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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 926 of 2009

Laxmi Nagesh, W/o. D.K. Nagesh, aged about 48 years, R/o. Near Bus Stand Konta, District Dantewada, Chhattisgarh

---- Appellant

Versus

1. Subhash Chandra Chandel, S/o. Ramesh Chandra Chandel, Aged about 39 years, R/o. Shanti Nagar Ward, Jagdalpur, District Bastar, Chhattisgarh
2. Praveen Chandra Tiwari, S/o. B.C. Tiwari, Aged about 21 years, R/o. Near Home Gua11rd Camp, Hutkochara, Jagdalpur, District Bastar, Chhattisgarh
3. The Oriental Insurance Company Ltd. Through: Branch Manager, Main Road, Jagdalpur, District Bastar, Chhattisgarh

----Respondents

MAC No. 1488 of 2009

The Oriental Insurance Company Ltd. Through: Branch Manager, The Oriental Insurance Co. Ltd. Main Road, Jagdalpur, District Bastar, Chhattisgarh

---- Appellant

Versus

1. Laxmi Nagesh, W/o. B.K. Nagesh, aged about 48 years, R/o. Near Bus Stand Konta, District Dantewada, Chhattisgarh
2. Subhash Chandra Chandel, S/o. Ramesh Chandra Chandel, Aged about 39 years, R/o. Shanti Nagar Ward, Jagdalpur, District Bastar, Chhattisgarh
3. Praveen Chandra Tiwari, S/o. B.C. Tiwari, Aged about 21 years, R/o. Near Home Guard Camp, Hatakchora, Jagdalpur, District Bastar, Chhattisgarh

----Respondents

For Appellant	:	Mr. Subhash Yadav, Advocate
For Resp. No.3/Insurance Company	:	Mr. H.P. Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

25/09/2017

1. These are two appeals arising out of the award dated 04.02.2009, passed by the Additional Motor Accident Claims Tribunal, South

Bastar, Dantewada, in Claim Case No.48/2007. Vide the said impugned award, in an injury case, the Tribunal has passed an award of Rs.1,56,900/- with interest @7.5% per annum from the date of application.

2. MAC No. 926/2009 is an appeal by the claimant seeking enhancement and MAC No. 1488/2009 is the appeal by the Insurance Company. For convenience sake, we take up the appeal of the Insurance Company first to be decided.

3. Counsel for the Insurance Company submits that it is a case where the Insurance Company has been wrongly fastened with the liability of payment of compensation. According to the counsel for the Insurance Company, it is a case where the insured was travelling in the said jeep as a passenger, whereas the vehicle was registered for private purpose. He further submits that the premium paid by the owner was also for personal use, whereas the fact that the claimant was travelling as a passenger shows that it was being used for commercial purpose. The counsel for the Insurance Company further submits that no extra premium in accordance with the sitting capacity has also been paid by the owner with which the liability could have been fastened upon the Insurance Company.

4. Perusal of the record would show that there is no evidence with which it could be said that the claimant while travelling in the said Jeep had paid some fair to the owner or driver for the purpose of travelling in the said Jeep. On the contrary, there is the evidence of the claimant who submits it to have stated that owner of the Jeep was well known to them and since they were well known, she was being taken in the Jeep to the Hospital and in the route the accident occurred.

5. In the absence of any substantive evidence on the part of the Insurance Company to disbelieve the finding recorded by the Tribunal, this Court is of the opinion that no strong case is made out on behalf of the Insurance Company calling for an interference, so far as the liability of the Insurance Company is concerned.

6. Thus the appeal of the Insurance Company being devoid of merit, deserves to be and is accordingly rejected.

7. So far as the appeal of the claimant is concerned, the undisputed fact which has come on record is that the accident which occurred on 04.10.2006. The vehicle involved in the accident being owned by the respondent No.2 and driven by the respondent No.1. The vehicle was duly insured with the Insurance Company-respondent No.3. In the course of the accident, the claimant suffered fracture on the right wrist, fracture of pelvis bone and also fracture of the right humorous bone.

8. The Doctor who has been examined before the Court i.e. Dr. Jha has assessed the percentage of disability suffered by the claimant at 70%. However, the Tribunal while quantifying the compensation has taken the functional disability at 40% while quantifying the compensation.

9. Considering the total facts and circumstances of case, particularly the fact that the incident is of the year 2009 and the claimant, who is a middle aged lady having suffered multiple fractures on her body, this Court is of the opinion that ends of justice would meet if a lump sum additional compensation of Rs.15,000/- in addition to what has already been awarded by the Tribunal is awarded in favour of the claimant.

10. It is ordered accordingly that the claimant shall be entitled for an additional amount of Rs.15,000/- in addition to the amount of Rs.1,56,900/- awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

11. As a result, the appeal of the claimant stands allowed and the appeal of the Insurance Company stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved