NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1543 of 2017

Ramesh S/o Dayali Sahu Aged About 28 Years R/o Village Kolegaon Thana Pandatarai District Kabirdham Chhattisgarh. (Claimant)

---- Appellant

Versus

1. Narendra Kumar S/o Ramraj Sahu Aged About 20 Years R/ O Village Kolegaon Thana Pandatarai Tahsil Pandatarai, District Kabirdhanm Chhattisgarh. (Driver)
2. Suresh Kumar S/o Itwari Dhruw Aged About 32 Years R/o Village Kolegaon Thana Pandatarai Tahsil Pandatarai, District Kabirdham Chhattisgarh. (Owner)
3. I C I C I Lombard General Insurance Company Commercial Tax Bhawan Devendra Nager Raipur Chhattisgarh. (Insurer)

–--Respondents

For Appellant	:	Mr. A.L. Singroul, Advocate
For Insurance Company	:	Mr. Amrito Das, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/12/2017

1. Mr. Amrito Das, Advocate accepts notice on behalf of the respondent/ Insurance Company.

2. The appeal is filed by the Claimant seeking for enhancement of the award dated 19.09.2017, passed by the Additional Motor Accident Claims Tribunal, Mungeli, Chhattisgarh, in Motor Accident Claim Case No. 22/2016. Vide the impugned award the Tribunal in an injury case has awarded a compensation of Rs.36,126/- with interest @7.5% per annum.

3. The counsel for the appellant submits that the impugned award is erroneous to the extent that the Tribunal while passing the award has wrongly exonerated the Insurance Company of its liability as per the provisions of the Motor Vehicle Act and the policy which has

been issued the liability of payment of compensation should had been fastened upon the Insurance Company. He as an alternative makes a prayer that atleast the Insurance Company should have been directed to deposit the compensation and should have recovered the same from the owner-cum-driver of the offending vehicle applying the principles of “Pay and Recover”.

4. He further submits that taking into consideration the nature of the injuries suffered by the claimant, the appellant also deserves enhancement of the compensation awarded. He also submits that the claimant in the instant case has also received fracture on the upper third bone of the right hand, which also had to be operated upon properly healing of the same and thus prayed for the award to be suitably modified.

5. Counsel for the appellant so far as the liability is concerned submitted that it is a case where the policy which was issued covered the risk of Driver plus one cleaner and the claimant. According to the counsel for the appellant the policy issued was a package policy and which would also include an occupant travelling in the said vehicle and therefore the liability should have been shifted upon the Insurance Company.

6. Mr. Amrito Das, Advocate appearing for the Insurance Company however opposes the appeal and submits that it is a case where the premium paid was only covering the risk of two persons i.e. the Driver and one cleaner and in the instant case it is not the case of the claimant that they were either the driver or the cleaner of the said vehicle and therefore they have to be considered as gratuitous passengers and the Tribunal has rightly exonerated the Insurance

Company of its liability. He further submits that the amount of compensation awarded also is just and reasonable taking into consideration the evidence which have come on record and thus prayed for the rejection of the appeal.

7. Having heard the contentions put forth on either side and on perusal of the record the admitted facts in the instant case, is the date of accident, the vehicle involved in the accident and the policy issued in favour of the offending vehicle by the respondent No.3-Insurance Company. The only issue which is left to be considered is whether in the given facts and circumstances the liability would be shifted upon the Insurance Company or as has been arrived at by the Tribunal it would be upon the owner and driver of the offending vehicle. Undisputedly, the policy issued was a package policy. So far as the premium paid by the owner covering the risk was that of the Driver and one cleaner. The package policy would also cover the risk of an occupant also.

8. In the instant case considering the fact that the claimant in the instant case was travelling in the vehicle as a gratuitous passenger, this Court is of the opinion that ends of justice would meet if the liability of payment of compensation would be fixed upon the Insurance Company applying the doctrine of “pay and recovery”, directing the Insurance Company to recover the compensation from the Owner cum Driver. With the aforesaid observations, the impugned award stands modified and it is held that the Insurance Company shall first deposit the compensation thereafter can initiate recovery proceedings against the Owner cum Driver.

9. So far as the quantum of compensation is concerned, this Court is of the opinion that taking into consideration the nature of the injuries sustained by the appellant and the fact that the injuries was on the right hand of the appellant and out of the compensation awarded, more than Rs.18,000/- is towards the treatment expenditure, this Court is of the opinion that ends of justice would meet if the appellant is awarded an additional compensation of Rs.20,000/- in addition to what has already been awarded making the total compensation payable at Rs.56,126/- instead of Rs.36,126/-.

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

11. The appeals thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved