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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1369 of 2009

Smt. Purnima Dhruv W/o Shri Rooplal Dhruv, aged about 25 years, R/o Mathpuraina, Police Station Tikrapara, Raipur, Tahsil & District Raipur (CG)

---- Appellant

Versus

1. Rajesh @ Munni Gupta S/o Ram Kripal Gupta, aged about 30 years, R/o Nehru Nagar, Kalibadi, Raipur, Police Station City Kotwali, Tahsil & District Raipur (CG)

   Working address – C/o Ramchand Gaikwad S/o Dirbilal Gaikwad, R/o village Deopuri, Police Station Tikrapara, Tahsil & District Raipur (CG)
2. Ramchand Gaikwad S/o Dirbilal Gaikwad, R/o Village Deopuri, P.S. Tikrapara, Raipur, Tahsil and Distt.-Raipur (CG)
3. The Oriental Insurance Company Limited through Divisional Manager, Divisional Office, Kutchery Chowk, Jail Road, Raipur, Tahsil and Distt.-Raipur (CG)

---- Respondents

For Appellant-claimant	:	Shri Shivendu Pandya, Advocate
For Respondent no. 3	:	Shri Deepak Gupta, Advocate

Misc. Appeal (C) No. 1254 of 2008

Oriental Insurance Company Limited, Divisional Office No.1, Raipur through its Divisional Manager, Divisional Office Bilaspur (CG)

---- Appellant

Versus

1. Smt. Purnima Dhruv W/o Rooplal Dhruv, aged about 25 years, R/o Mathpurena, Police Station Tikrapara, Raipur, Tahsil & District Raipur (CG)

2. Rajesh @ Munni Gupta S/o Ram Kripal Gupta, aged about 30 years, R/o Nehru Nagar, Kalibadi, Raipur, Police Station City Kotwali, Tahsil & District Raipur (CG)
3. Office address – C/o Ramchand Gaekwad S/o Dirbilal Gaekwad, R/o village Deopuri, Police Station Tikrapara, Tahsil & District Raipur (CG) (Driver of the Jeep Commander No. CG04T/1934)
4. Ram Chand Gaekwad, aged about 36 years, S/o Dirbilal Gaekwad, R/o Village Devpuri, P.S. Tikrapara, Raipur, Tahsil and Distt.-Raipur (CG) (Owner of the Jeep Commander No. CG04T/1934)

---- Respondents

For Appellant/Insurance Company	:	Shri Anand Gupta, Advocate
For Respondent no. 1/claimant	:	Shri Shivendu Pandya, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

31/10/2017

These are the two appeals arising out of the award dated 24.06.2008 passed by the 3rd Additional Motor Accident Claims Tribunal, Raipur, (CG) in Claim Case No. 52/2007. Vide the impugned award, the Tribunal has in an injury case under Section 166 of the MV Act, awarded a compensation of Rs.38,149/- with interest @ 6% per annum from the date of application.

2. While passing the impugned award the Tribunal has ordered for "pay and recovery" in favour of the Insurance Company.

3. MAC No. 1369/09 is an appeal by the claimant seeking enhancement and MAC No. 1254/08 is an appeal by the Insurance Company questioning the liability which has been fastened upon the Insurance Company.

4. So far as the appeal of the claimant is concerned, counsel for the claimant submits that only on the ground that the treating doctor has not been examined, the compensation has not been properly granted by the Tribunal and that the compensation paid is also on the lower side. He submits that the claimant in the instant case suffered fracture of left hand as well as left feet and the doctor has assessed the disability to be 77% but the Tribunal has awarded only an amount of Rs.5,000/- for the grievous injury, Rs.2,000/- for temporary disability suffered by the claimant and rest of the amount is for the expenses incurred during the course of treatment. Thus, prayed for enhancement of the compensation suitably.

5. Having considered the contention put forth by the counsel for the claimant and taking into consideration the facts and circumstances of the case particularly the gravity of injury sustained by the claimant and the treatment required, this Court is of the opinion that ends of justice would meet if the claimant is granted an additional amount of Rs.30,000/- in addition to what has already been awarded by the Tribunal making the total compensation payable to the claimant at Rs.68,149/- in stead of Rs.38,149/-. It is ordered accordingly. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.

6. Counsel for the claimant at this juncture submits that the finding of exoneration of the Insurance Company in the instant case is bad in law for the reason that the issue now stands decided by the larger Bench decision of Hon'ble Supreme Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **AIR 2017 SC 3668** and thus, prayed that the liability of payment of compensation may be shifted upon the Insurance Company alone.

7. This Court finds sufficient strength and force in the argument put forth by the counsel for the claimant in this regard as the Supreme Court in the case of Mukund Dewangan (supra) has already decided the issue and held that merely because there is no endorsement on the licence for driving a commercial vehicle by itself would not absolve the Insurance Company from indemnifying the owner if the driver at the relevant point of time had a licence of the same category/class of vehicle. In the instant case, admittedly the driver had a licence for driving light motor vehicle. The vehicle involved in the accident is a Commander Jeep which falls within the ambit of light commercial vehicle for the reason that it was being used for commercial purpose. The impugned award thus stands modified to the extent that the liability of payment of compensation shall be exclusively upon the Insurance Company indemnifying the owner and the driver jointly and severally.

8. So far as the appeal of the Insurance Company challenging the impugned award only on the ground of the driver not having a proper driving licence is concerned, the issue stands squarely decided in the light of the finding given in the preceding paragraphs and the appeal of the Insurance Company thus does not require fresh adjudication and the same being devoid of merits is accordingly dismissed.

9. Thus, the appeal of the claimant stands allowed and the appeal of the Insurance Company stands dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola