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HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 772 of 2005

Keshav Sarathi, aged about 3 years S/o Dilip Sarathi through his father as next friend Dilip Sarathi, aged 34 years, S/o Makhanlal Sarathi, R/o Shri Balaji Aata Chakki, Parasnagar, Raipur (CG).

---- Appellant

Versus

1. Satwant Singh S/o Pratap Singh, Driver R/o Ekta Nagar, Gudiyari, Raipur (CG).
2. Smt. Usha Sharma W/o RK Sharma, Owner R/o Gudiyari, Raipur (CG).
3. The National Insurance Co. Ltd., Branch Office No.2, Raipur, By Divisional Manager, Divisional Office, Mobin Mahal, GE Road, Raipur (CG).

---- Respondents

&

MA No. 854 of 2005

National Insurance Co. Ltd., Branch Office No.2, Raipur, through its Divisional Manager, Divisional Office, Mobin Mahal, GE Road, Raipur (CG).

---- Appellant

Versus

1. Keshav Sarathi, aged about 3 years S/o Dilip Sarathi through his natural guardian Dilip Sarathi, aged 35 years, S/o Makhanlal Sarathi, R/o Shri Balaji Aata Chakki, Parasnagar, Raipur (CG).
2. Satwant Singh S/o Pratap Singh, Driver R/o Ekta Nagar, Gudiyari, Raipur (CG).
3. Smt. Usha Sharma W/o RK Sharma, Owner R/o Gudiyari, Raipur (CG).

---- Respondents

For Appellant	:	None.
For respondent-Insurance company	:	Shri Dashrath Gupta,Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

14/07/2017

1. By this common order both the appeals are being disposed of as common facts & issues are involved in these appeals and arise out of

same accident.

2. These are two appeals under Section 173 of the Motor Vehicles Act against the award dated 19.04.2005 passed by the 14th Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.49/2004.
3. The appeals are of the year, 2005. For the whole week in spite of matter being called continuously, there was no representation on behalf of the claimants. The insurance company is being represented through their counsel. Taking into consideration that appeals are of more than 12 years old, this court thought it fit to proceed with the case and decide it finally on merits with the assistance from the counsel of insurance company.
4. MA No. 772 of 2005 has been filed by the claimant seeking for enhancement of compensation whereas, MA No. 854 of 2005 has been filed by the insurance company questioning the liability part. For the purpose of convenience so far as facts are concerned, MA No.772 of 2005 is taken as lead case.
5. Brief facts of the case is that, the appellant met with an accident on 04.04.2002 when he was hit by Auto rickshaw bearing registration No.MP-23-T-1047 being driven by the respondent No.1 and owned by the respondent No.2. As a result of said accident, the appellant -Keshav Sarathi received injuries all over his body and the main injury sustained was on the head on account of which he had to be hospitalized for about fortnight and he had got about 19 stitches on

his head. Apart from this, his right side skull also got fractured.

6. The claimant had preferred an application under Section 166 of the Motor Vehicles Act before the Tribunal where the case was registered as Claim Case No.49 of 2004.

7. Considering the evidence which have come on record and the pleadings of the parties, the Tribunal vide impugned award dated 19.04.2005 allowed the claim application of the claimant and granted compensation of Rs. 40,000/-. The liability of such payment was fastened upon the insurance company i.e. National Insurance Company which had insured the offending vehicle. The claimant had filed an appeal seeking for enhancement of compensation.

8. According to appellant, taking into consideration the nature of injuries particularly the head injury, which as per doctor was 25 percent permanent disability, he would have been entitled for much more compensation than what has been awarded by the Tribunal. According to appellant-claimant, the said injury resulted in life long deficiency to the growth of the appellant and it would affect his future career all through his life. Therefore, he should have been granted more compensation.

9. So far as appeal which has been preferred by the insurance company is concerned, it was contended that the Tribunal has failed to take note of his objection that the driver of the offending vehicle was not having valid and effective driving licence on the date of accident, neither did the owner had proper permit to operate the said auto rick-

shaw. Further, no proper opportunity was granted to the insurance company to call for the witness of the RTO though they have moved an application in this regard.

10. A perusal of record would reveal that on the part of claimant, his father namely Dilip Sarathi was examined. He had narrated the entire facts of the case including the injury sustained by the appellant as also the treatment undertaken by the appellant. There was no evidence led on behalf of the insurance company as it reflects from the record to rebut the contention of the appellant both on factual aspect as also on the medical aspect. The accident and the offending vehicle involved in the accident is also not in dispute. The vehicle being insured with the respondent insurance company also is not in dispute.

11. Now all that this court has to see is whether the amount of compensation awarded to the claimant was proper and justified or not?

12. It is not in dispute that the appellant at the time of accident was only aged about 3 years. The injury suffered by him was as a result of said accident. The only piece of evidence which has been relied upon by the insurance company is with regard to statement of Dr.G.S. Bacchu, AW-2, who had stated that there was 15 percent deficiency of eye-Q apart from this the doctor has not been able to show any sort of disability that has arisen because of injury caused in the said accident.

13. From the record it appears that the appellant had sustained grievous wound on his head to the extent that there was 19 stitches put on his head and the right part of skull was also got fractured. These two injuries referred to above are sufficient to show that the appellant was subjected to great mental agony and also must have undergone great amount of physical pain and suffering during treatment as also post treatment during the recovery stage.

14. Considering all these facts and circumstances of the case, this court is of the opinion that the amount of compensation of Rs.10,000/- towards disability awarded by the Tribunal is on the lower side and the same deserves to be and is accordingly enhanced to Rs.25,000/-. Similarly, the amount of compensation of Rs. 3000/-towards pain and suffering also deserves to be and is enhanced to Rs.10,000/-. Compensation towards special diet is also enhanced from Rs.2000/- to Rs.5000/-. In addition, he is also entitled for Rs.25,000/- towards medical bills as awarded by the Tribunal. Thus, in all the appellant shall be entitled for compensation of Rs.65,000/- instead of Rs.40,000/- as awarded by the Tribunal i.e. Rs.25,000/-over and above what has been awarded.

15. Thus, the appeal of the claimant (MA No. 772 of 2005) is allowed and the appellant is now entitled for compensation of Rs. 65,000/- in place of Rs.40,000/- as awarded by the Tribunal. The enhanced amount of Rs. 25,000/- shall be paid by the respondent-insurance company within a period of 60 days from today along with interest

quantified at the rate as awarded by the Tribunal. Rest of the conditions shall remain intact.

16. So far as appeal of the insurance company (MA No.854 of 2005) is concerned, if we peruse the records, the findings which clearly comes forth is that there was no evidence adduced by the any of the respondent including that of insurance company. Though there is a contention made that they have moved an application to call upon the RTO witness, but it appears that it has not been pursued after it has got rejected.

17. In the absence of any such evidence by the insurance company to substantiate their contention, the appeal preferred by the insurance company (MA No.854 of 2005) does not seem to have sufficient force calling for interference of this court.

18. Resultantly, MA No.854 of 2005 filed by the appellant-insurance company is dismissed and the appeal MA No. 772 of 2005 filed by the appellant-claimant for enhancement is partly allowed to the above extent.

Sd/-
(P.Sam Koshy)
Judge

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