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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 871 of 2010

Rambhajan Satnami S/o Ghurua Satnami R/o village Mariyatola, Post Pondi, PS Bodala District Kabirdham (CG)

---- Appellant

Versus

1. Arjun Verma S/o Durga Prasad Verma, Caste Kurmi, Occupation Driver, R/o village Lakhanpur, Post Pondi, PS Bodala, District Kabirdham (CG)
2. Durga Prasad S/o Takhatram Verma, Caste Kurmi, Occupation owner of vehicle, R/o village Lakhanpur Khurd, Post Pondi, PS Bodala, District Kabirdham (CG)
3. The United India Insurance Company Limited, Branch office – Bhilai, District Durg, (CG)

---- Respondents

For Appellant	:	Shri M. K. Sinha, Advocate
For Respondents 1 & 2	:	Shri Shashi Bhushan, Advocate
For Respondent no.3	:	Shri Dashrath Gupta, Advocate

Misc. Appeal (C) No. 1229 of 2010

The United India Insurance Company Limited through its Divisional Manager, Divisional Office, 1st Floor, Krishna Complex, Kutchery Chowk, Raipur, District Raipur (CG)

---- Appellant

Versus

1. Rambhajan Satnami S/o Ghurva Satnami, Occupation – Labourer, R/o village Mariyatola, Post Pondi, PS Bodala District Kabirdham (CG)
2. Arjun Verma S/o Durga Prasad Verma, Caste Kurmi, Occupation Driver, R/o village Lakhanpur, Post Pondi, PS Bodala, District Kabirdham (CG)
3. Durga Prasad S/o Takhatram Verma, Caste Kurmi, Occupation vehicle owner, R/o village Lakhanpur Khurd, Post Pondi, PS Bodala, District Kabirdham (CG)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondent no. 1	:	Shri M. K. Sinha, Advocate
For Respondents 2 & 3	:	Shri Shashi Bhushan, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/07/2017

These appeals have been preferred under Section 173 of the Motor Vehicles Act. The first appeal is by the claimant seeking for enhancement of the award and the second appeal is by the Insurance Company assailing the liability which has been fastened upon it. The appellants have assailed the order dated 12.04.2010 passed by the Motor Accident Claims Tribunal, Kabirdhan in M.A.C.C. No.91/2008 whereby the Tribunal has granted compensation of Rs.1,65,000/- to the claimant and has fastened the liability of payment of compensation upon the Insurance Company.

2. The facts of the case in nutshell are that the claimant Rambhajan Satnami met with an accident while he was travelling in the tractor bearing registration No. CG04 D7524 on 19.07.2008. The accident arose on account of the tractor falling in a field and the claimant came under the load of Muram that were loaded in the tractor. As a result of the said accident, the claimant sustained injuries all over his body. At the time of accident, the tractor was being driven by respondent no.1 and the owner of the tractor was respondent no.2 in MAC No.871/10. The offending tractor was insured with the appellant Insurance Company in MAC No. 1229 of 2010. The claim case under Section 166 of the Motor Vehicles Act was filed by the claimant before the Tribunal.

3. Considering the pleadings and the evidences which have come on record, the Tribunal vide impugned award dated 12.04.2010 allowed the claim application and ordered for payment of Rs.1,65,000/- as compensation to the claimant. Out of the said amount, Rs.80,000/- was given towards medical expenses which had already incurred and which was likely to be incurred, Rs.54,000/- for loss of income because of the disability that arose from the said accident, Rs.15,000/- for the pain and suffering and mental agony and Rs.16,000/- was paid towards accidental expenses that have incurred for the movement made while the claimant was under treatment. Though the award was passed holding that the respondents are jointly and severally liable but the liability of depositing of payment of compensation was fastened upon the Insurance Company.

4. It is this award which has been put to challenge by the claimant as well as by the Insurance Company.

5. The claimant's appeal is on the ground that the amount of compensation awarded by the Tribunal is on the lower side. The Insurance Company's appeal is on the ground that the Court below has failed to appreciate the breach of policy condition while fastening the liability upon it.

6. If we look into the medical evidences which have come on record and which have been proved by doctor Gajendra Singh PW-3, it would reflect that the certificate of disability was issued to the extent of 60% permanent disability. According to the doctor, apart from the other injuries that the claimant had sustained, the major injury was a fracture of the pelvic bone and the pelvic bone in due course of time has joined but there was a irregular joint at the place of fracture. As a result of the said injury on pelvic bone, the claimant was suffering from a problem of "foot drop". According to the doctor, the claimant was not able to move his feet up and down ward and the right leg also could not be straightened. In addition, the claimant was also finding difficulty for urination because of the accident and taking all these into consideration, the team of doctors held permanent disability by 60%.

7. Now if we look into the nature of fracture sustained by the claimant and the complications which arose thereafter, this Court has no hesitation in reaching to the conclusion that the claimant must have undergone a great element of pain and suffering and also mental agony and therefore, the compensation granted for the same deserves to be enhanced.

8. So far as the appeal of the Insurance Company is concerned, Counsel for the Insurance Company drew the attention of this Court to paragraph-15 of the judgment wherein the claimant in his cross-examination himself has accepted the fact that he goes to the village pond for having daily bath. Likewise, the claimant has also accepted that he is able to ride a bicycle. The Insurance Company has also produced documents which reflect that the name of the claimant has been entered in the muster roll maintained at village Mariatola of having worked as labourer under the employment guarantee scheme. Therefore, counsel for the Insurance Company submits that the impugned award seems to be fair and justifiable except for the fact of fastening the liability upon the Insurance Company.

9. Counsel for the Insurance Company further submits that the owner of the tractor was not having proper permit for using the tractor and trolley for commercial purpose and as such there was a contravention of the terms and conditions of the policy. According to the counsel for the Insurance Company, the tractor was supposed to be used only for agricultural purpose and at the time of accident, it was being used for the work other than the agricultural purpose. It was further contended that the policy that was taken was not covering the risk of a labour travelling on a trolley attached to the tractor, therefore, the claimant would not fall within the purview of a third party. Thus, prayed for discharging the liability of payment of compensation form the Insurance Company.

10. Given the factual aspects as narrated in the preceding paragraphs when we look into the injuries that were sustained by the injured claimant, this Court has no doubt in its mind that the claimant has definitely undergone substantial pain and suffering for which the amount of Rs.15,000/- awarded by the Tribunal seems to be too meager and the same therefore deserves to be and is accordingly enhanced to Rs.50,000/-. So far as the compensation and interest as awarded under the other heads, the same do not warrant any interference and shall remain intact.

11. So far as the appeal of the Insurance Company is concerned, if we look into the record, it clearly shows that there is no evidence whatsoever led by the Insurance Company to substantiate its contention that it had made before the Tribunal in respect of the liability part. In the absence of any evidence, there is no reason why the finding of the Court below should be interfered with and the appeal of the Insurance Company thus, being devoid of merits, deserves to be and is accordingly dismissed.

12. In the result, the appeal of the claimant is partly allowed and he is entitled for an additional amount of Rs.35,000/- under the head of pain, suffering and mental agony in addition to Rs.15,000/- awarded by the Tribunal. The said enhanced amount of Rs. 35,000/- shall also carry interest at the rate which has been awarded by the Tribunal from the date of application till the realization.

13. With the aforesaid modification to the impugned award, the appeal of the claimant stands partly allowed and the appeal of the Insurance Company stands dismissed.

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

Bhola