

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 656 of 2022**

- Fulbas, W/o Shyamsundar, aged about 40 Years, Occupation Agriculture, R/o Vilalge Karamdiha (B) Gudipara, Police Station Basantpur, District Balrampur Ramanujganj, Chhattisgarh.

---- Appellant**Versus**

1. Umashankar Yadav, S/o Ayodhya Prasad Yadav, aged about 34 Years, R/o Village Chera, Police Station Trikunda, District Balrampur Ramanujganj, Chhattisgarh. (Driver Of The Offending Vehicle)
2. Iffco Tokyo Insurance Company Limited, Registered Branch Iffco Sadan C 1 District Centre, Saket, New Delhi 110017 (Insurer of the Offending Vehicle)

---- Respondents

For Appellant	Ms. Priya Kaiwart & Mr. Sangeet Kumar Kushwaha, Advocates.
For Respondent No.1	Ms. Nikita Jangde, Advocate on behalf of Mr. Rahul Mishra, Advocate.
For Respondent No.2	Mr. Vaibhav Shukla and Mr. Himanshu Yadu, Advocates.

Hon'ble Shri Justice Radhakishan Agrawal
Judgment on Board

30/11/2023

1. This appeal is by the claimant/injured against the award dated 28.09.2021 passed by the Motor Accident Claims Tribunal, Balrampur place Ramanujganj, C.G. in Motor Accident Claim Case No.02/2019, awarding total compensation of Rs.70,932/- with interest @ 9% per annum from the date of application till realization, while fastening liability on the Insurance Company. For the sake of convenience, the parties shall hereinafter be referred to as per their description before the Tribunal.
2. As per claim petition, on 21.02.2018 at about 6:00 pm, appellant Fulbas, aged about 40 years, earning Rs.5,000/- by doing agricultural work, along

with her husband was going on moped from village Karamdiha to Wadrafnagar. However, on the way near Karamdiha main road, non-applicant No.1/driver of the vehicle Omni Car bearing registration No.CG04-HX-0863 (hereinafter called as 'offending vehicle') by driving the same in a rash and negligent manner, dashed the said the moped, as a result of which, claimant- Fulbas sustained grievous injuries over her body including fractures of pelvic bone (ulna) and the ribs. Thereafter, claimant was admitted in Wadrafnagar Hospital for primary treatment and after that, she was shifted to District Hospital, Ambikapur and from there, she was admitted in Holycross Hospital, Ambikapur for better treatment and thereafter, she was admitted to Banaras Hindu University, Varanasi and Astha Hospital, Robertsganj for treatment. At the relevant time, the offending vehicle was insured with non-applicant No.2.

3. On claim petition being filed by the claimant/injured under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.04,30,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
4. Learned counsel for the appellant submits that the Tribunal has wrongly assessed the income of claimant / injured at Rs.7,800/- per month and granted Rs.15,600/- towards loss of income for a period of two months, whereas it should be Rs.9,000/- per month. He further submits that the Tribunal has not properly considered the medical bills produced by the claimant totaling Rs.53,052/- and only granted Rs.20,332/- towards medical expenses, which needs to be reassessed suitably. He also submits that the amount awarded by the Tribunal under the head of attendant, transportation, special diet and mental agony and pain and suffering, is also on lower side, which needs to be enhanced suitably.

5. On the other hand, learned counsel for the respondent No.2/Insurance Company submits that the monthly income for assessing loss of income of the claimant assessed by the Tribunal is on higher side as the claimant herself, in her claim petition, has pleaded that at the time of incident, she was earning Rs.5,000/- per month by doing agricultural work, but the Tribunal assessed the income of claimant as Rs.7,800/- per month and granted Rs.15,600/- towards loss of income for two months, which is on higher side and needs to be reduced suitably. He further submits that the Tribunal has rightly considered the medical bills produced by the claimant and the amount under the head of attendant, transportation, special diet and pain and suffering is also just and proper, which needs no interference by this Court.
6. Counsel for the respondent No.1 / driver supports the impugned award.
7. Heard learned counsel for the parties and perused the impugned award.
8. A perusal of the record would reveal that indisputably due to rash and negligent driving of offending vehicle by its driver/non-applicant No.1, the claimant sustained fractures of pelvic bone in the wrist of left hand and both the ribs including injuries on her legs and other parts of her body, as is evident from Ex.P-14 Discharge Ticket, for which, she was admitted in PHC Wardrafnagar on 21.12.2018, thereafter, for better treatment, she was admitted in District Hospital, Ambikapur from 21.02.2018 to 23.02.2018 and from 23.02.2018 to 24.02.2018 in Holycross Hospital, Ambikapur. She was also admitted in Banaras Hindu University, Varanasi from 25.02.2018 to 28.02.2018. Lastly, she took treatment in Astha Hospital, Robertsganj Sonbhadra from 03.03.2018 till 15.03.2018, which is evident from the MLC report of claimant Ex.P-2. As per opinion of the Dr. Govind Singh, CHC Wadrafnagar, the injuries sustained by the claimant would take 1½ -3 three

months' time to recover and that she would be confined to bed till she recovers from such injuries & fractures. A perusal of record would also reveal that claimant has produced the medical bills (Ex.P-4 to Ex.P-74) before the Tribunal to show the expenses incurred by her during treatment. However, the Tribunal did not take into account the bills marked as Ex.P-37, Ex.P-56, Ex.P-59 and Ex.P-60 on the ground that those bills do not bare any name, seal and details and while taking into consideration the other bills produced by the claimant, granted Rs.20,332/- towards medical expenses. The approach of the Tribunal in not considering the aforesaid bills is not proper as the claimant sustained serious injuries including fractures for which she was required to be admitted in different hospitals for better treatment and that too, as per opinion of the Doctor, she had to be confined to bed for a period of 1 ½ -3 months. Thus, in my opinion, the Tribunal, looking to the nature and extent of injuries including fractures sustained by the claimant, ought to have considered those bills. Now a perusal of Ex.P-37 (medical bill), it is clear that though no such details are mentioned in the said bill, but the claimant must have purchased pelvic binder due to fracture sustained by her in the wrist of left hand. Likewise, in the bill (Ex.P-56) issued by Astha Hospital, Robertsganj, Sonbhadra (UP), details of fees by the concerned Hospital were mentioned which shows that the claimant must have incurred expenses towards treatment in the said hospital. Similarly, Exs.P-59 and Ex.P-60, medical bills also issued by Astha Hospital, Robertsganj, Sonbhadra would show that the appellant must have paid Rs.10,000/- and Rs.650/- for her treatment in the said hospital. Merely, because the said few bills do not contain any name, seal or details, those bills cannot be discarded on the ground that they are not genuine. This apart, the Insurance Company did not rebut and challenge the same in cross-examination. Therefore, looking to the nature of multiple injuries

including fractures sustained by the claimant in vehicular accident and treatment took by her in different hospitals as mentioned above, I, propose to award a sum of Rs.53,052/- towards medical expenses as shown in the bills marked as Ex.P-4 to P-74, instead of Rs.20,332/- as awarded by the Tribunal. The amount of Rs.53,052/- would meet the ends of justice and cannot be said to be excessive.

9. As regards the income of the claimant, though the claimant herself has pleaded that she used to earn Rs.5,000/- by doing agricultural work, however, the Tribunal, looking to the nature and extent of injuries sustained by the appellant, awarded Rs.15,600/- for loss of income. Although an amount of Rs.15,600/- was for a period of two months, but in the facts and circumstances of the case and looking to the nature, number and extent of injuries suffered by the claimant, the period of her hospitalization and considering the pleading of the claimant that at the time of accident, she was earning Rs.5,000/- per month, it would be appropriate for this Court to award Rs.15,600/- towards loss of income for a period of three months instead of two months as determined by the Tribunal, which would meet the ends of justice.
10. Apart from the above, the Tribunal awarded Rs.10,000/- towards attendant, Rs.15,000/- towards transportation, Rs.5,000/- special diet and Rs.5,000/- for mental agony, pain and suffering, which, in the considered opinion of this Court, is on lower side and needs reconsideration. Considering the facts and circumstances of the case, the nature, number and extent of injuries including fractures suffered by the claimant, the period of her hospitalization in different hospitals & places and the expenses incurred by her, I propose to recompute the compensation by awarding a sum of Rs.24,000/- towards attendant for a period of three months, Rs.25,000/- towards transportation, Rs.15,000/- towards special diet for a period of three months and Rs.40,000/- towards

mental agony and pain and suffering. Thus, a total amount under the above heads would come to Rs.1,19,600/-.

11. In view of above, the claimant is entitled for compensation in the following manner:-

S.No.	Head	Awarded by the Tribunal (Rs.)	Awarded by this Court (Rs.)
1.	Loss of income of claimant @ of Rs.7,800/- per month as assessed by the Tribunal	Rs.15,600/- (for two months)	Rs.15,600/- (for three months)
2.	Towards Medical expenses	Rs.20,332/-	Rs.53,052/-
3.	For attendant	Rs.10,000/-	Rs.24,000/- for a period of three months
4.	For Transportation	Rs.15,000/-	Rs.25,000/-
5.	For Special Diet	Rs.5,000/-	Rs.15,000/- for a period of three months
6.	Towards mental agony and pain and suffering	Rs.5,000/-	Rs.40,000/-
		Rs.70,932/-	Rs.1,72,652/-

12. Since the Tribunal has already awarded Rs.70,932/- after deducting the same from the above amount i.e. Rs.1,72,652/-, the claimant is held entitled for an additional compensation of **Rs.1,01,720/-** with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

13. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-
(Radhakishan Agrawal)
Judge