NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 800 of 2015

- Kamta Ram Sahu S/o Late Dayalu Ram Sahu aged about 41 years, Caste-Teli R/o village-Dewari (doner) Tahsil and Distt. Dhamtari Chhattisgarh

---Appellant/claimant

VERSUS

1. Yaman Kawar S/o Rampyare aged about 30 Years R/o Village Bhalughulan Post Dahi Tahsil Kurud, District Dhamtari Chhattisgarh. **-----Driver cum Owner**
2. Branch Manager National Insurance Company Limited, Mobin Hal G.E. Road Raipur Tahsil and Distt. Raipur Chhattisgarh

----Respondents

For Appellant : Mr. A.L. Singroul, Advocate
For Respondent 2 : Mr. Shivendu Pandya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

14/09/2021

1. Challenge in this appeal is to the award dated 12.03.2015 passed by Learned Additional Motor Accident Claims Tribunal, Dhamtari, Chhattisgarh (for short “Claims Tribunal”) in Claim Case no. 117/2014, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short “Act of 1988”) in part and awarded total sum of Rs. 1,28,500/- as compensation in injury case.

2. Fact of the case relevant for disposal of this appeal are that on 07.01.2014 appellant along with one Mehtaruram was travelling on his motorcycle bearing registration no. CG05C3418 from Sarkada to Parasvani. On the way near Parasvani nala turn at about 06:00 pm one Hero Honda motorcycle bearing registration no. CG05 R

5727 (henceforth “offending vehicle”) driven rashly and negligently by non-applicant 1 dashed motorcycle of appellant and caused accident. In the said accident, appellant suffered injuries on his chest, right leg, knee and toe due to which he suffered fracture injury on his leg. He was taken to Community Health Centre, Magarlod for his treatment, and looking to the seriousness of the injuries, he was referred to higher hospital. Injured was then taken to Shri Narayana Hospital, Raipur.

3. Appellant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs. 6,05,000/- as compensation pleading therein that on the date of accident he was an able bodied person doing the work of agricultural labourer and earing Rs. 200/- per day. Due to permanent disability suffered by him in the aforementioned accident he is not able to do his work to earn his livelihood. His family members are dependent on his income. As also he expended about Rs.1,80,000/- for his treatment.

4. Non-applicant 1 did not appear before the Claims Tribunal and was proceeded *ex-parte*.

5. Non-applicant 2/ Insurance Company submitted reply to claim application denying the pleadings made therein, it was further pleaded that Non-applicant 1 on the date of accident was not possessed with valid and effective driving license, as such, there was breach of policy conditions. Accident was a result of contributory negligence and insurance company is not liable to satisfy any amount of compensation.

6. Learned Claims Tribunal, upon appreciation of pleadings and

evidence placed on record by respective parties, held that appellant suffered injuries due to rash and negligent driving of offending vehicle by non-applicant 1. Permanent disability of appellant was not proved. There was breach of policy conditions, contributory negligence was not found to be proved. Tribunal upon assessing income of appellant as Rs. 3,000/- per month calculated the amount of compensation and awarded Rs. 1,28,500/- as total compensation with interest @ 6% p.a. from the date of filing of claim application.

7. Mr. A.L. Singroul, learned counsel for appellant would submit that Claims Tribunal erred in awarding meagre sum of compensation. He submits that appellant suffered compound fracture injury over his right Tibia Fibula along with fracture of Clavicle Right. Claims Tribunal awarded medical bill of 1,08,500/- which itself shows the nature of injury suffered by appellant to be grievious. He submits that apart from medical bills Tribunal awarded consolidated amount of Rs. 20,000/- on the heads of pain and sufferings, special diet, grievous injuries but has not awarded any amount towards attendant, loss of amenities and joy in life and also on conveyance, overlooking the documents placed on record, appellant took treatment as in-patient from 07.01.2014 to 14.1.2014 and 25.01.2014 to 27.01.2014. Appellant was resident of village Deori (Donar) but he took treatment at Narayana Hospital, Raipur. He submits that the amount of compensation be suitably enhanced.

8. Mr. Shivendu Pandya, learned counsel for Respondent 2-Insurance Company would submit that the Claims Tribunal exonerated the Insurance Company from its liability as on the date

of accident Respondent 1 was not possessed with valid and effective driving licence. He further submits that the amount of compensation awarded by learned Claims Tribunal is just and proper which does not call for any interference.

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

10. Perusal of record would show that the date of accident is 07.01.2014, accident took place near Parasvani nala turn. After the accident, appellant immediately taken to Community Health Centre, Magarlod and thereafter he was shifted to Narayana Hospital, Raipur where he took treatment as in-patient from 07.01.2014 to 14.01.2014. Tribunal has not awarded any amount towards conveyance expenses. In the facts of the case, in the opinion of this Court, appellant will be entitled for amount of compensation towards conveyance expenses for his travelling from Magarlod to Raipur and returning back to his village. Claims Tribunal has further not awarded any amount towards attendant overlooking the fact that the appellant took treatment as in-patient for about 1 week at Raipur. Tribunal not awarded any amount towards loss of amenities and joy in life which appellant suffered due to motor accidental injuries suffered by him and further loss of income during the period of treatment.

11. Taking into consideration the nature of injuries, period of treatment, travelling of appellant from Magarlod to Raipur for his treatment and nature of injuries which deprived the appellant from earning his livelihood for considerable period, I find it appropriate to award consolidated amount of Rs. 20,000/- in addition to the amount

already awarded by the Claims Tribunal.

12. Now the appellant-claimant shall be entitled for Rs. 1,48,500/- as total compensation instead of Rs. 1,28,500/- awarded by learned claims Tribunal. Aforesaid amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization.

13. At this state, learned counsel for appellant submits that the appellant is a poor person, hence, a direction may be issued to the Insurance company to first deposit the entire amount of compensation and thereafter to recover the same from Respondent 1. He submits that issuance of insurance policy for the offending vehicle is not disputed, exoneration of Insurance company is only on the ground that at the time of accident driver of offending vehicle was not possessed with valid and effective driving licence. The issue with regard to issuance of direction to the Insurance company to first pay the amount of compensation and thereafter to recover the same from the owner of offending vehicle has been considered by Hon’ble Supreme Court in case of **Shamanna and another v. Divisional Manager, Oriental Insurance Company Ltd.** reported in **2018 (9) SCC 650** in which Hon’ble Supreme Court has held thus:

> “6. As per the decision in National Insurance Company Limited vs. Swaran Singh (supra), onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, “pay and recover” can be ordered in case of third party risks. The Tribunal is required to consider “as to whether the owner has taken reasonable care to find out as to whether the driving

> licence produced by the driver... does not fulfill the requirements of law or not will have to be determined in each case”

14. In the case at hand also there was breach of policy conditions on account of driver not possessing valid and effective driving licence on the date of accident. Taking support of the aforementioned rulings of the Hon’ble Supreme Court in case of **Shamanna (supra)**, I find it appropriate to direct Respondent 2- Insurance Company to first deposit the entire amount of compensation along with interest and thereafter to recover the amount so deposited by it by Respondent 1 in accordance with law.

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

Sd/-
(Parth Prateem Sahu)
Judge

Pawan