NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 343 of 2015

- Mahbula Khan S/o Amanula Khan, aged about 28 years R/o Ward No.3, Nagar Panchayat Pratappur Post Office, Police Station & Tahsil Pratappur, District Surajpur (CG)

---- Appellant (owner of vehicle)

Versus

1. United India Insurance Company Limited, Bramha Road, Near Kumkum Hotel, Ambikapur, Post Office Ambikapur, District Surguja (CG) (Insurer of Vehicle)

2. Ajeebh Khan, S/o Ajim Khan, aged about 24 years, R/o Village Gouripur, Post Office & Police Station Chalgali, District Balrampur-Ramanujganj (CG) (Driver of vehicle)

3. Kanchan Prasad Jaiswal, son of Late Heera Prasad Jaiswal, aged about 48 years, resident of village Pratappur, Post Office, Police Station & Tahsil Pratappur, District Surajpur (Chhattisgarh)

(Claimant)

---- Respondents

For Appellant	:	Mr. V.K. Pandey, Advocate
For Respondent No.1	:	Mr. Dashrath Gupta, Advocate
For Respondent No.2	:	None.
For Respondent No.3	:	Mr. Neeraj Kumar Mehta, Advocate

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

20/1/2021

1. Challenge in this appeal is to the award dated 27.1.2015 passed by the Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur (for short 'the Claims Tribunal') in Claim Case No.12/2014 whereby the Claims Tribunal allowed application for grant of compensation in part, awarded Rs.2,52,160/- as total compensation in an injury case and while exonerating Insurance Company from its liability, held

appellant herein liable to pay the amount of compensation.

2. Facts relevant for disposal of this appeal are that on 4.5.2013 respondent No.3-claimant was travelling on Tata Sumo Spacio vehicle bearing registration number CG15-B-0143, owned by non-applicant No.1/appellant herein, and going to village Markadand from village Pratappur. On the way near village Tukudand (near Patrengi brook), the offending vehicle turned turtle due to rash and negligent driving of non-applicant No.3. In the said accident, claimant-respondent No.3 suffered injuries over his chest, ribs, back and both legs. He was taken to Jeevan Jyoti Hospital, Ambikapur and thereafter he took further treatment from Sir Sunderlal Hospital, Varanasi and also from a hospital in Daltonganj.

3. Claimant-respondent No.3 filed an application under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.7,46,179/- on the ground that on account of injuries suffered by him in the aforementioned accident, he incurred Rs.61,179/- in his treatment. He has also claimed an amount of Rs.1,35,000/- towards loss of income during treatment period.

4. Non-applicant No.1-Insurance Company resisted claim by filing reply pleading therein that the claimant has not suffered nature of injuries as pleaded in claim application; he has not filed any document showing his income, as claimed in application. The offending vehicle was insured as a 'private car' covering risk of third party only, however, on the date of accident, it was being plied in breach of policy conditions, hence the insurance company is not having any liability to indemnify the insured.

5. Non-applicants No.2 & 3, appellant and respondent No.2 herein, submitted their joint reply to claim application, while denying the pleadings made therein further pleaded that amount of compensation claimed is highly exaggerated,

grounds urged in claim application are false and fabricated; the offending vehicle was driven by non-applicant No.3, who was possessed with valid and effective driving license; accident took place on account of mechanical defect (failure of steering) in the offending vehicle and not on account of rash and negligent driving of offending vehicle by non-applicant No.3. Claimant / respondent No.3 suffered injuries of simple nature; on the date of accident, the offending vehicle was insured with non-applicant No.1, hence the entire liability to pay amount of compensation is upon non-applicant No.1.

6. The Claims Tribunal upon appreciation of pleadings and evidence brought on record by respective parties held that claimant-respondent No.3 suffered motor accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant No.3; there was breach of policy condition, while exonerating insurance company from its liability, awarded Rs.2,52,160/- as total compensation, which included Rs.58,160/- towards medical and transportation expenses.

7. Mr. V.K. Pandey, learned counsel for appellant-owner of offending vehicle submits that the Claims Tribunal erred in exonerating Insurance Company from its liability and saddling appellant herein with the liability to satisfy the amount of compensation. He further contended that the Claims Tribunal erred in not considering that claimant-injured has suffered only simple injuries and in arriving at a conclusion that appellant could not be able to work for a period of nine months which in the facts and circumstances of the case is erroneous. The award on loss of income from agriculture is also wrongly assessed. He pointed out that amount of compensation awarded by the Claims Tribunal is on higher side taking into consideration nature of injuries suffered by claimant-injured, therefore, the amount of compensation awarded to claimant is liable to be scaled down suitably.

8. Mr. Dashrath Gupta, learned counsel appearing on behalf of respondent No.1 opposes the submissions made by learned counsel for appellant and submits that the Claims Tribunal based on evidence available on record has rightly recorded the finding that there was breach of policy condition and as such insurance company is not liable to indemnify insured, finding with regard to breach of policy condition does not call for any interference.

9. Mr. Neeraj K Mehta, learned counsel representing respondent No.3-claimant submits that respondent No.3 suffered grievous injuries over his person, he had to undergo treatment for long period which is evident from medical documents available on record. He further contended that on account of nature of injuries suffered by him, respondent No.3 could not be able to run grocery shop and also to do agriculture work, which were the sources of his livelihood. The Claims Tribunal has rightly taken into consideration the medical documents wherein the period of treatment is mentioned and further rightly assessed loss of income during period of treatment. The Claims Tribunal on the basis of documentary evidence placed on record has awarded just amount of compensation which does not call for any interference.

10. We have heard learned counsel for the parties and perused record of claim case.

11. So far as submission made by learned counsel for appellant with regard to exoneration of insurance company from its liability on the ground of breach of policy condition is concerned, perusal of the record would show that offending vehicle was insured with respondent No.1 Insurance Company as a 'private car' and the policy issued was 'liability only' policy. Evidence of AW-2 Bharatlal, one of the occupants of offending vehicle, reflects that in the cross-examination this witness has admitted that offending vehicle was hired by

them. In view of specific evidence of AW-2 Bharatlal that he was travelling in offending vehicle as a passenger after hiring it, in the opinion of this Court, the Claims Tribunal has not committed any error in arriving at a conclusion that there was breach of policy condition as on the date of accident, offending vehicle was being used for commercial purpose, whereas it was insured as a private car.

12. So far as second submission made by learned counsel for appellant with regard to quantum of compensation is concerned, the Claims Tribunal has awarded Rs.58,160/- towards medical and transportation expenses. Respondent No.3-claimant has filed MLC as Ex.A-7, discharge ticket of Jeevan Jyoti Hospital as Ex.A-18, OPD Slip of Sunderlal Hospital, Kashi Hindu University and other medical prescriptions as Ex.A-10 to A-17. Cash receipts showing purchase of medicines, hospital charges and vehicle charges have also been placed on record as Ex.A-22 to A-54. In view of aforementioned documentary evidence placed on record by respondent No.3, we do not find any reason to interfere with the amount of compensation awarded by the Claims Tribunal under the head 'medical and transportation expenses'.

13. The Claims Tribunal has awarded Rs.20,000/- towards physical and mental agony. Looking to the nature of injuries, as mentioned in MLC (Ex.A-7) and discharge ticket (Ex.A-18), we are not inclined to interfere with the amount awarded under the head 'physical and mental agony'.

14. The Claims Tribunal has awarded Rs.54,000/- towards loss of income from grocery shop for a period of 9 months and Rs.1,20,000/- towards loss of income from agriculture for a period of one year. Perusal of medical documents placed on record would show that claimant took treatment at Jeevan Jyoti Hospital, Ambikapur only for one day i.e. from 4.5.2013 to 5.5.2013. There is no other document available on record

to show that respondent No.3 took treatment as inpatient in any hospital, but all the documents placed on record by appellant would show that he took treatment as out-patient in different hospitals. No evidence is available on record to show the nature of treatment taken by claimant vis-a-vis nature of injuries requiring bed-rest for such a long period. In absence of any specific evidence placed on record by respondent No.3-claimant, in the considered opinion of this Court, the Claims Tribunal erred in assessing loss of income for a period of 1 year. Agriculture field recorded in the name of respondent No.3-claimant could have been very well maintained by engaging a person in place of claimant for the period in which he was not in a position to supervise or work in his field. Respondent No.3 has not placed on record any document to show that he owns a Kirana (grocery) shop. In a certificate stated to be issued by the Sarpanch concerned, which was placed on record as Ex.A-19, also there is no mention with regard to fact that respondent No.3 could not be able to run his grocery shop for any period. In absence of any admissible piece of evidence showing that grocery shop of the injured was not running if he owns such shop as stated by respondent No.3, loss of income from grocery shop is not acceptable. The Claims Tribunal erred in awarding Rs.54,000/- towards loss of income from grocery shop, therefore, the same is hereby set aside.

15. Looking to the nature of injuries and treatment taken, respondent No.3-claimant may not be able to work in his agriculture field for some time but definitely not for a period of one year. Taking into consideration the nature of injuries mentioned in the medical documents available on record, we find it appropriate to hold that respondent No.3-claimant might not be able to work for a period of 04 months and for which he has to engage some other person to work and supervise agriculture field in his place. Taking into consideration the

date of accident i.e. 4.5.2013, we find it appropriate to assess monthly wages of the person to be engaged for the purpose of supervision and working in agriculture field as Rs.4,500/-, as of a labourer. As we have held that claimant-respondent No.3 could not be able to work for a period of four months, hence the loss of income during the period of treatment will come to Rs.20,000/- (4500x4).

16. Now respondent No.3-claimant will be entitled for a total sum of Rs.98,160/- instead of Rs.2,52,160/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 7.5% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/respondent No.3 as compensation shall be adjusted from the total amount of compensation as calculated above.

17. Accordingly, the appeal is allowed in part. Impugned award stands modified to the extent indicated above.

Sd/-
(P.R Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-