

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1448 of 2015**

- Ku. Shikha Chouhan, daughter of Sukhdev Chouhan, aged about 19 years, resident of Old Bhattipara Kirandul, Bailadila, District Dantewada Chhattisgarh

---Appellant**VERSUS**

1. Vijay Kumar Lalchandani, son of Meghraj Lalchandani, resident of Rishi Colony Dayalband, Bilaspur, Police Station Torwa, District Bilaspur Chhattisgarh **-----Owner**
2. Laxman Das, son of late Shri Anand Das, aged about 35 years, resident of Bannka Chowk, Near Marghat Sirgitti, Police Station Sirgitti, District Bilaspur Chhattisgarh
3. ICICI Lombard Vehicle Insurance Company Limited, through Manager Office, Bilaspur District Bilaspur Chhattisgarh

----Respondents

For Appellant	:	Mr. Ashok Soni, Advocate
For Respondent 1	:	Mr. Hemant Gupta, Advocate
For Respondent 3	:	Mr. Tessy Abraham, Advocate on behalf of Mr. Amrito Das, Advocate

*(proceedings through Video Conferencing)***Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****09/08/2021**

1. Challenge in this appeal is to the award dated 24.04.2015 passed by learned Fifth Additional Motor Accident Claims Tribunal, Bilaspur, C.G. (for short "Claims Tribunal") in claim case no. 166/2014, 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 Rs. 1,00,020/- as total compensation.

2. Facts relevant for disposal of this appeal are, that on 14.04.2013, at about 07:00 pm, when appellant/ claimant was travelling from Tifra Bilaspur to Chakarbhata Dental College on an auto-rickshaw bearing registration no. CG10 T 4010 along with her friend Kumari Kiran Sahu. At that relevant time, when auto-rickshaw reached near new bus stand Tifra one Tata magic vehicle bearing registration no. CG10 C 7911 (hereinafter "offending vehicle") driven rashly and negligently by non-applicant 2/ Respondent 2, dashed the auto-rickshaw and caused accident. In the said accident, appellant suffered grievous injuries on her person. She suffered fracture injury over her right leg apart from other injuries on her waist, hand and head. She was immediately taken to CIMS hospital, Bilaspur on 14.04.2013. Accident was reported to concerned police station based upon which criminal case was registered against non-applicant 1.
3. Appellant filed an application under Section 166 of the Act of 1988 pleading therein that on account of aforementioned accident, she suffered grievous injuries on her person; fracture injury over her right leg. She was shifted to Sanjeevani hospital and research centre, Bilaspur from CIMS hospital on 15.04.2013 for better treatment where she took treatment as in-patient till 24.04.2013. She is still under treatment and taking medicines as prescribed to her. She underwent operation of her right femur and expended about Rs. 3,10,000/- towards her treatment. Appellant claimed Rs. 7,90,000/- as total compensation on different heads.
4. Non-applicant 1/ Respondent 1, owner of the offending vehicle, submitted reply to the claim application, denying the facts pleaded

therein and further pleaded that the amount of compensation as claimed is highly exaggerated. Offending vehicle was insured with non-applicant 3, as such, the liability if any to satisfy the amount of compensation would be of non-applicant 3. The owner, driver and insurer of other vehicle involved in the accident were not arrayed as non-applicants, hence, the claim application is not maintainable.

5. Non-applicant 3/ Insurance Company submitted its separate reply denying the facts pleaded in the claim application and further pleaded that non-applicant 3 was not possessed with valid and effective driving licence, as such, there was breach of policy conditions. The amount of compensation claimed is highly exaggerated. The liability to satisfy the amount of compensation would be upon non-applicant 1 and 2.
6. Learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties held that appellant suffered grievous motor accidental injuries on her person on account of rash and negligent driving of offending vehicle by non-applicant 2. Breach of policy conditions was not found to be proved and awarded Rs. 1,00,020/- as total compensation.
7. Mr. Ashok Soni, learned counsel for the appellant/ claimant submits that the Claims Tribunal erred in awarding meagre amount of compensation. He further submits that the Claims Tribunal has awarded only Rs. 68,020/- towards the bills placed by appellant and Rs. 10,000/- towards mental pain and agony

overlooking the nature of injury & treatment underwent by the appellant. It is further argued that the Claims Tribunal has not awarded any amount of compensation towards grievous injuries in the facts of the case where the appellant suffered fracture of right femur for which she underwent operation and took treatment for long time even after her discharge from the hospital. No amount has been awarded towards the loss of amenities and joy in life for the period when the appellant was under treatment and might not have performed her all activities for a considerable period. He further submits that learned Claims Tribunal has awarded the bills Ext. P-12, 39 & 40 placed on record. Ext. P-12 is the bill of fruit supplier which is not considered only because the treatment of appellant was at Bilaspur whereas the fruit supplier is of Kirandul, Dantewada. He submits that the Tribunal has not considered that the appellant was prosecuting her studies at Dental college Chakarbhatta, Bilaspur but she was resident of Kirandul, Bailadila, Dantewada. After suffering injuries and taking treatment at Bilaspur, she went to Kirandul and stayed there for bed rest period and therefore she had purchased fruits there. Claims Tribunal has not awarded any amount towards future treatment nor the amount of compensation for her conveyance from Dantewada to Bilaspur. He submits that the appeal be allowed and the amount of compensation be suitably enhanced.

8. Mr. Tessy Abraham, learned counsel for Respondent 3, opposing the submissions made by learned counsel for the appellant would submit that the award passed by the Tribunal, in the facts and circumstances of the case, is just and proper. Tribunal has

considered the entire evidence placed on record in its true perspective. No evidence is brought on record that the appellant requires future treatment and the estimated cost of future treatment, hence, the Tribunal justified in not awarding amount for future treatment. He submits that the Claims Tribunal has awarded proper amount of compensation on the head of mental pain and agony and Rs. 10,000/- towards conveyance expenses. He submits that the amount of compensation awarded by the 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 carefully.
10. To appreciate the submissions made by the learned counsel for the appellant with regard to award of meagre amount of compensation is concerned, learned counsel for the appellant could not point out from the bills available on record with respect to treatment which of the bills placed on record and marked exhibits were not considered by the Tribunal. In view of the above, the submission of learned counsel for the appellant that the Tribunal has not awarded the entire bills towards medical expenses, is not sustainable and it is repelled. Award of medical bills, with others, of Rs. 68,020 is upheld.
11. So far as the submission with regard to non-award of any amount of compensation towards future treatment is concerned, appellant has placed on record the document of treatment of CIMS hospital and Sanjivani hospital, Bilaspur, from perusal of documents

placed on record as Ext. P-17 & P-20 would show that the appellant suffered fracture injury of her right thigh, she underwent operation whereby the closed interlocking nailing procedure of right femur was done on 15.04.2013. Treating doctor, Dr. Vinod Tiwari, was examined as AW-2, in his statement he proved the fact of date of accident and admission of appellant in the hospital as also the process of treatment. From the medical documents as well as the evidence of AW-2 would show that the appellant suffered grievous fracture injury of her right femur, she underwent operation. Claims Tribunal has not awarded any amount towards injury. Looking to the nature of injury and treatment taken by the appellant in the considered opinion of this Court, the appellant is entitled for Rs. 20,000/- towards grievous injuries suffered by her. So far as, the submission with regard to non-award of any amount of compensation towards future treatment, perusal of evidence of AW-2 would show that he stated that after treatment, the appellant might have cured fully. He further mentioned that it will be proper to give any opinion after examination. He further admitted that there is no document to show that after discharging from the hospital, appellant again visited for treatment. There is no other document or evidence brought on record by the appellant that further treatment for the motor accidental injuries was required. In view of absence of any specific evidence in this regard that the appellant has to undergo further treatment for the motor accidental injury, the submission of learned counsel for the appellant that the Tribunal erred in not awarding any amount towards future treatment is not sustainable and it is repelled. Claims Tribunal has rejected Ext. P-12, bill of fruit supplier, on the

ground that it is a bill of fruit supplier from Kirandul, Dantewada, whereas she took treatment at Bilaspur. The medical document Ext. P-17, the admission slip of CIMS hospital would show that address of appellant has been mentioned as Kirandul, Dantewada, Chhattisgarh and in Ext. P-18, the address has been mentioned as Triveni Dental College, Bilaspur. Appellant has placed on record document Ext. P-14 which is the bill issued by Aggrawal Travels, Main Market, P.O. Kirandul, showing the travel of appellant from Kirandul to Bilaspur. Further Ext. P-12 is placed on record of fruit supplier of Rs.9700/-. Claims Tribunal had disbelieved the bill only on the ground that the appellant underwent treatment at Bilaspur. From the evidence and document available on record would clearly show that after her accident and taking treatment from Sanjivani hospital, appellant went to her parents house at Kirandul, hence, the Claims Tribunal erred in disbelieving the bill of fruit supplier only on the ground that Ext.P-12 is of fruit supplier from Kirandul. After the treatment of accidental injuries, appellant might have taken special diet, hence in view of the above, appellant is entitled for an amount of Rs. 10,000/- towards special diet. Claims Tribunal has awarded only Rs. 10,000/- towards mental pain and agony, looking to the fact that the appellant was studying in dental college at the time of accident, she might have suffered loss of study due to injuries suffered by her, I find it appropriate to award Rs. 15,000/- towards mental pain and agony instead of Rs. 10,000/- as awarded by learned Claims Tribunal. The Tribunal has not awarded any amount towards loss of amenities and joy in life, looking to the nature of injury suffered by the appellant, I find it appropriate to

award Rs. 10,000/- towards loss of amenities and joy in life. Apart from above, appellant will also be entitled for Rs. 6,000/- towards attendant and Rs. 10,000/- towards conveyance as awarded by learned Claims Tribunal.

12. Accordingly, appellant shall be entitled for **Rs. 1,39,020/-** [Rs.68,020+ Rs.20,000+ Rs.10,000+ Rs.15,000+ Rs.10,000+ Rs.6,000+Rs.10,000] as total compensation instead of Rs. 1,00,020/-. The amount of compensation shall carry interest @ 7% p.a. from the date of filing of claim application till its realization.

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

Sd/-
(Parth Prateem Sahu)
Judge