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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL No. 238 of 2004

Ajay Kumar, aged about 4 years (Minor), S/o Shri Bhularam Dewangan, through: his natural guardian father: Bhularam Dewangan, S/o. Shri Chhoturam Dewangan, aged about 40 years, R/o. Jamul, Laxmipara, Tehsil and District Durg (C.G.)

... Appellant

Versus

1. Sagar Singh, aged about 32 years, S/o. Shri Baliram, Caste Kewat, Resident of Nandani Khudani, P.S. Nandani, Tehsil Dhamdha, District Durg, Chhattisgarh

(Driver of the vehicle)

2. Sanjeev Kumar S/o. Shri Brijmohan, R/o. Deepak Nagar, District Durg, Chhattisgarh.

(Owner)

3. The New India Insurance Company Limited, Branch Office near Dena Bank, Nandani Road, Bhilai Nagar, District Durg, Chhattisgarh

(Insurer of the vehicle)
(Insurance Policy No. 3145120/18826)

4. Bholaram Choudhari S/o. Shri Ramdas Choudhari, R/o. Newai, Tehsil Dhamdha, District Durg, Chhattisgarh

... Respondents

For Appellant	:	Mr. P. P. Sahu, Advocate.
For Respondent No.3	:	Mr. Qamarul Aziz, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/07/2017

1] The present is an appeal under Section 173 of the Motor Vehicle Act assailing the award dated 18.10.2003 passed by the 8th Additional Motor Accident Claims Tribunal (FTC) Durg in Claim Case No. 99/2003. Vide the said impugned award, the Tribunal in a proceeding under Section 166 of the Motor Vehicle Act has awarded a compensation of Rs. 1,55,000/- with interest @ 9% per annum.

2] The brief facts of the case is that the appellant/claimant in the instant case was 4 years old at the time of filing of the claim application. His case was that on 21.12.1994 when the appellant was playing on the road side, the respondent No.1 who was driving a truck bearing registration No. MOR 9295 came in a high speed driving in a rash and negligent manner and dashed the appellant, as a result of which, the appellant's both feet came under the wheel of the truck and one of his feet i.e. the left leg got crushed and cut. His right leg also received grievous injuries in addition to other injuries all over his body. A criminal case was registered against respondent No.1 at Police Station Jamul for the offence under Sections 279 & 335 of the I.P.C. vide crime No. 256/94. In the course of treatment, left leg below the knee of the injured got amputated and his right thigh which was totally crushed had to be treated for a considerable long period. The respondent No.2 was the owner of the offending vehicle and respondent No.3 was the insurer of the said vehicle. Meanwhile, the claimant filed a claim application under Section 166 of the MV Act for compensation.

3] The Tribunal taking into account the evidences which have come on record particularly the doctor's evidence wherein the physical disability of the appellant was assessed at 80% vide impugned awarded dated 18.10.2003 granted compensation of Rs.30,000/- towards special diet, Rs. 25,000/- towards future treatment expenses and Rs.1,00,000/- towards pain and suffering totaling Rs. 1,55,000/-.

4] It is this award which is under challenge by the appellant/claimant claiming for enhancement of the compensation as the impugned award under each of the heads is considerably on the lower side taking into account the evidences which have come on record.

5] The appellant relied upon the decisions of the Supreme Court in the cases of Michael Vs. Regional Manager Oriental Insurance Company reported in 2013 (14) SCC 774, Mallik Arjun Vs. Divisional Manager National Insurance Company Limited and Another reported in 2014 (14) SCC 396 and Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and

Others reported in 2015 (1) SCC 539 to support his contention for enhancement of the compensation. Counsel for the appellant submits that the two injuries which were sustained by the appellant one on his left leg and the other on his right thigh were grievous in nature and in the process, the left leg had to be amputated below the knee and the right thigh received multiple crushed injuries at which surgery had also to be conducted. As a result of the injuries, the appellant sustained a life long disability to the tune of 80% by amputation of his left leg. Counsel for the appellant submits that because of this amputation of left leg, the movement of the appellant/claimant itself has been curtailed and got restricted substantially. This disability also would hamper his growth in life and would also have an adverse impact on his marriage prospect. In addition, he would also not be able to secure any such nature of employment which would require physical stress and movement. Thus, practically he has sustained a 100% disability.

6] It is pertinent to mention at this juncture that the Tribunal while passing the award had exonerated the Insurance Company from the liability of payment of compensation on account of there being a breach of policy condition in as much as the driver of the offending vehicle not having a valid license at the time of accident, the Tribunal fastened the liability upon respondents 1 & 2. The owner had preferred an appeal i.e. M. A. No. 64/2004 and the record shows that the said appeal got dismissed by virtue of a peremptory order.

7] Counsel for the appellant/claimant during the course of argument submits that the owner and the driver have till date not come forward and deposited the entire amount awarded. He makes a request to the Court in the present appeal to direct the Insurance Company which had insured the offending vehicle to deposit the compensation awarded as also the enhanced amount and the Insurance Company in turn may recover the same from the owner and the driver. The request made by the counsel for the appellant

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was with an intention that the claimant may receive the compensation without any further delay or else it would cause irreparable damage.

8] Counsel appearing for the Insurance Company, however, opposes the appeal to the extent of the liability being sought to be changed from the owner and the driver of the offending vehicle to the Insurance Company. According to the counsel for the Insurance Company, since it is an admitted fact that the driver at the relevant point of time was in possession of a fake driving licence and there is a clear breach of policy condition, the Tribunal has thus rightly exonerated the Insurance Company from the liability of payment of compensation and fastened the liability upon the owner and the driver.

9] Having considered the rival contentions put forth on either side and on perusal of records, coming to the issue of enhancement of the compensation in an injury case what is relevant to take note is the judgment of the Supreme Court in the case of ***R. D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and others*** reported in ***1995(1) SCC 551*** wherein in paragraph-9 discussing on the issue of damages to be assessed it has been held as under:-

> 9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit;(iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

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Likewise in the same judgment dealing with the issue of pain and suffering and loss of amenities of life, in paragraph 17 the Supreme Court held as under:-

> 17. The claim under Sl. No. 16 for pain and suffering and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs 3,00,000 each under the two heads. The High Court has allowed Rs 1,00,000 against the claims of Rs 6,00,000. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs 1,50,000 in respect of claim for pain and suffering and Rs 1,50,000 in respect of loss of amenities of life. We direct payment of Rs 3,00,000 (Rupees three lakhs only) against the claim of Rs 6,00,000 under the heads "Pain and Suffering" and "Loss of amenities of life".

10] The aforesaid judgment has further been reiterated in the case of ***Ashwani Kumar Mishra vs. P. Munium Babu and others*** reported in ***1999(4) SCC 22,*** in the case of ***Divisional Controller KSRPC vs. Mahadev Shettyand another*** reported in ***2003(7) SCC 197***. The Supreme Court in case of ***B.T. Krishnappa vs. Divisional Manager, United Insurance Company Limited and Another*** reported in ***2010(12) SCC 246*** in paragraph 15 dealing on the issue of expectations of life on earning capacity, the Supreme Court held as under:-

> 15. Long expectation of life is connected with earning capacity. If earning capacity is reduced, which is the case in the present situation, that impacts life expectancy as well. Therefore, while fixing compensation in cases of injury affecting earning capacity the Court must remember:
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> "10....No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered

physical frame." [See R.D. Hattangadi vs. Pest Control (India) (P) Ltd. & others, (1995) 1 SCC 551, at page 556, para 10]"

11] If we take into consideration the quantum of compensation awarded by the Tribunal, one would see that it is only Rs.30,000/- towards special diet, Rs.25,000/- towards future prospects and Rs.1,00,000/- towards pain and suffering which have been awarded by the Tribunal. The impugned award does not reflect any compensation awarded for the treatment already undergone. The finding of the Tribunal itself in paragraph 20 is that the appellant/claimant was hospitalized for a period of more than 3 months. In the course of treatment, undisputedly the left leg of the appellant/claimant had been amputated. The right leg had also to be treated for the grievous injuries sustained where it got large amount of crushed injuries which even required grafting etc. for the early cure. All these must have put the father of the appellant to a great amount of expenses. Unfortunately, the claimant could not produce the bills and the documents related to the treatment. However, it is not in dispute that the appellant/claimant did sustain injuries on account of the accident and in the course of treatment his left leg had to be amputated below knee and his right thigh received multiple crushed injuries, which had to be treated and that he had spent more than 3 months time in the hospital. Thus, for the treatment already undergone by the appellant/claimant, this Court feels it proper to grant an amount of Rs.1,50,000/- under this head. Considering the tender age on which the claimant had sustained injuries, it would have definitely required great amount of special diet to give sufficient strength to his right leg and muscles which had got crushed. Thus, the amount of Rs.30,000/- awarded under this head also deserves to be and the same is accordingly enhanced to Rs.80,000/-. As regards the amount of compensation awarded towards pain and suffering of Rs.1,00,000/-, if we look into the gravity of the injuries and also consider the tender age of the claimant and the amount of impact of the said disability which the appellant/claimant is going to suffer all through his life including his carrier, the marriage prospects, the earning capacity, the life expectancy, this Court has no hesitation in holding that it cannot be compensated by awarding any amount of compensation. But, true it is that Rs.1,00,000/- for the pain and suffering awarded is definitely on the lower side. Considering the overall facts and circumstances of the case, which includes the actual physical pain and suffering, which the claimant had undergone during his course of treatment and in the course of amputation of his leg, this Court is of the opinion that an amount of Rs.3,00,000/- would be reasonable under the head of pain and suffering and it is ordered accordingly i.e. Rs.2,00,000/- over and above Rs.1,00,000/- which has already been awarded. In view of the same, the appeal of the appellant/claimant is allowed to the extent that the appellant shall be entitled for an amount of Rs.5,55,000/- as total compensation instead of Rs.1,55,000/- as awarded by the Tribunal. Thus, there would be enhancement of Rs.4,00,000/- over and above what has been awarded by the Tribunal.

12] This Court ventures into the prayer made by the appellant of fastening the liability upon the Insurance Company for making the payment so as to enable the appellant/claimant to receive the compensation promptly, particularly the accident being one which had taken place on 21.12.1994 i.e. almost about 23 years ago. At this juncture, it is relevant to take note of the observations of the Hon'ble Supreme Court in case of ***Pepsu Road Transport Corporation Versus National Insurance Company*** reported in ***2013(10) SCC 217,*** where in paragraph 8 it has been held as under:-

> 8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied

> in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.

13] Recently the Coordinate Bench of this Court in M. A. No. 496/2003 in the case of ***National Insurance Company Vs. Kashi Das @ Mohan Das and others*** decided on 03.05.2016 referring to a series of decisions of the Supreme Court on the issue of the liability of the insurance company to pay in the event of a fake license or no valid license etc. keeping in mind of the view of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited vs. Swarn Singh & Ors.*** reported in ***2004 (3) SCC 297*** and also the law laid down by the Supreme Court in the cases of ***S. Ayyappa vs. United India Insurance Company Limited*** **& Anr.** reported in **(2013) 7 SCC 62** and ***Jawahar Singh vs. Bala Jain and others*** reported in ***2011(6) SCC 425*** has held that in such a situation, the Insurance Company was obliged to first pay and then recover even when there is a breach of policy condition.

14] Concurring with the view taken by the Coordinate Bench of this Court in the aforesaid judgments, this Court also in the present case finds that the driver of the offending vehicle had a license which was later on found to be a fake license. There is no evidence to show that the owner of the vehicle was aware that the driver had a fake license neither is there any evidence brought on record by the Insurance Company. Therefore, this Court is inclined to partially modify the award to the extent that the Insurance Company is directed to pay the amount and recover the same from the respondents 1 & 2 subsequently. The reason for directing the Insurance Company to pay the compensation is also on the undisputed fact that the vehicle at the relevant time was in fact duly insured and the allegation was that the licence belonging to the driver of the offending vehicle was later on found to be a fake licence.

15] The appeal of the appellant is thus allowed. The compensation awarded is enhanced to Rs.5,55,000/- in stead of Rs.1,55,000/-. The Insurance Company is directed to pay the amount of compensation and recover the same from the respondents 1 & 2. If any amount has already been deposited by the owner and the driver, the Insurance Company may deposit the balance of the amount and recover the same from the owner and the driver. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

Sd/-
P. Sam Koshy
Judge

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