NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 478 of 2015

- Jagannath Prasad Shukla S/o Late Sitaram Shukla, Aged About 56 Years R/o Qtr. No. 512/B/3 , Balco Nagar, Korba Chhattisgarh

---- Appellant

Versus

1. Munshi Golam Shaifuddin, S/o Munshi Golam Rasul Aged About 22 Years R/o Village Near Vardhman Park Sarkas, 1/23 Vardhman Thana, District Vardhman, West Bengal, At Present Bhadarapara House Of R.K. Singh Balco Nagar, District Korba Chhattisgarh
2. H.L. Dewangan, S/o Patiram Dewangan, R/o Qtr. No. 1075/A/5 Balco Nagar, District : Korba, Chhattisgarh
3. United India Insurance Company Limited Branch Office Near Stadium Road, T.P. Nagar, District : Korba, Chhattisgarh

----Respondents

For Appellant	:	Shri Shivang Dubey, Advocate
For Respondents- 1 and 2	:	Shri Basant Kaiwartya, Advocate
For Respondent- 3	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
01.02.2021

1. Appellant/Claimant has preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated 04.12.2014 passed by the Motor Accident Claims Tribunal, Korba (for short, 'Claims Tribunal') in Claim Case- 16 of 2013, whereby learned Claims Tribunal allowed the application under Section 166 of the Act of 1988 and awarded Rs.36,240/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 23.11.2007 at about 9.30 when appellant was standing on side of the Road, NA1 while driving Motorcycle bearing No.CG 12G-5035 (for short, 'offending vehicle') rashly and negligently, dashed the appellant from his back. In the said accident, appellant suffered grievous injuries over his right leg, head and

other parts of the body. He was immediately taken to the hospital, where he underwent operation.

3. Appellant filed application under Section 166 of the Act of 1988 seeking compensation of Rs.7,06,448/- pleading therein that on account of motor accidental injuries suffered by him, he suffered compound fracture over his right leg, he underwent operation and steel rod was implanted. He suffered permanent disability on his right leg. He is unable to walk without any support/crutches.

4. NA1, driver of offending vehicle did not appear and was proceeded *ex parte*.

5. NA2, owner of offending vehicle while resisting the claim, further pleaded that he has been falsely impleaded in the case. Offending vehicle was insured with NA3/Insurance Company and as such, Insurance Company is liable to satisfy the amount of compensation.

6. NA3/Insurance Company while denying the pleadings made in the claim application, further pleaded that amount of compensation is highly exaggerated. Appellant was aged about 60 years, he did not suffer any permanent disability, injuries were simple in nature and he recovered fully. It was further pleaded that NA1 was not possessed with valid and effective driving license. There was breach of policy conditions, there was contributory negligence on the part of claimant as he himself dashed with the Motorcycle while crossing the road.

7. Upon appreciation of pleadings and evidence brought on record by respective parties, Claims Tribunal held that the claimant suffered motor

accidental injuries on account of rash and negligent driving of offending vehicle by NA1. Offending vehicle was being driven in breach of policy conditions as on the date of accident, NA1 was not possessed with valid and effective driving license with him and awarded Rs.36,240/- as total compensation.

8. Shri Shivang Dubey, learned counsel for the appellant submits that Tribunal erred in awarding meagre amount of compensation overlooking the nature of injuries suffered by him; period of treatment as inpatient for about 79 days; he further pointed out that Tribunal has awarded meagre amount of Rs.20,000/- towards pains and suffering, Rs.15,000/- towards nutritious diet, attendant and conveyance consolidatedly. No amount is awarded towards loss of amenities and joy in life, he further contended that the Tribunal has not awarded any amount towards loss of earning during the period of treatment and lastly, contended that learned Claims Tribunal has erroneously exonerated the Insurance Company from its liability. It is further contended that even if, Tribunal arrived at a conclusion that on the date of accident, NA1 was not possessed with valid and effective driving license, then also, direction ought to have been issued to Insurance Company to first pay the entire amount of compensation and thereafter, to recover the same from owner/NA2 of the offending vehicle.

9. Shri Basant Kaiwartya, learned counsel for respondents-1 and 2, driver and owner of offending vehicle submits that learned Claims Tribunal based upon pleadings and evidence brought on record by the respective parties, have passed just amount of compensation in the facts and circumstances of the case, which does not call for any interference. He also submits that appellant was working with BALCO (Bharat Aluminium Company), Korba, he did not suffer any loss of income and not suffered any permanent disability.

10. Shri Dashrath Gupta, learned counsel for the respondent/Insurance company, while supporting the award passed by the Tribunal, submits that appellant has not placed on record clinching evidence to show that on account of his treatment as inpatient, he suffered any loss towards his income. Claims Tribunal after taking into consideration, nature of injuries, treatment taken, has awarded just amount of compensation which does not call for any interference. He submits that on the date of accident, NA1 was not possessed with Driving License, as such, Tribunal has rightly arrived at a finding that there was breach of policy condition and exonerated the Insurance Company from its liability. If for any reason, this Court comes to the conclusion that a direction is to be issued to the respondent/Insurance Company to first pay the amount of compensation and then recover from NA1 and 2, driver and owner offending vehicle, it should be clarified that Insurance Company to pay only the amount which is not paid by NA1, owner of offending vehicle.

11. We have heard learned counsel for the respective parties and also perused the record.

12. First submission made by learned counsel for the appellant with regard to enhancement of the amount of compensation is concerned, it is argued by learned counsel for the appellant referring to the evidence of Discharge Report of Balco Hospital available on record at Page-9 along with unexhibited documents that appellant took treatment as inpatient for about 79 days, but perusal of that document would show that appellant was admitted in hospital on 23.11.2007 and was discharged on 10.01.2008. It is evident that appellant took treatment as inpatient only for about 49 days. In his evidence, appellant has not stated in categorical terms as to for what period he availed Earned Leave for the purpose

of treatment. In paragraph 3 of his evidence, appellant stated that the Company gave him salary for a period of 79 days. In absence of any specific statement and evidence brought on record as to what period of Earn Leave has been availed for treatment of motor accidental injuries suffered by him, this Court is unable to count the period of Earned leave. Hence, we do not find any force in the submission made by learned counsel for the appellant that the appellant suffered loss of income during the period of treatment.

13. Learned Claims Tribunal has awarded amount of all medical bills placed on record. During the course of argument it could not be brought to the notice of this Court that the Tribunal has not considered any of the proved medical bill. In view of above, we affirm the award of **Rs.1,240/-** towards medical expenses.

14. Appellant undisputedly suffered segmental fracture over Tibia right. He took treatment for 49 days as inpatient, underwent operation which itself shows the seriousness of injuries suffered by him. On the date of accident, appellant has been shown to be aged about 51 years. Taking note of his age, nature of injuries and process of treatment, appellant might have suffered pains for long time even after discharge from the Hospital. Considering the above proved facts available on record, we find it appropriate to award **Rs.30,000/-** towards pains and suffering instead of Rs.20,000/- as awarded by the Claims Tribunal.

15. Learned Claims Tribunal has not awarded any amount towards loss of amenities and joy in life. Award of compensation on non-pecuniary damages has been considered by Hon'ble Supreme Court in the matter of **R.D. Hattangadi vs M/s Pest Control (India) Pvt. Ltd. and others** reported in AIR 1995 SC 755**,** and held as under:-

> "17. ……...."When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000/- in respect of claim for pain and suffering and Rs.1,50,000/- in respect of loss of amenities of life...." (emphasis supplied)

16. Taking support from the aforementioned ruling of Hon'ble Supreme Court, facts of the case and nature of injuries, we find it appropriate to award **Rs.30,000/-** towards the loss of amenities and joy in life as appellant may not be able to do all the work and activities which he was doing prior to the date of accident.

17. Learned Claims Tribunal has awarded consolidated amount of Rs.15,000/- on the head of nutritious diet, attendant and conveyance.

18. Appellant took treatment as inpatient in the hospital for 49 days. In view of nature of injuries, we are of the view that compensation awarded on the above head is on lower side. We find it appropriate to award **Rs.20,000/-** for conveyance nutritious diet and attendant.

19. Now appellant/claimant is entitled for Rs.81,240/- (1240 + 30000 + 30000 + 20000) as total compensation instead Rs.36,240/-.

20. Amount of compensation shall carry interest @ 8% per annum from the date of filing claim application, till its realisation. Other conditions imposed by the Claims Tribunal shall remain intact.

21. Now, we will consider the 2nd submission made by learned counsel for the appellant with regard to the direction to be issued to the Insurance Company to first pay the entire amount of compensation and thereafter to recover the same.

22. Claims Tribunal has exonerated the Insurance Company on the ground that on the date of accident, NA1 was driving offending vehicle in breach of policy conditions as he was not possessed with valid and effective driving license.

23. The issue with regard to breach of policy conditions for want of valid Driving License has been considered by Hon'ble Supreme Court in case of **Shamanna and another Vs Divisional Manager, Oriental Insurance Company Limited and others,** (2018) 9 SCC 650 and held thus:

> “5. In the case of third party risks, as per the decision in *National Insurance Company Ltd. v. Swaran Singh and others (2004) 3 SCC 297*, the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third-party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Elaborately considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, “pay and recover” can be ordered. In para 110, the Supreme Court summarised its conclusions as under: (SCC pp. 341-42)

"110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) xxxxxxxxx

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(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."

6. As per the decision in Swaran Singh case, 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 fulfil the requirements of law or not will have to be determined in each case."

24. Taking support of aforementioned ruling of Hon'ble Supreme Court, we direct respondent-3 Insurance Company to first deposit entire unsatisfied amount

of compensation along with interest and thereafter to recover the same from respondents 1 and 2 in accordance with law.

25. The appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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