NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1411 of 2017

1. Roshanlal S/o Sunder Das Jivnani Aged About 45 Years R/o Sindhi Colony, Navapara, Police Station Gobra, Navapara, District Raipur, Chhattisgarh.
2. Raja Ram Sahu S/o Late Dayaram Sahu Aged About 38 Years R/o Near Gurudwara, Navapara Gobra, Rajim, District Raipur, Chhattisgarh.

---- Appellants

Versus

1. Puranik Ram Dhruv S/o S/o Shri Kartik Ram Dhruv Aged About 38 Years R/o Village Kodebod, Police Station- Khurud, District Dhamtari, Chhattisgarh.
2. The New India Insurance Company Limited, Through Branch Manager, Jail Road, District Raipur, Chhattisgarh.

–--Respondents

AND

MAC No. 1073 of 2017

Puranik Ram Dhruv S/o S/o Shri Kartik Ram Dhruv, Aged About 35 Years Occupation Driver, R/o Village Kodebod, Plice Station Kurud, District Dhamtari, Chhattisgarh.

---- Appellant

Versus

1. Raja Ram Sahu S/o Late Dayaram Sahu, Aged About 38 Years Occupation Driver R/o Near Gurudwara, Navapara Gobra, (Rajim) District Raipur Chhattisgarh. (Driver)
2. Roshanlal, S/o Sunder Das Jivnani, Aged About 45 Years Occupation Business R/o Sindhi Colony Navapara, P. S. Gobra Navapara District Raipur Chhattisgarh. (Owner)
3. The New India Insurance Company Ltd. Through Branch Manager Jail Road District Raipur Chhattisgarh. (Insurer)

–--Respondents

For Claimant	:	Mr. C.K. Sahu, Advocate
For Owner	:	Mr. Shikhar Bakhtiyar, Advocate
For Insurance Company	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/12/2017

1. These are two appeals arising out of the award dated 13.04.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Raipur,

Chhattisgarh, in Motor Accident Claim Case No. 32/2013. Vide the impugned award the Tribunal in a proceeding under Section 163A of Motor Vehicles Act has awarded a compensation of Rs.3,60,200/- with interest @ 7.5% per annum.

2. While passing the impugned award, the Tribunal has exonerated the Insurance Company of its liability and has fastened the liability of payment of compensation upon the Owner.

3. MAC No. 1411/2017 is an appeal by the Owner questioning the liability part and MAC No. 1073/2017 is an appeal by the Claimant seeking for enhancement of the compensation.

4. So far as the appeal of the owner is concerned, he has filed an application for condonation of delay. The appeal was barred by 86 days. On due consideration and also the application not being opposed, the I.A. No.1 stands allowed. Delay of 86 days stands condoned. I.A. No.2 as a consequence also has been allowed.

5. The counsel for the owner meanwhile filed an application i.e. I.A. No.4 under Order 41 Rule 27 of C.P.C. wherein he had produced the extract of the driving license of the Driver to establish the fact that the Driver on the date of the accident had a valid license to drive a Light Motor Vehicle. The contention of the counsel for the Owner is that the Insurance Company has been exonerated of its liability only on the ground that the Driver on the date of accident not having an effective license. According to the owner, the finding of the Tribunal was that the license for driving the transport vehicle had already got expired on 27.10.2004 and thereafter it has not been renewed and therefore, it was presumed that the Driver did not have a valid license to drive a Transport vehicle on the date of accident. The

owner further contended that the said finding of the Tribunal is erroneous in the light of the recent Larger Bench decision of the Hon'ble Supreme Court in the case of ***"Mukund Dewangan vs. Oriental Insurance Company Limited" AIR 2017 S.C. 3668.*** such requirement of an endorsement granting permission to drive a transport vehicle has been done away with by the Hon'ble Supreme Court and therefore, the liability ought to have been fastened upon the Insurance Company and prayed for the award to be suitably modified.

6. Mr. Dashrath Gupta, Advocate appearing for the Insurance Company had taken time to get the driving license verified from the concerned R.T.O. and today he makes a submission that on verification it has been found that the Driver had a license to drive the L.M.V. (Non-Transport) on the date of accident, however the endorsement permitting him to drive a transport vehicle had got expired on 27.10.2004 and thereafter it has not been renewed.

7. On the submission so made by the Insurance Company what clearly culls out is that undisputedly the Driver had a driving license for driving a Light Motor Vehicle on the date of accident.

8. In view of the same, this Court has no hesitation in reaching to the conclusion that the said issue raised by the Owner has sufficient force as it is squarely covered by the decision of the Larger Bench of the Hon'ble Supreme Court in the case of Mukund Dewangan (supra). The impugned award, so far as exonerating the Insurance Company of its liability stands accordingly quashed and it is held that the liability of payment of compensation shall be jointly and severally upon the Owner, Driver and the Insurance Company and the responsibility of payment of compensation shall be upon the Insurance Company instead of Owner-Roshanlal. Whatever amount that has

been deposited by the Owner while preferring the present appeal shall be refunded by the Insurance Company to the Owner. As a result, the appeal of the Owner i.e. MAC No. 1411/2017 stands allowed.

9. Coming to the appeal filed by the Claimant, it is argued that the amount of compensation paid by the Owner is on the lower side and the amount deserves for suitable enhancement. He submits that the nature of the injury is that of the amputation of the right hand from the Elbow and as such the Claimant has been rendered jobless because of the accident and that since he was a Driver, there is 100% loss of earning capacity and therefore he should had been granted 100% compensation instead of 70% as has been assessed by the Tribunal. He further submits that the monthly income assessed also is on the lower side and the Tribunal also had erred in assessing that the Claimant was getting employment for only around 15 days a month, whereas he was engaged for whole month, and therefore the compensation deserves to be suitably enhanced.

10. As far as the quantum part is concerned, Mr. Gupta appearing for the Insurance Company opposes the same and submits that since the claim application is one under Section 163-A, the Tribunal has awarded the maximum that could have been awarded taking into consideration the nature of employment, the evidence which have come on record and the disability as per the assessment made by the Doctor and submitted that the amount being just and reasonable does not warrant interference and the same deserves to be rejected.

11. Having considered the contentions put forth on either side and on perusal of record, what reflects is that the Tribunal has assessed his income at Rs.150/- a day and has also given a findings that he

would be getting an employment for only around 15 days a month. The applicant since was a Driver by profession, even though he was engaged by one person for around 15 days does not mean that for the balance of the 15 days he would be sitting either way. He would definitely be engaged or called upon by other similarly placed persons taking the work of a Driver from the Claimant.

12. Given the facts and circumstances of the case, this Court is of the opinion that since the accident is of December, 2006, under the normal circumstances also a Driver would had been earning anything between Rs.3000-4500/- a month, this Court considering the facts and circumstances of the case assesses the monthly income of the deceased at Rs.3300/-, which would bring the yearly income to Rs.39,600/-.

13. Considering the fact that since the Doctor has given the disability certificate of 75%, however considering the fact that the injury suffered by the Claimant would as per the schedule under the Workmen's Compensation Act would show the disability at 70%, the Tribunal has assessed the disability at 70%.

14. This Court does not find any error on the said finding of the Tribunal and for quantification of the compensation takes 70% of the yearly income of the Claimant for the purpose of assessing the total compensation that he would receive. 70% of Rs.39,600/- would reach to Rs.27,720/-, which if multiplied applying the multiplier of 18, the amount payable would come to Rs.4,98,960/-. In addition, the Claimant would be entitled for compensation under the other heads as has been quantified by the Tribunal i.e. Rs.20,000/- which would make the total compensation payable to the Claimant at Rs.5,18,960/- instead of Rs.3,60,200/-.

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

16. The appeal of the Claimant also thus stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved