NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 999 of 2010

Adnuram Sahu S/o Maniram Sahu, aged about 45 years, R/o village Tulshighat, PS & Tahsil Lormi, District Bilaspur, CG

---- Appellant

Versus

1. Ramesh Singh S/o Shri Faguram Rajput, aged about 31 years, driver Matador No. CG 10 C/1997, R/o village Majgaon, Tahsil Lormi, District Bilaspur (CG)
2. Yatendra Kumar Khatri S/o late Khemchand Khatri, aged about 40 years, owner Matador No. CG 10 C/1997, R/o Mahamaya Road, near Shivaji Mandir, Lormi, Tahsil Lormi, Distt.-Bilaspur (CG)
3. Bajaj Allianz General Insurance Company Limited, through its Branch Manager, Bajaj Allianz General Insurance Company Limited, Second Floor, V.R. Plaza, Link Road, Bilaspur (CG)

---- Respondents

For Appellant	:	Shri A. L. Singroul, Advocate
For Respondent no. 3	:	Shri S. S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

09/11/2017

Present is an appeal by the claimant under Section 173 of the Motor Vehicles Act assailing the award dated 28.04.2010 passed by the 2nd Additional Motor Accident Claims Tribunal (FTC), Mungeli, District Bilaspur (CG) in Claim Case No. 67 of 2009. Vide the impugned award, the Tribunal, in an injury case under Section 166 of MV Act, has awarded a compensation of Rs.1,17,000/- with interest @ 9% per annum from the date of application.

2. The appeal is by the claimant seeking for enhancement of compensation on the ground that out of Rs.1,17,000/- awarded by the Tribunal

Rs.80,000/- is towards medical expenses which has been incurred by the appellant-claimant and that the compensation thereafter is only Rs.37,000/- which is too meager an amount considering the nature of injury which the appellant had sustained.

3. Counsel for the appellant submits that initially the appellant was hospitalized at CIMS, Bilaspur thereafter he was admitted at MMI, Raipur wherein again he was hospitalized for a period of two months from 05.08.2008 to 30.09.2008. He submits that the claimant in the instant case had received a fracture on his waist and there was also clotting of blood in urinary track on account of which the claimant underwent severe pain and suffering and also substantial expenses towards treatment and for recovering from the injury so sustained. Thus, prayed for the amount of compensation to be suitably enhanced.

4. Counsel for the appellant further assailed the exoneration of the Insurance Company of its liability stating that the appellant in the instant case was working as a labour under respondent no.2 the owner of the Metador and was travelling on the said vehicle on the date of accident for unloading the bricks which was being transported. It was contended that the policy which was issued by the Insurance Company indemnifying the owner is a package policy which covered the risk of the owner-cum-driver as well as two persons engaged in the operation and maintenance of the vehicle insured. Since the premium was paid for covering the risk of the person engaged for maintenance of the vehicle, the liability of payment of compensation should have been upon the Insurance Company. Thus, counsel for the appellant prayed for suitable modification of the impugned award.

5. Counsel appearing for the Insurance Company, however, opposing the appeal submits that the claimant under no circumstances can be brought within the ambit of a person engaged in the operation and maintenance of the vehicle insured. He submits that the person involved in the operation of the vehicle is the driver and the person engaged for the maintenance of the vehicle would be either a Khalashi or a conductor, therefore the labour who was traveling in the vehicle cannot be brought within the ambit of a person engaged for maintenance. Further contention of the counsel for the Insurance Company is that the claimant in the instant case was travelling as a gratuitous passenger, in addition also he was travelling not in the cabin but on the backside of the Metador where in a transport vehicle the passengers are not permitted to travel. Therefore, the Insurance Company has been rightly exonerated and the liability has been fastened upon the owner. Thus prayed for dismissal of the appeal.

6. Having considered the contention put forth on either side, so far as the issue of enhancement is concerned, undisputedly, the doctor has not been examined. Likewise, the certificate of permanent disability also has not been produced before the Court so as to assess the disability which the claimant had sustained. The accident and the resultant injury in the present case are not in dispute. The treatment which the claimant had undertaken at two places also is not in dispute as the Tribunal itself has allowed all the bills which were raised by the claimant. The nature of injury sustained appears to be a fracture of waist and there appears to be some blockage which arose because of clotting of blood in urinary track. Taking into account the nature of injury sustained and the period of treatment which the claimant has undergone, this Court is of the opinion that ends of justice would meet if the claimant is awarded an additional lump sum compensation of Rs.50,000/- in addition to Rs.1,17,000/- as has been awarded by the Tribunal taking the total compensation payable to the claimant at Rs.1,67,000/-. It is ordered accordingly. The enhanced amount shall also carry interest at the same rate as has been assessed by the Tribunal.

7. So far as the liability of payment of compensation is concerned, from the record it appears that the accident, the vehicle involved and the respondent no.3 being the insurer of the vehicle are not in dispute. The policy which was issued also is a package policy covering the risk of the owner-cum-driver as well as two persons involved in the operation and maintenance of the vehicle. From perusal of the record particularly the evidence of the claimant which has come on record it clearly reflects that he was an employee of respondent no.2, the owner and was working as a labour. He was engaged for loading and unloading the goods which were being transported. From the evidence which has come on record it also reflects that at the time of accident, the matador was transporting bricks and the claimant was travelling in the said matador sitting on the bricks as the labour. According to the claimant, he was being taken for unloading the bricks. Considering the fact that there was a package policy issued by the Insurance Company, this Court is of the opinion that ends of justice would meet if the liability of payment of compensation is fastened upon the Insurance Company applying the principle of pay and recovery. It is ordered accordingly.

8. The appeal thus stands allowed to the extent that the total compensation payable to the claimant would be Rs.1,67,000/- with interest in stead of Rs.1,17,000/- and that the liability of payment of compensation shall be upon the Insurance Company i.e. respondent no.3 with liberty of recovering the same from the owner and the driver.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola