

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 108 of 2008

Hemant S/o Surendra Kumar Kaushik, aged about 18 years, R/o Chakarbhata Basti, Tahsil Bilha, District Bilaspur (Chhattisgarh).

---- Appellant

Versus

1. Santosh Yadav S/o Chaitram Yadav, aged about 29 years, R/o Chakarbhata Basti, Tahsil Bilha, District Bilaspur (Chhattisgarh).
2. Bhana Bai W/o Surendra Kumar Kaushik, aged about 38 years, President, Durga Swa-Sahayata Samooh, Chakarbhata, R/o Chakarbhata, Tahsil Bilha, District Bilaspur (Chhattisgarh).
3. Branch Manager, United India Insurance Company Ltd., Rajendra Nagar, Bilaspur, District Bilaspur (Chhattisgarh).

---Respondents

AND

MAC No. 162 of 2008

Branch Manager, United India Insurance Company Ltd., Rajendra Nagar, Bilaspur, District Bilaspur (Chhattisgarh).

---- Appellant

Versus

1. Hemant S/o Surendra Kumar Kaushik, aged about 18 years, R/o Chakarbhata Basti, Tahsil Bilha, District Bilaspur (Chhattisgarh).
2. Santosh Yadav S/o Chaitram Yadav, aged about 29 years, R/o Chakarbhata Basti, Tahsil Bilha, District Bilaspur (Chhattisgarh).
3. Bhana Bai W/o Surendra Kumar Kaushik, aged about 38 years, President, Durga Swa-Sahayata Samooh, Chakarbhata, R/o Chakarbhata, Tahsil Bilha, District Bilaspur (Chhattisgarh).

---Respondents

For respondent No.3/ Insurance Company	:	Shri H.B.Agrawal, Senior Advocate along with Shri Pankaj Agrawal, Advocate.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/09/2017

1. Considering the fact that, the appeal is about 10 years old and since there is nobody for the claimant, this court requested Shri Shivendu Pandya, Advocate to assist the court for the disposal of the appeal.
2. These are the two appeals preferred against the award dated 06/11/2007 passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur (Chhattisgarh) in Claim Case No. 319/2007 whereby the Tribunal under Section 166 of the Motor Vehicle Act has awarded compensation of Rs.1,21,000/- along with interest @ 7% per annum from the date of application.
3. MAC No.108/2008 is an appeal preferred by the claimant seeking for enhancement. MAC No.162/2008 is an appeal preferred by the Insurance

Company assailing the directions given by the Tribunal of pay and recovery.

4. So far as the appeal of the Insurance Company as regards observation of pay and recovery is concerned, the counsel for the claimant submits that, it is a case where the fact of breach of policy condition has been categorically established before the Tribunal. Yet the Tribunal has opposed the order of pay and recovery directing the Insurance Company to pay the amount of compensation and then go for recovery proceedings against the owner.
5. According to the counsel for the Insurance Company, the vehicle involved in an accident is a Tractor where the sitting capacity in Tractor is only that of the driver and the policy also covered the risk of the driver only. Admittedly, in the instant case, there were more than one person travelling in the Tractor. One of the person was the claimant who sustained injury. He further submits that, since the Insurance Company has not covered the risk of any person beyond the driver and that the Tractor also did not have sitting capacity of more than one person, they could not be fastened with the liability of payment of compensation.
6. Shri Shivendu Pandya, Advocate however opposing the appeal of the Insurance Company on the ground that, it is a case where the Insurance Company had issued a valid policy in favour of the owner of the Tractor and that only breach in the instant case is the owner taking more than one person in the Tractor. He further submits that, the claimant should not suffer for the fault of the owner and that it would be difficult for the claimant to recover from the owner whereas for the Insurance Company.
7. Considering the facts and circumstances of the case and keeping in view the judgment of Supreme Court in the case of ***Manuara Khatun and Ors. Vs. Rajesh Kumar Singh and Ors. [2017 Volume 4 SCC page 796]***, this court is of the opinion that, the order of pay and recovery passed by the learned Tribunal in the present case does not warrant any interference and the appeal of the Insurance Company thus deserve to be dismissed.
8. So far as the appeal of the claimant seeking enhancement is concerned, Shri Pandya referring to the statement of the Doctor submitted that, the Doctor had categorically deposed before the Tribunal that, the injured had suffered grievous injury on his spleen which had to be removed and there were great element of blood loss caused and for considerable period of time, the treatment had to be provided to him. He further refers to the deposition of the Doctor wherein the Doctor has deposed that the injury caused to the claimant would have lifelong effect, as removal of the spleen

would reduce the resistance power as also affect the functions in the body. He further submits that, the Doctor has said that the claimant in the instant case would have to be very careful in his diet as well as in getting exposed from infections and thus prayed for enhancement of the compensation.

9. The counsel for the Insurance Company however opposing the prayer for enhancement on the ground that, the findings of the Tribunal is based on the evidence which have come on record and therefore the award is just and reasonable.
10. Having considered the rival contentions put forth on either side and on perusal of record this court is of the opinion that, the gravity of the injury caused to the claimant is clearly reflected from the evidence of the Doctor and considering the nature of the injury and the treatment which has been provided also reflects that he had to undergo regular future treatment also in this regards.
11. Considering the facts and circumstances of the case, this court is of the opinion that, for pain and suffering and agony which the claimant has undergone, he deserves an additional compensation of Rs.25,000/- in addition to Rs.25,000/- awarded by the Tribunal making the compensation towards pain and suffering to be Rs.50,000/-. Likewise, for the special diet and engaging of attendant, this court is of the opinion that, instead of Rs.4,800/- which has been awarded by the Tribunal, the claimant shall be entitled for compensation of Rs.10,000/-. Further, for the future treatment which the appellant would be require, instead of Rs.20,000/- awarded by the Tribunal, the same is enhanced to another Rs.20,000/- making the compensation for future treatment to be Rs.40,000/-. Further, the disability part for the loss of income which has been assessed by the Tribunal at 10% of the earning capacity, this court is of the opinion that, ends of justice would meet if the same is enhanced by another 5% making the disability at 15%. Thus, an additional compensation of Rs.30,600/- would also be payable to the claimant in addition to the amount of Rs.61,200/- awarded by the Tribunal. Thus, the claimant shall be entitled for and additional amount of Rs.80,800/- in addition to Rs.1,21,000/- as has been awarded by the Tribunal making the total compensation payable at Rs.2,01,800/-. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.
12. Thus, the appeal of the Insurance Company stands rejected and the appeal of the claimant stands allowed.

13. Let the Secretary, High Court, Legal Services Authority send a copy of this judgment to the Secretary, District Legal Services Authority, Bilaspur with further direction that he shall make all efforts in getting the judgment of this court served upon the claimant.

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

Sumit