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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 31.7.2018

Order Delivered on 9.8.2018

MAC No. 1226 of 2014

1. Abdul Rasid Khan S/o Chand Khan Aged About 59 Years R/o Village- Dhusera, P.S. And Tah. Dongargarh, Distt. Rajnandgaon C.G.
2. Mohit S/o Humman Aged About 26 Years R/o Village- Dhusera, P.S. And Tah. Dongargarh, Distt. Rajnandgaon C.G.

---- Appellants

Versus

1. Vinod Kumar S/o Bisahu Lal Verma Aged About 26 Years R/o Gandhi Chowk, Motipur, Ward No. 06, O.P. Chikhli, Tah. And Distt. Rajnandgaon C.G., Chhattisgarh
2. Branch Manager Oriental Insurance Co. Ltd., Near Railway Station, Rajnandgaon, Distt. Rajnandgaon C.G.
3. Branch Manager Durg- Rajnandgaon Gramin Bank, Branch At Dongargarh, Gol Bazar, Dongargarh, Distt. Rajnandgaon C.G.

---- Respondents

&

MAC No. 229 of 2015

- Vinod Kumar S/o Bisahu Lal Verma Aged About 26 Years R/o Gandhi Chowk, Motipur, Ward No. 06, O.P. Chikhali, Tahsil And District Rajnandgaron

---- Appellant

Versus

1. Mohit S/o Humman Aged About 26 Years R/o Village Dhusera, P.S. And Tahsil Dongergaon, District Rajnandgaon, C.G.
2. Abdul Rasid Khan S/o Chand Khan Aged About 59 Years R/o Village Dhusera, P.S. And Tahsil Dongergaon, District Rajnandgaon, C.G.
3. Branch Manager Oriental Insurance Company Limited, Near Railway Station, Rajnandgaron, District Rajnandgaon, C.G.
4. Branch Manager Durg Rajnandgaon Gramin Bank, Branch Dongergarh, Gol Bazar, Dongergarh, District- Rajnandgaon, C.G.

---- Respondents

Shri MK Bhaduri, Advocate for Appellants in MAC No.1226/14 & counsel for respondents 1 & 2 in MAC No.229/15

Shri Rajat Agrawal, Advocate on behalf of Shri Vivek Singhal, Advocate for Appellants in MAC No.229/15 and counsel for respondent No.1 in MAC No.1226/14

Shri Raj Awasthi, counsel for respondents 2 & 3 in MAC No.1226/14 and counsel for respondents 3 & 4 in MAC No.229/15

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. Since MAC No.1226/2014 & MAC No.229/2015 arise out of common award dated 14-10-2014 passed by Additional Motor Accident Claims Tribunal, Khairagarh, Dist. Rajnandgaon (CG) in Claim Case No.10/11, they are heard analogously and are being disposed of by this common order.

2. MAC No.1226/2014 has been preferred against the award dated 14.10.2014 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, Distt. Rajnandgaon (CG) in Claim Case No.10/11 wherein the said Tribunal has awarded a sum of Rs.7,07,549/- in favour of the claimant/respondent No.1 for the injuries suffered by him due to motor accident on 14.10.2009.

3. MAC No.229/2015 has been preferred by the claimant for enhancement of awarded sum.

4. In MAC No.1226/2014, the appellants are owner and driver of the offending vehicle Tractor bearing registration No. CG 08 C 7469. As per the claim, due to rash and negligent driving by the driver of tractor, the claimant suffered injuries.

5. As per the appellants (Owner and Driver), the tractor in question was purchased by appellant Abdul Rasid Khan through bank finance and it was financed by respondent No.3 Bank and insured with respondent No.2-Oriental Insurance Co. Ltd. Premium of the Policy was deducted by the loan account of appellant No.1, but in the said policy the vehicle number was wrongly mentioned as CG 08 C 5031. Upon application for correction filed by the Bank, the same was corrected on 07.12.2009 and description of the offending vehicle has been mentioned in the modified insurance policy as per Ex-D/4. Initially the vehicle was insured for the period from 20.5.2009 to 19.5.2010 and after correction the same shall be treated as insured from 20.5.2009 to 19.5.2010 and therefore, the insurance company was liable to pay compensation but the Tribunal has passed the award against the owner and driver.

6. In MAC No.1226/2014, learned counsel for the appellant submits as under:

(i) After correction in the insurance policy, the policy was effective on the date of incident therefore, finding arrived at by the trial Court that the policy was not effective on the date of incident is bad-in-law.

(ii) Fastening of liability totally on the owner and driver overlooking both the policies is not permissible under the law.

(iii) As the claimant was bachelor, deduction of 50% ought to have been made from his income.

7. In MAC No.229/2015, learned counsel for the appellant submits as under:

(i) The Claims Tribunal erred in assessing the disability of the appellant/claimant as 8% which is at lower side in the circumstances and the injuries sustained by him.

(ii) At the time of incident, the appellant was a bright student of Chartered Accountant and he suffered studies due to injuries. The Tribunal ought to have assessed the loss of earning as 80%.

(iii) The Tribunal has erred in taking notional income of the appellant as Rs.3,000/- whereas it should be Rs. 60,000/- per annum.

8. On the other hand, learned counsel for the Insurance Company submits that the finding arrived at by the Tribunal is based on proper appreciation of the evidence adduced by both the parties and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

9. The first question for consideration before this Court is whether the insurance policy was effective on the date of incident. Admittedly, date of incident is 14.10.2009. Originally the insurance Policy was issued as per Ex-D/10 and it was effective from 20.5.2009 to 19.5.2010. In the said insurance policy the vehicle number is mentioned as CG 08 C 5031 and the same was corrected on 07.12.2009 for the offending vehicle bearing registration No.CG 08 C 7069 (Ex-D/4). As it was issued on 07.12.2009, the period mentioned in the said policy is 07.12.2009 to 19.5.2010. In both the policies, the policy was effected upto 19.5.2010. In view of this court, if the vehicle bearing registration No.CG 08 C 5031 was insured, there was no need to issue the corrected Policy for offending vehicle, because the policy was already effective for other vehicle, therefore, the policy for the offending vehicle is effective from 20.5.2009 to 19.5.2010 and on the date of incident i.e. 14.10.2009 the policy was effective.

10. In view of the above, finding arrived at by the Tribunal that the policy was not effective on the date of accident is not sustainable and the same deserves to the reversed.

11. It is declared that the Policy issued by the Oriental Insurance Company Ltd. was effective on the date of accident and the said Company is liable to pay compensation to the claimant.

12. Finding of the Tribunal regarding negligence on the part of the appellant No.2 is based on oral and documentary evidence and the same is not liable to be interfered with.

13. The second question for consideration before this Court is whether the impugned award passed by the Tribunal is just and proper. The Tribunal has awarded on account of loss of future income after assessing disability of 8%, but from the evidence of Dr. Milind Choudhary (AW-3), Dr. J. Rai Chodhary (AW-4) and Dr. Prakash Bhalerao (AW-2), it is established that disability was 55% and he was under treatment for about one year. Looking to the fact that the claimant has suffered in his studies, an amount of Rs.75,000/- is awarded on this count, i.e. loss of income. The Tribunal has not awarded any amount for pain and suffering. It would be proper to award a sum of Rs.50,000/- on account of pain and suffering. Looking to the assessment of the Tribunal and this enhanced amount, the award amount is modified and rounded upto Rs.8,35,000/-.

14. In the result, MAC No.1226/2014 is allowed and MAC No.229/2015 is allowed in part. Accordingly, the award is modified as under:

(i) The Oriental insurance Company Ltd. shall pay to claimant Vinod Kumar a sum of Rs.8,35,000/- within two months from today failing which interest @ 9% shall be charged on the enhanced amount of compensation till its realization.

(ii) The Insurance Company shall pay the cost of the proceedings.

(iii) The amount so deposited shall be disbursed to the claimants as per the directions of the Tribunal.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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