**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**MISC. APPEAL (C) NO. 1454 OF 2008**

Dinesh Vaishnav, aged about 25 years, S/o Late Ripusudan Das Vaishnav, R/o Village & Post Rohara, District Raipur (C.G.)

**… Appellant**

**Versus**

1. Vijay Kumar Sen, S/o Pardeshi Sen, R/o Village & Post- Rohara, District Raipur (C.G.)
2. Smt. Madhuri Sharma, W/o Shivnarayan Sharma, R/o Village-Tarenga, Bhatapara, District Raipur (C.G.)
3. The Oriental Insurance Company Ltd., through Divisional Office, Divisional Manager, Raipur, District Raipur (C.G.)

**… Respondents**

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| For Appellant | : | Mr. Shivendu Pandya, Advocate. |
| For Respondent No.3 | : | Ms. Chitra Shrivastava, Advocate. |

**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**13/09/2017**

**1.** The present is a Claimant's appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the Third Additional Motor Accident Claims Tribunal, Raipur, on 19.7.2007, in Claim Case No. 28/2007.

**2.** Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act initiated by the Claimant, has awarded a compensation of Rs. 79,452/- to the Claimant with interest thereon at the rate of 6% per annum from the date of award, fastening the liability jointly and severally upon the driver, owner and insurer of the offending Jeep, bearing Registration No. CG04-B/3254, to pay the compensation awarded.

**3.** Respondent No.3-Insurance Company has also filed a cross-objection under Order XLI Rule 22 of the Code of Civil Procedure, challenging the impugned award to the extent of liability fastened upon it for payment of compensation awarded.

**4.** Shri Shivendu Pandya, learned Counsel for the Appellant-Claimant, submits that the Claimant at the relevant point of time was working as a driver and on account of the accident that has occurred on 10.6.2006 he received fracture on his Ulna bone of his left hand and in the process he had to be hospitalized and also had to be operated upon for the said injury. He further submits that the compensation awarded by the Tribunal is only to the extent of medical expenses incurred and not for the disability sustained. He also submits that the compensation awarded by the Tribunal under the head of pain and suffering and special diet is also on the lower side and thus prayed for suitable enhancement of compensation awarded.

**5.** Smt. Chitra Shrivastava, learned Counsel for Respondent No.3-Insurance Company, however opposing the appeal submits that it is a case where at the relevant point of time the owner of the offending Jeep, i.e., Respondent No.2-Smt. Madhuri Sharma, was operating the Jeep in contravention of the conditions of the policy. According to her, the said Jeep was insured as a Private Car Package policy and the Jeep could not have been used for commercial purpose. She further submits that the Insurance Company has led evidence of its officer as well as investigator to show that there was a breach of policy condition. She refers to Exhibit D-1, which is a statement of the Claimant recorded under Section 161 of the Code of Criminal Procedure immediately after the accident by police authorities, wherein he has stated that he had engaged the said Jeep for Rs.700/- on hire for a marriage purpose. Thus, it stands proved that it was being used for commercial purpose establishing breach of policy condition and therefore the liability could not have been fastened upon the Insurance Company and the Insurance Company is liable to be exonerated from its responsibility to pay compensation.

**6.** Having heard the contentions put forth on either side and on perusal of the record, so far as the cross-objection of the Insurance Company is concerned, true it is that the Insurance Company has led evidence of two persons; one is the clerk in the Insurance Company and the another is the investigator of the Insurance Company. But, what is striking is the fact that during the course of cross-examination of the Claimant, on a query being put by the Insurance Company, he has specifically stated that on an assurance given by the officer of the Insurance Company for releasing the medical expenses he had put his signature on Exhibit D-1 and that he had put his signature without reading its contents. Further, from the evidence of the clerk or the investigator of the Insurance Company there does not appear to be any independent witnesses examined to show that the said Jeep at the relevant point of time was being used for commercial purpose. Thus, the contentions put forth by the Insurance Company cannot be accepted so far as the cross-objection is concerned as also for interfering with the liability which has been fastened upon it by the Tribunal.

**7.** As regards the appeal of the Claimant seeking enhancement of the compensation awarded, the record shows that except for medical expenses which have been awarded, the Tribunal does not seem to have awarded any compensation for the physical disability which the Claimant has sustained. Though the Claimant has adduced evidence of one Dr. Bachhu, who has given the certificate of the Claimant suffering 65% of permanent disability, but the fact that the injury was on the Ulna bone of left hand of the Claimant and that the same has been treated, there would be some functional disability which has occurred and taking into consideration the injury as has been discussed by the Doctor in the evidence, this Court considers the functional disability arrived at by the Claimant to be 10%.

**8.** Considering the fact that the accident is of the year 2006, the minimum income which the Claimant must have earned would be Rs.100/- a day i.e., Rs.3000/- a month of which if 10% is taken, it would be Rs.300/- which if multiplied by 12 would make it Rs.3600/- and after applying the multiplier of 18 the same would be Rs.64,800/-. It is accordingly ordered that the Claimant shall be entitled for a compensation of 10% of functional disability of an amount of Rs.64,800/-. In addition, the amount of Rs.3000/- awarded by the Tribunal towards pain and suffering and mental agony is unreasonably low and therefore the same is enhanced to Rs.15,000/-. Likewise, the amount of Rs.2000/- awarded by the Tribunal for special diet is also on the lower side and which is also being enhanced to Rs.5000/-. Thus, the Appellant-Claimant shall be entitled for a compensation of Rs.64,800/- towards physical disability, Rs.15,000/- towards pain and suffering and mental agony, Rs.5000/- for special diet and Rs.74,452 towards medical expenses, totaling to Rs.1,59,252/-.

**9.** Accordingly, it is ordered that the Appellant-Claimant shall be entitled for a total compensation of Rs. 1,59,252/- instead of Rs.79,452/- as quantified by the Tribunal. The enhanced amount of compensation shall carry interest at the same rate as has been awarded by the Tribunal from the date of the claim application.

**10.** In the result, the appeal of the Claimant is allowed and the cross-objection of the Insurance Company stands dismissed.

Sd/-
**(P. Sam Koshy)**
**Judge**

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