

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1591 of 2015

- Sukhnandan S/o Shri Nokhelal Verma, Aged About 22 Years R/o Village- Sonpuri, P.S. Dadhi, Tah. And Distt. Bemetara, Chhattisgarh, At Present- Mariatola, Post- Podi, P.S.- Bodla, Civil And Rev. Distt.- Kabirdham, ChhattisgarhClaimant

---- Appellant

Versus

1. Ramchandra Chandravanshi S/o Shri Jalesh Ram Chandravanshi, Aged About 24 Years R/o Village- Palansari, P.S.- Pandatarai, Civil And Rev. Distt. Kabirdham, Chhattisgarh Owner Of The Offending Vehicle Bearing Reg. No. C.G. 09 H/ 3041
2. I.C.I.C.I. Lombard General Insurance Company Limited, Through Branch Manager, I.C.I.C.I. Lombard House- 414, Veer Savarkar Marg, Siddhi Vinayak Mandir Prabhadevi, Mumbai M.H.- 400025414, Branch Office- I.C.I.C.I. Lombard General Insurance Co. Ltd., Guru Kripa Tower, 3rd Floor Vyapar Vihar, Civil And Rev. Distt.- Bilaspur, Chhattisgarh Insurer Of The Offending Vehicle Bearing Reg No. C.G. 09 H/ 3041

---- Respondents/Non-Applicants

For Appellant	: Shri Keshav Dewangan, Advocate
For Respondent- 1	: None appears
For Respondent-2	: Shri Tessy Abraham, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

17.09.2021

1) Challenge in this appeal is to the award dated 13.10.2015 passed by the Additional Motor Accident Claims Tribunal, Kabirdham (Kawardha) (for short, 'Claims Tribunal') in Claim Case No.164 of 2014, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.34,107/- with interest @ 7% in an injury case.

2) Facts relevant for disposal of this appeal are that on 16.09.2013 at about 2.30 pm, appellant was pulling Motorcycle as it was not in running condition and his friend Narad Yadav was pushing the Motorcycle from its

back. While so, when they were taking rest on road side, at that relevant time, another Motorcycle bearing No.CG09 H- 3041 (hereafter, referred to as 'offending vehicle') driven by NA1 rashly and negligently, dashed appellant and his friend Narad Yadav and caused accident. In the accident, appellant suffered injuries on his head, jaw and other parts of body. Appellant was immediately taken to District Hospital Kawardha, from where, he was referred to higher hospital and shifted to Ramakrishna Care Hospital at Raipur. There he took treatment from 16.09.2013 to 18.09.2013 (two days).

3) Appellant filed application under Section 166 of Motor Vehicle Act seeking compensation of Rs.2,60,000/-, pleading therein that prior to the date of accident, he was working as Manager of Sai Filling Station (Petrol Pump). In the accident, he suffered grievous injuries, he took treatment at Ramakrishna Care Hospital, Raipur and thereafter, Laxmi Dental Clinic and Maxillofacial Surgical Centre Hospital, Raipur on 20th, 21st, and 30th of September, and 3rd of October 2013.

4) NA1, Driver of offending vehicle submitted reply to claim application resisting the claim. It was further pleaded that on the date of accident, offending vehicle was insured with NA2, and he was possessed with valid and effective driving license. Accident was result of negligence of claimant himself. Liability to satisfy amount of compensation, if any, would be upon NA2/Insurance Company.

5) NA2/Insurance Company submitted its reply to claim application denying the claim and further pleaded that accident was result of

negligence on the part of claimant himself. He was not possessed with valid and effective driving licence. It was further pleaded that NA1, driver of offending vehicle was also not possessed with valid and effective driving license, as such, there was breach of policy conditions. Hence, Insurance Company is not having liability to indemnify the insured.

6) Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, held that claimant suffered grievous injuries over his person on account of rash and negligent driving of motorcycle by NA1, breach of policy conditions were not found to be proved, calculated and awarded total sum of Rs.34,107/- as compensation.

7) Shri Keshav Dewangan, learned counsel for appellant would submit that learned Claims Tribunal awarded amount of compensation on different heads but the compensation calculated is on lower side. He further submits that learned Tribunal overlooking place of accident and treatment taken by appellant at Raipur, not awarded any amount towards conveyance, no amount has been awarded for loss of income during the period of treatment, ignoring nature of injuries, period of treatment as inpatient at Ramakrishna Care Hospital, Raipur, and continued treatment at Laxmi Dental Clinic and Maxillofacial Surgical Centre Hospital, Raipur. He submits that from documents placed on record, it is evident that appellant suffered head injury and further nature of injuries suffered by him on his jaw, amount of compensation awarded under head of pains and suffering and inconvenience caused to appellant of Rs.5,000/- only, is meagre and submits that amount of compensation be enhanced suitably.

8) Shri Tessy Abraham, learned counsel for the Insurance Company would submit that appellant took treatment as inpatient only for two days, and thereafter, he was discharged from Hospital. Treatment as stated by appellant at Laxmi Dental Clinic and Maxillofacial Surgical Centre Hospital, Raipur was not proved. Tribunal taking into consideration entire facts and circumstances of the case and evidence brought on record, has awarded just and proper amount of compensation which does not call for any interference. He also points out that in documents placed on record, occupation of appellant has been shown to be a student and not as working person.

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

10) Accident, injuries suffered by appellant and treatment taken by him are not in dispute. Appellant, in support of his pleading, has placed on record Ex.A9 Discharge Ticket of Ramakrishna Care Hospital, Raipur, wherein date of admission is shown as 16.09.2013 and date of discharge as 18.09.2013. From aforementioned document, it is apparent that after accident, appellant was shifted from Podi to Raipur. Evidence of AW2 Pradeep Verma shows that appellant was shifted in Ambulance. In view of aforementioned evidence, in the opinion of this Court, Tribunal erred in not awarding any amount towards conveyance expenses.

11) Considering date of accident and distance between Podi and Raipur, where appellant took treatment, I find it appropriate to award

Rs.10,000/- for conveyance expenses for shifting of appellant from Podi and thereafter, for returning back to his house.

12) Tribunal not awarded any amount towards loss of income during the period of treatment though in medical documents it is mentioned that occupation of appellant to be a Student, but in pleadings of claim application and in statement of appellant he stated that he is working as Manager at Fuel Station. AW2 also stated that appellant was working at Fuel Station, hence, I find it appropriate to award **Rs.4,000/-** towards loss of income during the period of treatment for a month.

13) Looking to nature of injuries and further treatment taken by appellant from 16.09.2013 till 18.09.2013 at Ramakrishna Care hospital, treatment on different dates at Laxmi Dental Clinic Maxillofacial Surgical Centre Hospital, Raipur and also nature of treatment, in the opinion of this Court, award of compensation of Rs.5,000/- towards pains and suffering and for inconvenience caused to appellant is on lower side. Considering the entire facts and treatment taken by appellant, which is proved by placing documents from Ex.A9 to A12, it is appropriate to award **Rs.10,000/-** for pains and suffering and inconvenience, instead of Rs.5,000/- as awarded by the Tribunal.

14) For the foregoing reasons, I find it appropriate to re-compute the award of compensation which is as under:

15) Appellant/claimant is entitled for Rs.28,107/- towards medical expenses, Rs.1,000/- towards special diet, Rs.1,000/- towards Assistant, Rs.10,000/- for pains, suffering and inconvenience caused to appellant,

Rs.10,000/- for conveyance, Rs.4,000/- towards loss of income during the period of treatment.

16) Now, appellant/claimant will be entitled for **Rs.54,107/-** (28107 +1000 + 1000 + 10000 + 10000 + 4000) as compensation instead of Rs.34,107/- as awarded by the Tribunal.

17) Aforementioned amount of compensation shall carry interest @ 7% from the date of filing of claim application till its realization. Other conditions imposed by the Tribunal shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
JUDGE