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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 847 of 2013

Banshidhar son of Gangadhar, aged about 40 years, resident of behind Sharda Vidyalay, Hanuman Mandir Road, Supela, Tahsil and District Durg (Chhattisgarh) PIN 490 023

Versus

1. Lakhan Lal, son of Buddhuram, resident of Kurud Road, Kohka,P.S. And P.O. Supela, Bhilai, District Durg (C.G) PIN – 490 023 *(Driver of offending Vehicle No.C.G.07-M/9445)*.

2. Smt. Leela Sahu, wife of Shri Jageshwer Sahu, resident of Rani Awanti Bai Chowk, Kurud Road, Kohka, P.S. & P.O. Supela, Bhilai, Distt. Durg (C.G) PIN – 490 023 *(Owner of Vehicle No.C.G.07-M/9445).*

3. Manager, Reliance General Insurance Company, Jai Stambh Chowk, G.E. Road, Raipur (C.G)

For the appellant	:	Mr. Vipin Kumar Tiwari, Advocate.
For Respondent No.3	:	Mr. Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

15.10.2015

1. This is an appeal against the award dated 20.02.2013 passed in claim Case No. 94 of 2012 by the Fifth Additional Motor Accidents Claims Tribunal, Durg.

2. The claim petition was filed by the injured claimant Banshidhar with the averments that on 30.01.2011 at about 3.25 p.m., he was going to his house situated at Muktidham, Ramnagar, Bhilai. At that time, a vehicle bearing Regn.No.07-M/9445 driven by non-applicant No.1 Lakhanlal in rash and negligent manner came to the wrong side and dashed the applicant, due to which, he fell down and sustained grievous injuries on both his legs. He was immediately admitted in Chandrakar Hospital, Bhilai.

Thereafter, he was admitted in Suraaj Hospital where he was treated from 16.01.2011 to 02.02.2011 and he was operated. Therefore, on different heads an amount of Rs.19,82,000/- was claimed.

3. Non-applicants 1 & 2, the driver and owner of the offending vehicle, denied the averments of the claim petition. It was stated that on 13.01.2011 no accident was actually caused by Non-applicant No.1. It was also stated that on the date of accident, the vehicle was driven in a moderate speed and the driver was having valid driving license. It was also stated that the vehicle was insured with Respondent No.3 and it was being plied within the terms of insurance policy, therefore, it was prayed that non-applicants 1 & 2 be exonerated.

4. Non-applicant No.3 the Insurance Company refuted the averments of the claim petition and stated that at the relevant time, the vehicle was being driven in breach of terms of policy, consequently, the insurance Company cannot be held liable to make good the payment. It was further contended that at the relevant time, non-applicants 1 & 2 were not holding valid and effective licence and permit to drive the vehicle, consequently the Insurance Company cannot be held liable to make good the payment.

5. The learned Tribunal on the basis of pleadings and evidence on record, has passed an award of Rs.1,94,052/- in favour of the claimant. The Tribunal has recorded a finding that on 13.01.2011, non-applicant no.1 drove the offending Scorpio Jeep bearing No.C.G.07M/9445 in rash and negligent manner and dashed the applicant thereby the applicant sustained

grievous injuries which has resulted in permanent disability. The finding of rash and negligent driving by the Jeep has not been challenged by non-applicants 1 & 2. Consequently, in absence of any challenge to the same, the said finding is affirmed.

6. Learned counsel for the appellant would submit that because of the accident, the claimant had sustained permanent injury which has resulted into functional disability of the claimant. He further submits that the learned Tribunal has assessed the income only on the notional basis without considering the loss of income on the basis of functional disability caused to the claimant. He further submits that the income tax returns were also placed on record to prove the fact that there has been loss of income. He further submits that the accident had happened on 13.11.2011, and because of the injuries sustained in the said accident, he was not able to raise any income, therefore, the income tax return for the relevant assessment year could not be placed as the income was completely stopped. Counsel for the appellant further submits that the income has been assessed by taking notional income of Rs.3000/- per month which could not have been accepted in view of the earlier tax returns which has been placed on record. It is also contended on behalf of the appellant that even the disability certificate which shows the disability of the petitioner to the extent of 45% is placed before this Court but an endorsement/seal was made on the top left side of the Certificate to the effect that *"not valid for court purpose"* whereas the certificate produced before the Tribunal shows the disability to the extent of 22% , therefore, he submits that there cannot be two degrees of

disablements for a single person. He, therefore, prays for a direction to make assessment of loss of income.

7. Per contra, learned counsel for the insurance company vehemently opposes the same and would submit that non-filing of pertinent tax returns for the assessment years 2011-2012 and 2012-2013 would show that there has been no loss of income at all. He further submits that because of this fact, the income tax returns might have been held back. He submits that in view of the evidence and documents which were placed before the Court below, the award is well merited which do not call for any interference, at this stage. He also submits that the application filed under Order 41 Rule 27 deserves to be dismissed.

8. I have heard learned counsel for the parties at length and have also perused the documents and evidence on record.

9. The tribunal in its award has assessed the loss of income by taking the notional income of Rs.3000/- per month. Before this court, the income tax returns for the assessment year 2009-2010 and 2010-2011 have been placed on record along-with certain other bills of the hospital and medical bills. The bills issued by the hospital would show that the appellant was operated and the amount was paid to Suraaj Hospital for the operation and different medicines.

10. A perusal of the income tax returns which are placed before this Court alongwith application under Order 41 Rule 27 shows the income for the assessment year 2009-2010 was to be Rs.1,48,700/- and subsequently for the year of 2010-2011, the income was shown to be Rs. 1,57,685/-, therefore,

in the considered opinion of this Court, in any case, the notional income of Rs.3000/- taken by the Tribunal appears too meagre on the face of above tax returns. Undoubtedly, the income tax returns for the assessment years 2011-2012 and 2012-2013 which would be relevant for this purpose have not been placed on record, therefore, in the considered opinion of this Court, in order to find out just compensation to the claimant, the documents filed on record along-with application under Order 41 Rule 27 CPC appears to be necessary since the documents of the assessment years 2009-2010 and 2010-2011 are placed on record. It is expected that the appellant shall produce the income tax returns for the assessment years 2011-2012 and 2012-2013 so as to assess the actual loss of income by the Tribunal. If the appellant produces the same, the Insurance Company shall also be at liberty to call for the record from the income tax office and may adduce evidence, if so advised.

11. The other bills which are filed along-with application under Order 41 Rule 27 CPC also appear to be relevant since the appellant has undergone surgery and actual bill amount has been paid, therefore, necessarily it is also to be compensated. Since bills of Suraaj Hospital and other medical bills are filed on record, the same are also accepted.

12. Since the loss of income has not been assessed by the Tribunal, the case is remitted back to the Tribunal to make assessment of loss of income caused to the appellant.

13. For the foregoing reasons, the application filed by the claimants under Order 41 Rule 27 of CPC deserves to be and is allowed. The impugned award is set aside and the matter

is remitted back to the Tribunal for reassessing the compensation in accordance with law after providing due opportunity to the parties to adduce additional evidence in relation to the income of deceased for the assessment years 2011-2012 and 2012-2013 and for proof of medical bills.

14. As the matter is being remitted back permitting the claimant to adduce additional evidence in relation to income tax returns for the assessment years 2011-2012 and 2012-2013 and medical bills, the parties shall be allowed to adduce additional evidence and file additional documents to prove the income. The Tribunal thereafter shall assess the income of the claimant and other medical bills on the basis of evidence so adduced and then pass a fresh award in accordance with law as expeditiously as possible preferably within a period of six months from the date of appearance of the parties.

15. The parties are directed to appear before the Tribunal on 15th December, 2015.

16. Registry is directed to send back the record to the concerned Tribunal immediately.

17. In view of the above, the appeal stands disposed of.

Sd/-
GOUTAM BHADURI
JUDGE

Rao