

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 906 OF 2009

1. Devcharan, S/o Chaitram, aged about 30 years, R/o Mitkera, Post-Guma, P.S. Palari, District Raipur (C.G.)
2. Chaitram, S/o Madanlal Verma, R/o Mitkera, Post-Guma, P.S. Palari, District Raipur (C.G.)

... Appellants

versus

1. Rajkumar Teharvansh, S/o Late Santram Teharvansh, aged about 26 years, R/o Village- Baijnath Khapri, Post- Balodi, Tahsil- Palari (Balodabazar), P.S. Palari, District Raipur (C.G.)
2. The New India Insurance Company Limited, through Branch Manager, Office Balodabazar, District Raipur (C.G.)

... Respondents

MISC. APPEAL (C) NO. 899 OF 2009

Rajkumar Teharvansh, S/o Late Santram Teharvansh, aged about 25 years, R/o Village- Baijnath Khapri, Post Office Balodi, Tahsil- Palari District Raipur (C.G.)

... Appellant

versus

1. Devcharan, S/o Chaitram, aged about 30 years, R/o Gitkera, Post-Guma, P.S. Palari, District Raipur (C.G.)
2. Chaitram, S/o Madanlal Verma, aged about 34 years, R/o Gitkera, Post-Guma, P.S. Palari, District Raipur (C.G.)
3. The New India Insurance Company Limited, through Branch Manager, Office, Balodabazar, District Raipur (C.G.)

... Respondents

- Mr. S.P. Sahu, Advocate, for the Appellants in MAC No. 906/2009 and for Respondents No. 1 and 2 in MAC No. 899/2009.
- Mr. C.R. Sahu, Advocate, for the Appellant in MAC No. 899/2009 and for Respondent No.1 in MAC No. 906/2009.
- Mr. Deepak Gupta, Advocate, for Respondent No.2 in MAC No. 906/2009.
- Mr. Shivendu Pandya, Advocate, for Respondent No.3 in MAC No. 899/2009.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/11/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the award dated 6.4.2009 passed by the Second Additional Motor Accident Claims Tribunal, Balodabazar, in Claim Case No. 28/2008.

2. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.4,65,000/- to the claimant-Rajkumar Teharvansh with interest thereon at the rate of 6% per annum from the date of presentation of the claim application. While passing the award, the learned Tribunal has exonerated the insurance company of its liability and fastened the liability for payment of compensation upon the owner and the driver of the offending vehicle.

3. MAC No. 906/2009 is the appeal preferred by the driver and the owner of the offending vehicle assailing the liability and MAC No. 899/2009 is the appeal filed by the injured-claimant seeking enhancement of the compensation awarded.

4. Brief facts of the case are that on 15.4.2008 while the claimant-Rajkumar Teharvansh was travelling on a motorcycle no. CG05/1319 as a pillion rider, he was hit by a tractor-trolley no. CG04-DA-1693 & 1694 which was driven by Devcharan and was owned by Chaitram who are both father and son respectively. As a result of the said accident, the claimant-Rajkumar Teharvansh sustained grievous injuries for which he was hospitalized where his right leg had to be amputated near the knee.

5. So far as the appeal of the driver and owner is concerned, i.e., MAC No. 906/2009, the contention of the learned counsel appearing for the owner and driver is that the Tribunal has wrongly exonerated the insurance company of its liability and that the liability in the instant case ought to have been shifted upon the insurance company. According to him, the offending vehicle was duly insured with a package policy that was meant for agriculture purpose and since it was a package policy, the Tribunal has erred in exonerating the insurance company of its liability. Further contention raised is that the finding of the Tribunal that the offending vehicle at the time of accident was being used for commercial purpose is

erroneous and is without any substantive piece of evidence and the same deserves to be set aside. According to him, there was categorical evidence led by the driver that the offending vehicle was loaded with sand which was meant for some construction work in their field.

6. There is no evidence to show that the sand was being transported for commercial use or that the sand loaded in the offending vehicle belonged to some other person. The evidence which have come on record both of the driver-Devcharan and the independent witness, Roopcharan, clearly indicate that the offending vehicle at the relevant point of time was loaded with sand but there was no evidence to show that it was meant for some third person in the village or that it was being used for commercial purpose.

7. Even if from the evidence which have come on record which have been relied upon by the learned Tribunal, what is clear is that the offending vehicle belonged to the appellants, Devcharan and Chaitram and the sand belonged to the appellants and that the sand was being taken to the agriculture field for some construction work is also established. This itself is a sufficient indication of the offending vehicle being used for the personal use of the appellants and not for any third person. There is no evidence of any commercial aspect proved or established or brought on record by any of the respondents to disprove the evidence or to controvert the evidence led by the appellants. Another aspect which cannot be lost sight is that the insurance company in the instant case has not led any evidence to substantiate their contentions of the offending vehicle being used for commercial purpose.

8. For the aforesaid factual matrix of the case which is not in dispute or has not been disputed by any of the counsel present before this Court, the finding of the learned Tribunal exonerating the insurance company does

not seem to be proper, legal and justified and the same therefore deserves to be and is accordingly set aside. It is ordered that the liability for payment of compensation shall jointly and severally be upon the owner, driver and the insurer of the offending vehicle and the responsibility of payment of compensation shall fall upon the insurance company, for the reason that the offending vehicle at the relevant point of time was duly insured with a package policy meant for agriculture purpose.

9. So far as the appeal of the injured-claimant seeking enhancement of the compensation is concerned, i.e., MAC No. 899/2009, learned counsel for the claimant submits that the Tribunal has assessed the income of the injured-claimant at Rs.3000/- a month and has quantified the compensation assessing the disability at 70%, which is not correct. He further submits that the finding of contributory negligence arrived at by the learned Tribunal is bad in law, for the reason that the claimant in the instant case was a pillion rider and therefore there cannot be a case of contributory negligence and it can be a case of composite negligence.

10. The argument of the learned counsel for the claimant as regards the contributory negligence does have sufficient force. Since admittedly the claimant was a pillion rider, there cannot be any contributory negligence on his part attributing to the accident. Thus, the finding of contributory negligence deserves to be and is accordingly set aside.

11. So far as the quantum of compensation is concerned, from the factual matrix of the case, the accident and the resultant injury i.e. amputation of right leg is not in dispute. It is a case of the claimant which stands unrebutted is that he was a driver by profession and by virtue of amputation of his right leg he cannot perform the duties of a driver any longer and as such there is 100% loss of earning capacity in the instant case. Applying the principles laid down by the Hon'ble Supreme Court in

the case of **Pratap Narain Singh Deo v. Srinivas Sabata and Another**¹ which has been subsequently relied upon by the Hon'ble Supreme Court in the case of **S. Suresh v. Oriental Insurance Company Limited and Another**², this Court has no hesitation in assessing the disability of the injured-claimant at 100% instead of 70%.

12. Accepting the income of the injured-claimant at Rs.3000/- a day which comes to Rs. 36,000/- yearly and applying the multiplier of 18 looking to the age of the claimant, the compensation payable would be Rs.6,48,000/-. It is thus ordered that the claimant shall be entitled for Rs.6,48,000/- for loss of earning capacity. So far as the medical expenses are concerned, the amount awarded by the learned Tribunal, i.e., Rs.1,70,000/-, is ordered to be remain intact. Likewise, so far as the pain and suffering, mental agony and other incidental expenses are concerned, this Court quantifies the amount at a lump sum compensation of Rs.32,000/-.

13. It is accordingly ordered that the claimant shall be entitled for a total compensation of Rs.8,50,000/- instead of Rs.4,65,000/- which was awarded by the learned Tribunal. The enhanced amount shall also carry interest at the same rate as has been imposed by the learned Tribunal. It is made clear that the claimant shall be entitled for the entire compensation awarded without there being any deduction towards the contributory negligence, as the finding of contributory negligence already stands set aside by this Court.

14. The appeal preferred by the driver and owner as well as the appeal preferred by the claimant both stand allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/

1 1976 (1) SCC 289
2 2010 (13) SCC 777