NAFR

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 546 of 2010

1. Ganpat Kumar Vishwakarma S/o Kumar Vishwakarma, aged about 20 years, occupation Nothing caste, Lohar, R/o village Jhal Khamariya, Tehsil Mahasamund, District Mahasamund (CG).

---- Appellant

Versus

1. Munnalal Patel S/o Laxman Patel, aged about 40 years, occupation Driver, R/o through under the service of Orrissa-Nagpur Roadways, Telghani Naka, Raipur District Raipur (CG).
2. Jakir Hussain S/o Fakir Hussain, aged about 50 years, occupation-registered owner of vehicle Truck CG-05-A-7086 R/o Orrissa Nagpur Roadways, Telghani Naka, Raipur District Raipur (CG).
3. The United India Insurance Co. Ltd. through Divisional Manager, Divisional office, Kutchery Chowk, Jail Road, Raipur, District Raipur (CG).

---- Respondents

For Appellant : Shri Shivendu Pandya, Advocate.
For respondent No.3 : Shri Srikumar Agrawal, Sr. Advocate along with Shri Anand Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

04.10.2017.

1. The present is an appeal under Section 173 of the Motor Vehicles Act (for short, the MV Act) filed by the claimant seeking enhancement of compensation against the award dated 06.03.2009 passed by the Chief Motor Accident Claims Tribunal, Mahasamund (for short, the Tribunal) in Claim Case No.01 of 2008. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act by the appellant-claimant in a case of amputation of his right leg above the knee has awarded compensation of Rs.1,41,155/- along with interest @ 6 percent per annum from the date of application. While passing the said award, since the offending vehicle involved in

the accident was not insured, the entire liability of payment of compensation was fastened upon the owner and driver i.e. respondents No.1&2.

2. The owner and driver were ex-parte before the Tribunal and before this court also inspite of repeated efforts, notice could not be effected upon them.

3. Learned counsel appearing for the appellant assails the liability part and submits that the liability of payment of compensation in the instant case should have been upon the insurance company as the vehicle was duly insured which is reflected from proceeding of Supurdnama under which the owner had received the vehicle from the trial court wherein it was said that the vehicle was duly insured. Seizure memo of the criminal case which was registered against the driver also reflects that the vehicle was duly insured at the time of accident.

4. He further submits that it is a case where the claimant has suffered amputation of right leg above knee and that the compensation for the disability which is assessed by the Tribunal at Rs.50,000/- is too meager an amount looking to the age of the claimant at the time of accident i.e. only 20 years. Thus, prayed for enhancement of compensation suitably.

5. Learned counsel appearing for the insurance company submits that the company has led evidence before the Tribunal of its witnesses who had deposed that the vehicle at the time of accident was not insured at all. Thus, there is no evidence to counter this evidence and as such the findings of the Tribunal exonerating the insurance company is purely justified which does not call for any interference so

far as liability part is concerned.

6. Having heard the rival contentions put forth on either side and on perusal of records, so far as issue of liability is concerned, indisputably there is no evidence on record with which it can be proved that the vehicle was duly insured at the relevant point of time. Neither the driver nor the owner have produced copy of policy insuring the offending vehicle at the time of accident. On the contrary, there is a categorical deposition of the insurance company denying insurance of the offending vehicle. Thus, so far as finding of liability is concerned, the award of Tribunal does not warrant any interference and the contention of claimant thus stands negated.

7. So far as enhancement of compensation is concerned, the Tribunal has assessed the compensation for the physical disability at Rs.50,000/-. The basis for granting Rs.50,000/- is not reflected in the award. It is only a lump sum compensation which has been awarded in a case of amputation of right let above the knee and which has been proved by Dr.Jogi Lal Shrivastava, AW-2, who has categorically deposed of the claimant suffering from 80 percent permanent disability. The Tribunal ought to have quantified the compensation considering the loss of earning capacity sustained by the claimant.

8. The claimant in the instant case was working as a Labour. As a result of the amputation of his leg above the knee, his ability to do the physical work has become zero and thus there is definite substantial loss of earning capacity because of the accidental injury. The claimant has deposed before the Tribunal of earning Rs.150/- per day i.e. Rs.4500/- per month and 80 percent of this amount by virtue of 80

percent disability would come to Rs.3600/- which would make yearly loss of earing capacity at Rs. 43,200/- which if multiplied by 18 considering the age of the injured claimant, the amount would come to Rs.7,77,600/-. It is ordered accordingly that the claimant shall be entitled for compensation of Rs.7,77,600/-towards loss of earning capacity instead of Rs.50,000/-as assessed by the Tribunal.

9. In addition, the claimant shall also be entitled for compensation towards medical expenses as assessed by the Tribunal at Rs.66,155/-. Further, considering the fact that it is a case of amputation of right leg and the age of the claimant being 20 years at the time of accident and having lost his leg at prime youth age, the pain and suffering both physical and mental which the claimant would have undergone is beyond measurement and the amount of compensation towards pain and suffering also deserves to be enhanced and the same is quantified at Rs.50,000/-instead of Rs.25,000/- as assessed by the Tribunal. Thus, the total compensation payable to the claimants would become Rs.8,93,755/- instead of Rs.1,41,155/-. It is ordered accordingly.

10. The said enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal. The liability of payment of compensation shall remain upon the owner and driver i.e. the respondent No.1&2 jointly and severally, as decided by the Tribunal.

11. Accordingly, the appeal of the claimant stands allowed and disposed off.

Sd/-

(P.Sam Koshy)
Judge

inder