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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1199 of 2007

Heturam, S/o. Kalikat, Aged about 38 years, R/o. Khursipar, Near Saraswati Shishu Mandir, Bhilai 12, District Durg Chhattisgarh

---- Appellant

Versus

1. Bhuteshwar, S/o. Kamal Singh, Aged about 45 years, R/o. Pardeshi Chouk, In front of Punjab Bar, Ramnagar, Supela, Bhilai, District Durg Chhattisgarh (Driver)
2. Manmohan Singh, S/o. Charan Singh, Aged about 30 years, R/o. Camp-II, In front of B.S.P. High School, Bhilai, District Bhilai, Chhattisgarh (Owner)
3. The New India Assurance Co. Ltd. Branch- Bhilai Power House, District Durg Chhattisgarh (Insurer)

----Respondents

MAC No. 390 of 2008

The New India Assurance Co. Ltd. Branch- Bhilai Power House, District Durg Chhattisgarh (Insurer)

---- Appellant

Versus

1. Heturam, S/o. Kalikat, Aged about 38 years, R/o. Near Saraswati Shishu Mandir, Khursipar, Bhilai 12, District Durg Chhattisgarh
2. Bhuteshwar, S/o. Kamal Singh, Aged about 45 years, R/o. Pardeshi Chowk, Ramnagar, Supela, Bhilai, District Durg Chhattisgarh (Driver)
3. Manmohan Singh, S/o. Charan Singh, Aged about 30 years, R/o. In front of B.S.P. High School, Bhilai, District Bhilai, Chhattisgarh (Owner)

----Respondents

For Claimant	:	Smt. Meera Jaiswal, Advocate
For Insurance Company	:	Mr. Raj Awasthi, Advocate Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/11/2017

1. These are two appeals arising out of the Claim Case No. 50/2007, passed by the 12th Additional Motor Accident Claims Tribunal (FTC)

Durg, Chhattisgarh.

2. Vide the impugned award, the Tribunal in an injury case has awarded a compensation of Rs.1,13,540/- with interest @ 6% per annum from the date of application.

3. MAC No. 1199/2007 is an appeal by the Claimant seeking for enhancement and MAC No. 390/2008 is an appeal by the Insurance Company assailing the liability.

4. So far as the appeal of the Claimant is concerned, the contentions of the Claimant is that the injured in the instant case received grievous injuries on his right leg and for which the Doctor-AW/3 was also examined and who has assessed the permanent disability of the injured at 40%. The counsel for the appellant submits that the injured in the instant case was working as a cook and has been assessed of earning Rs.200/- a day i.e. Rs.6,000/- a month, and therefore, if the Doctor has assessed 40% as the disability, the compensation should have been suitably enhanced, instead of the lump sum compensation awarded by the Tribunal.

5. The counsel for the Insurance Company opposing the appeal of the Claimant, and arguing on the appeal preferred by the appellant-Insurance Company submits that it is a case where the injured in the instant case was traveling as a gratuitous passenger and that he was not covered under the policy issued by the Insurance Company. He further submits that it was a case where the Owner had taken only a liability policy which would cover the risk of only two

employees and third party and no extra premium was paid covering the risk of any other person. He further submits that a claim application of another injured from the same accident which was also decided in favour of the Claimant by the same Tribunal vide an order passed on the same date was subjected to challenge before this Court in an appeal i.e. MAC No. 329/2008 along with the appeal of the Claimant therein for enhancement i.e. MAC No. 1228/2007 was also decided in favour of the Insurance Company exonerating the Insurance Company of its liability.

6. Having heard the contentions put forth on either side and on perusal of record undisputedly the document i.e. Exhibit D-1 would reflect that the policy issued was a liability only policy which was also known as an act only policy which covers the risk of only two employees and the third party and that no extra premium was paid for the coverage of anybody extra. If we look into the finding by the coordinate Bench passed in appeal i.e. MAC No. 391/2008, decided on 24.07.2014, it clearly reflects that considering the same set of evidence, the coordinate Bench has already taken a decision holding that the injured in the instant case and the injured in the other appeal were all traveling together and they were members of the same group and it is also proved that they were traveling on the Truck after payment of fair to the Driver, which clearly would bring them within the ambit of gratuitous passengers.

7. In view of the findings of the coordinate Bench in a case arising out of the same accident, this Court is also inclined to accept the

analogy applied in the said order and hold that the Insurance Company has sufficiently proved its case before the Tribunal to show that the injured persons were traveling as a gratuitous passengers and that the policy issued was liability only policy and thus Insurance Company would not be liable to pay the compensation to the injured persons. The appeal of the Insurance Company thus stands allowed and they are exonerated of the liability of payment of compensation and the liability is ordered and shifted upon the Owner and Driver of the offending vehicle i.e. Truck Tailor bearing registration No. CG-04-C-1913 i.e. respondent No. 1 & 2 in the appeal filed by the Claimant.

8. So far as the appeal by the Claimant for enhancement is concerned, from the perusal of record, the findings of the Tribunal itself is that the injured at the time of accident was earning Rs.200/- a day i.e. Rs.6,000/- a month. Though there is an evidence that the injured received work for about 8 months in an year, that does not mean for the rest of the 4 months, there would be no employment or he would be sitting idle during this period. He would be definitely doing something to earn his income during the said period and for that period also the Claimant would be entitled for the same wages that of Rs.200/- a day. Thus, accepting Rs.6,000/- as his monthly income, the yearly income would be come to Rs.72,000/-, of which if 40% is assessed for loss of earning capacity, it would come to Rs.28,800/-. Considering the fact that the appellant was aged around 38 years, the multiplier applied would be 15, and the amount would come to Rs.4,32,000/-. It is ordered that the Claimant shall be entitled for a loss of earning capacity of Rs.4,32,000/-. In addition,

the Claimant shall also be entitled for a lump sum compensation of Rs.50,000/- towards engagement of attendant so also towards special diet and other incidental traveling expenses incurred, which would make the total compensation payable at Rs.4,82,000/-. In addition to this, the Claimant shall also be entitled for a compensation of the medical expenses incurred for which the bills were raised amounting to Rs.3,967/-. Thus, the total compensation payable would be Rs.4,85,976/-.

9. Thus, the appeal of the Claimant stands allowed accordingly.

10. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

Sd/-
(P. Sam Koshy)
Judge

Ved