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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 550 of 2014

Ali Khan S/o Basir Khan, aged about 23 years, R/o village Pandhi, P.S. Sipat, Bilaspur, Civil & Revenue District Bilaspur, C.G.

---- Appellant

Versus

1. Sunil Yadav S/o Rupchandra Yadav R/o Ganiyari, P.S. Kota, Distt. Bilaspur, C.G. (Owner - Auto no. CG 10/T-1264)
2. Suresh Dubey @ Mani S/o Shiv Kumar Dubey, aged about 26 years, R/o Pandhi, Post- Sipat, Distt. Bilaspur, C.G. (Driver - CG 10/T-1264)
3. Branch Manager, the Oriental Insurance Company Ltd., near Rajeev Plaza, Bus Stand, Bilaspur, C.G. (Insurance Company)
4. Ramsharan Chowhan S/o Sudama Prasad Chowhan, R/o Padavpara, behind Janpad Panchayat Office, P.S. & Tah. Kota, Distt. Bilaspur, C.G. (Owner cum driver – Maruti Van (wrongly mentioned as Vetan) No. CG10/F-9178)
5. Branch Manager, Shri Ram General Insurance Company Ltd., E-8, I.P. Ricko Industrial Area, Jaipur, Sitapur (Rajasthan)

---- Respondents

For Appellant	:	Shri Akhtar Hussain, Advocate
For Respondent no. 3	:	Shri T. K. Tiwari, Advocate
For Respondent no. 4	:	Shri A. L. Singroul on behalf of Shri P. K. Tulsyan, Advocate
For Respondent no. 5	:	Shri S. S. Rajput, Advocate

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and

Misc. Appeal (C) No. 1021 of 2014

Shri Ram General Insurance Company Limited through Branch Manager, Shri Ram General Insurance Company Ltd., E/8, I.P. RIICO, Industrial Area, Sitapura, Jaipur, Rajasthan 302022 (Insurer of Maruti Van No. CG 10-F-9178)

---- Appellant

Versus

1. Ali Khan S/o Basir Khan, aged about 23 years, R/o village Pandhi, P.S. Sipat, District Bilaspur, C.G. (Claimant)
2. Sunil Yadav S/o Roopchand Yadav R/o Ganiyari, P.S. Kota, Distt. Bilaspur, C.G. (Owner - Auto no. CG 10-T-1264)
3. Suresh Dubey @ Mani S/o Shiv Kumar Dubey, aged about 26 years, R/o Pandhi, Post- Sipat, Distt. Bilaspur, C.G. (Driver of Auto No. CG 10-T-1264)
4. Branch Manager, the Oriental Insurance Company Ltd., beside Surya Hotel, Bilaspur C.G. (Insurer of Auto No. CG 10-T-1264)
5. Ramsharan Chauhan S/o Sudama Prasad Chauhan, R/o Padaopara, behind Janpad Panchayat Office, P.S. & Tah. Kota, Distt. Bilaspur, C.G. (Owner and driver of Maruti Van No. CG10-F-9178)

---- Respondents

For Appellant	:	Shri S. S. Rajput, Advocate
For Respondent no.1	:	Shri Akhtar Hussain, Advocate
For Respondent no.4	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

11/12/2017

These are the two appeals challenging the common order dated 04.04.2014 passed by the Additional Motor Accident Claims Tribunal (FTC), Bilaspur (CG) in Claim Case No. 41/2013. Vide the impugned award, the Tribunal, in an injury case under Section 166 of the MV Act, has awarded a compensation of Rs.2,21,800/- with interest @ 6% per annum from the date of application.

2. MAC No. 550/14 is an appeal by the claimant seeking enhancement of compensation and MAC No. 1021/14 is an appeal by the Insurance Company i.e. Shri Ram General Insurance Co. Ltd. questioning the liability party.

3. While passing the impugned award, the Tribunal has exonerated the Oriental Insurance Company Limited which had insured the Auto-rickshaw bearing registration No. CG 10 T 1264 involved in the accident and has fastened the liability to the tune of 30% upon the owner and driver of the auto-rickshaw and the balance amount of 70% has been fastened upon Shri Ram General Insurance Company Ltd. which had insured the Maruti Van bearing registration No. CG 10 F 9178.

4. So far as the appeal of Shri Ram General Insurance Company is concerned, contention of the counsel for the Insurance Company is that the driver of the Maruti Van did not have a valid licence at the time of accident. Similarly, the vehicle involved in the accident did not have a valid permit. It is the contention of the counsel for the Insurance Company that the nature of accident would establish that there was a contributory negligence of equal proportion on the part of the driver of the auto also and therefore, the apportionment of compensation should have been at the ratio of 50:50 in stead of 30:70 as assessed by the Tribunal. It is also the contention of the counsel for the Insurance Company that the amount of compensation awarded is on the higher side and prayed for the award to be suitably modified.

5. However, perusal of the record would show that the Insurance Company i.e. Shri Ram General Insurance Company Limited has not led any evidence to substantiate its contention. In the absence of any evidence led by the Insurance Company, this Court does not find any strong case made out to interfere with the impugned award so far as the liability that has been fastened upon Shri Ram General Insurance Company is concerned. As regards the quantum also, this Court does not find any strong case made out by the Insurance Company calling for an interference particularly taking note of the date of accident, the nature of work the claimant was performing coupled with the fact that the claimant himself has also filed an appeal for enhancement of compensation. For the aforesaid reasons, the appeal of the Insurance Company fails and is accordingly dismissed.

6. So far as the appeal of the claimant is concerned, contention of the counsel for the claimant is that the exoneration of the Insurance Company which had insured the auto-rickshaw i.e. the Oriental Insurance Company is no longer sustainable on the ground that the issue involved herein is squarely covered by the recent larger Bench decision of the Hon'ble Supreme Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **AIR 2017 SC 3668.** Therefore, the impugned award needs suitable modification of fastening the liability of payment of compensation in respect of the share of 30% of the owner of the Auto upon the Oriental Insurance Company i.e. the insurer of the auto-rickshaw in stead of the owner and driver.

7. Counsel for the respondents are not in a position to dispute the contention of the claimant of the matter being covered by the judgment of the Supreme Court in the case of Mukund Dewangan (supra). Accordingly, the impugned order to the extent of exonerating the Oriental Insurance Company of its liability of indemnifying the owner and driver of the auto-rickshaw is not sustainable and the same is set aside. It is ordered that the liability of 30% of the compensation quantified by the Tribunal upon the owner and the driver of the auto-rickshaw shall be upon the Oriental Insurance Company Limited.

8. So far as the claim for enhancement of compensation is concerned, counsel for the claimant submits that the injured in the instant case was earning much more than what has been assessed by the Tribunal. He further submits that considering the date of accident, it is evidently clearly that the income assessed by the Tribunal and the quantum awarded are on the lower side which deserve to be enhanced suitably.

9. Having heard the contention put forth by the counsel for the claimant and on perusal of the record this Court has no hesitation in holding that at the relevant point of time, the minimum wages of an unskilled labour would have been more than rupees 150 a day and 4,500/- a month. Therefore, in all practical purposes, the income of the injured would be Rs.4,500/- a month i.e. Rs.54,000/- yearly in stead of Rs.36,000/- as assessed by the Tribunal. It is ordered accordingly. Accepting Rs.54,000/- as the yearly income of the deceased, 10% of which would be the loss of earning capacity as assessed by the doctor which makes it Rs.5,400/-. If the said amount is multiplied applying the multiplier of 18 considering the age of the claimant, the amount would come to Rs.97,200/-. It is ordered that the claimant shall be entitled for loss of earning capacity at Rs.97,200/- in stead of Rs.64,800/-. In addition, this Court also awards an additional amount of Rs.20,800/- towards compensation under the other heads. The compensation awarded under medical treatment, pain and suffering, for engaging attendant, special diet and expenditure towards travelling shall remain intact. Thus, the claimant shall be entitled for a total compensation of Rs.2,75,000/- in stead of 2,21,800/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been assessed by the Tribunal.

10. Accordingly, the appeal of Shri Ram General Insurance Company i.e. MAC No.1021/14 stands dismissed. The appeal of the claimant i.e. MAC No.550/14 stands allowed and it is ordered that the amount of compensation payable to the tune of 30% as assessed against the owner and driver of the Auto-rickshaw shall now be shifted upon the insurer of the said auto i.e. the Oriental Insurance Company Limited.

Sd/-
(**P. Sam Koshy)**
JUDGE

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