the appellant with regard to non-awarding of all the bills with respect of repairing charges and purchase of parts of Mini Bus is concerned, perusal of bills and receipts would show that appellant has exhibited bills and receipts from Ex.P/4 to Ex.P/15, which was considered by Tribunal in paragraph-17 of impugned award and awarded total sum of Rs.3,27,954/-. Ex.P/16, Ex.P/17 and Ex.P/18 are the estimate for repairing, hence, Claims Tribunal rightly not considered the documents (Ex.P/16, Ex.P/17 and Ex.P/18) because it is not payment receipts, but it is only estimate for repairing. Ex.P/19 is also a quotation and not payment receipt. Other documents are not exhibited, hence, submission made by learned counsel for the appellant that receipt of Rs.18,700/- dated 02.02.2010 is not awarded is not sustainable. Appellant/claimant was represented by an Advocate, he entered into witness box and got bills and receipts exhibited which he found relevant and if any of the bills though available on record, but have not been marked exhibit, it will be presumed that those bills/receipts have been consciously not marked as exhibit by the appellant. Learned counsel for the appellant has not made any submission that any of the bill/receipt, which was exhibited has not been taken into

consideration for awarding amount of compensation towards repairing charges. Hence, I do not find any merit in the submission made by learned counsel for the appellant that entire repairing charges and purchase of parts of Mini Bus is not awarded and it is hereby repelled.

12. Second submission of learned counsel for the appellant that very meagre sum has been awarded towards loss of income is concerned, learned Claims Tribunal though considered the submissions of learned counsel for the applicant that Mini Bus was standing in Garage for a period of 5 months for its repairing, in absence of any admissible piece of evidence with regard to monthly income from Mini Bus, awarded only Rs.20,000/- observing that appellant/claimant suffered some monetary loss. Once Claims Tribunal arrived at a conclusion that Mini Bus was kept standing in Garage for its repairing for considerable period of time, then in the opinion of this Court, learned Claims Tribunal even in absence of proof of income, could have awarded just amount of compensation on the head of loss of income considering that Mini Bus was a 'Public Carrier' running between Durg to Raipur. The person who is maintaining Mini Bus, plying it as 'Public Carrier' on valid permit in between two major cities of Chhattisgarh i.e. Durg to Raipur and Raipur to Durg, just amount of compensation ought to have been awarded to loss of income considering the nature of business.

13. Taking into consideration the nature of occupation of appellant/claimant/business of transportation and operating a 'Passenger Vehicle', I find it appropriate to assess monthly income from the Mini Bus as Rs.15,000/- per month and even if considering that Mini Bus to be kept standing in Garage for about 3 months for its repairing, loss of income will be Rs.45,000/- (15,000 x 3). It is ordered accordingly.
14. Appellant/claimant has further claimed Rs.50,000/- towards mental agony. Claims Tribunal in the facts of the case where Mini Bus suffered damage badly, its driver died in the accident and appellant being owner has definitely suffered with mental pain and pressure, hence, in the opinion of this Court, appellant is further entitled for a sum of Rs.15,000/- towards mental pain and agony.
15. So far as other submission made by learned counsel for the appellant with regard to award of interest on the awarded amount of compensation is concerned, considering the totality of facts and circumstances of the case where claim is with regard to expenditure incurred for repairing of damaged of Mini Bus in the accident, loss of income due to non-operation of Mini Bus for a period of 3 months, which is a business loss and also considering the date of accident i.e. 26.01.2010, I find it appropriate to award interest at the rate of 7.5% per annum from the date of filing of claim application till its realization.

16. For the aforementioned reasons and discussions, now, appellant/claimant is entitled for total compensation of Rs.3,87,954/- (3,27,954 + 45,000 + 15,000) instead of Rs.3,47,954/- as awarded by learned Claims Tribunal. Amount of compensation shall carry interest at the rate of 7.5% per annum from the date of filing of the claim application till its realization. Other conditions of the impugned award shall remain intact.
17. 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