NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 720 of 2012

Abdul Hamid S/o Mohammed Shakur, aged about 40, R/o Bhilai, District Durg (C.G.).

---- Appellant

Versus

1. Faiyaz Ahmed S/o Fazal Ahmed, aged about 38 years, R/o near Munmun Kirana Stores, Camp-1, PS Chhawni, Bhilai, Distt. Durg (CG).
2. Barjat Ali S/o Abdul Rahman, R/o 36-F, Camp-1,bhilai, District Durg (C.G.)
3. National Insurace Compnay Limited Through Branch Manager, Branch No. 1 Bhutani Complex, G.E. Road, Power House, Bhilai, District Durg C.G.

---- Respondents

For Appellant	:	Shri Amiykant Tiwari, Advocate.
For Insurance Company	:	Shri Dashrath Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

04/09/2017

1. The present is an appeal by the claimant under Section 173 of the Motor Vehicles Act against the award dated 26.06.2010 passed by the 9th Additional Motor Accident Claims Tribunal (FTC) Durg (in short, the Tribunal) in Claim Case 104/2009. Vide the impugned award, the Tribunal on an application filed under Section 166 of the Motor Vehicles Act, has awarded compensation of Rs.4,56,921/- of which the breakup is Rs.1,04,521/- towards medical expenses and Rs.3,26,400/- towards loss of income. In addition, for pain and suffering Rs.5000/- has been awarded, Rs.1000/- towards special diet and Rs.10,000/- each for attendant and loss of amenities. While passing the award, the Tribunal has exonerated the insurance company and have fastened the liability of payment of compensation upon the owner and driver of the offending vehicle.

2. It is this award which is under challenge in this appeal. The challenge to the award is firstly the exoneration of the insurance company and secondly the amount of compensation awarded by the Tribunal is on the lower side which requires interference.
3. So far as the liability part is concerned, counsel for the appellants submits that the only ground of exonerating the insurance company is that of the discrepancy that was detected during the course of evidence so far as date of birth of the driver of the offending vehicle i.e. respondent No.1. According to appellant, the witness of the RTO itself has been examined as witness of the insurance company who has categorically deposed that the driver of the vehicle at the relevant point of time had a valid licence, inadvertently the date of birth of driver i.e. respondent No.1 has been wrongly mentioned as 15.06.1970 and which subsequently has been rectified and corrected as 15.06.1965. Tribunal, thus has committed an error of law in exonerating the insurance company of its liability.
4. Counsel for the insurance company submits that the findings of the Tribunal is based upon the evidence which have come on record and in the evidence the witness has not been able to show as to whether there was any proper instruction or any order from the superior officer for making out the rectification. In the absence of which the discrepancy detected by the Tribunal cannot be faulted with and thus, prayed for rejection of the appeal.
5. Having heard the counsel appearing for either side and on perusal of record, it is undisputed that the driver on the relevant date had a

licence. It is also not in dispute that apart from the ground of discrepancy of date of birth in the licence there is no any other breach of policy conditions by which the insurance company has been exonerated. What is relevant at this juncture is to verify the evidence of the witness of RTO. The witness Syed Safi, AG-II in the office of the RTO, Durg, was examined before the court as witness of the insurance company who has specifically deposed that there was a discrepancy in the date of birth because of a clerical error and this error was subsequently got rectified. Once when there is an evidence of the Register of the office of the RTO having been rectified, there is no question of adverse presumption against the driver inasmuch as the same has not been cancelled by the authorities of the Transport Department. In the absence of any cancellation of licence, it cannot be said that the licence issued was not a duly issued licence. Thus, the ground of exonerating the insurance company is not tenable and the same deserves to be and is hereby set aside.

6. So far as claim of the claimants is concerned, the claim before the Tribunal was that he was a Tempo Driver and because of the injuries sustained from the said accident he has become immobile as he has become bedridden and cannot move without a wheelchair and for which also he requires assistance of an attendant. It has also come on report of the doctor VS Baghel, AW-4, who was examined on behalf of the claimant, that the appellant suffers from 100 percent physical disability as he has no feelings below his waist nor does he have any control over his body below the waist to the extent even he

does not have control over his passing of urine and stool.

7. In the given facts and circumstances of the case particularly the evidence which has come on record, this court has no hesitation in holding that the disability of the appellant can safely be assessed at 100 percent keeping in view the decision of Supreme Court in case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, 1976 (1) SCC 289.

8. So far as other ground of challenge by the claimant is that the income assessed by the Tribunal at Rs.3000/- per month is on the lower side considering the fact that accident took place in the year, 2008 where even if the wages of an unskilled labour if taken into account, would be somewhere between Rs.150-200 per day which would be Rs.4500-6000 in a month. This submission of the appellant definitely has some force and in the year 2008 the minimum wages of a person would not have been less than Rs.4500/- if we take Rs.150/- as daily wage of a person. Thus, this court holds that for the purpose of quantifying compensation, the income of the deceased ought to have been assessed at Rs.4500/- instead of Rs.3000/-. It is ordered accordingly.

9. If Rs.4500/- is taken as monthly income, the yearly income would be Rs.54000/- of which, if 50 percent is added towards future prospects, the same could become Rs.81000/-. If this amount is multiplied by applying the multiplier of 15, the compensation payable to the claimant for loss of dependency would be Rs.12,15,000/- instead of Rs.3,26,400/- as assessed by the Tribunal.

10. Likewise, if we take into account the compensation awarded under conventional heads also, this court is of the opinion that pain and suffering which the claimant has undergone and is still undergoing is beyond measurement and the mental agony because of the body of the claimant getting immobile below the waist also is immense. Thus, under these circumstances, this court is of the opinion that a lump sum compensation of Rs.1,00,000/-so far as pain & suffering and mental agony would be just and proper. This court is further of the opinion that under the head of special diet and on incident transportation and also engagement of attendant to be incurred in future, an amount of Rs.1,00,000/- should be just and reasonable. In addition, the amount of compensation payable to the appellant towards medical expenses i.e. Rs.1,04,521/-shall remain intact.

11. Thus, the claimant shall now be entitled for a total compensation of Rs.15,19,521/- instead of Rs.4,56,921/- as awarded by the Tribunal. The appeal of the claimant thus stands allowed. The liability of payment of compensation shall be upon the insurance company. Rest of the conditions mentioned in the award shall remain intact.

Sd/-
(P.Sam Koshy)
Judge

inder