NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 975 of 2011

Mahesh Kumar S/o Bhaagbali Yadav, aged 40 years, R/o vilalge Pipartarai, P.S.Kota, District Bilaspur (C.G.) (Claimant).

---Appellant

Versus

1. Pradip Kumar Sahu S/o Amru Sahu, R/o Firangi Para Kota, Tah Kota, District Bilaspur (C.G.) (Owner – Tractor No. CG-10-D-3477-78).
2. Kanhiya Gond S/o Vishnu Gond, aged 25 years, R/o Nawagaon "Salka" Tah Kota, District Bilaspur (C.G.) (Driver – Tractor No. CG-10-D-3477-78).
3. Branch Manger, I.C.I.C.I. Lombard Insurance Company, V.R.Plaza, Bilaspur, District Bilaspur (C.G.) (Insurance Company – Tractor No. CG-10-D-3477-78).

---Respondents

For appellant/claimant : Shri Akhtar Hussain, Advocate.
For respondent No.3/ Insurance Company. : Shri Tarkeshwar Nande on behalf of Shri Sourabh Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/02/2018

1. Present is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 30/04/2011 passed by the learned Third Additional Motor Accident Claims Tribunal, Bilaspur (C.G) in Motor Accident Claim Case No. 26/2010.

2. Vide the said impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.26,000/- with interest @ 9% per annum from the date of application.

3. While passing the impugned award, the Tribunal has exonerated the Insurance Company of its liability and have ordered for payment of compensation against the owner and driver of the Tractor involved in the accident.

4. The facts of the case in brief is that, the appellant/claimant in the instant case-Mahesh Kumar, aged around 40 years met with an accident on 07/09/2009 while he was standing on the road was hit by a Tractor and Trolley bearing registration Nos. CG-10-D-3477 and CG-10-D-3478 respectively. As a result of the said accident, the appellant received two fractures, one on his right thigh and the other being below the knee for which he was hospitalized and was also operated upon and steel plates and rods was inserted for his treatment. The doctor in the instant case was also examined i.e. AW/2 – Dr.S.S.Bhatia and Ex.A/8 which is the disability certificate issued from the District Medical Board, Bilaspur was also brought on record wherein it was held that, the appellant suffers from the permanent disability of 45%.

5. The counsel for the appellant submits that, the Tribunal in the instant case has given a lump sum compensation of only Rs.20,000/- for the disability part, Rs.5,000/- towards pain and suffering and Rs.1,000/- towards miscellaneous expenses which are unreasonably low. He further submits that, the Insurance Company has been wrongly exonerated in the instant case as no evidence whatsoever has been led by any of the respondents

with which it could be established that, there was a breach of policy condition.

6. The counsel for the Insurance Company however opposing the appeal submits that, it is a case where the nature of injury does not seem to be too grievous and therefore the amount of compensation awarded is just, fair and reasonable and does not warrant any interference.

7. Having heard the contention put forth on either side and on perusal of record what is not in dispute is the date of accident being 07/09/2009, the appellant sustaining accidental injuries from the said accident, the vehicle involved in the accident being that of a Tractor and Trolley bearing registration Nos. CG-10-D-3477 and CG-10-D-3478 respectively and the vehicle being duly insured with the respondent No.3/Insurance Company.

8. What further reflects from the proceedings drawn is that, neither the driver nor the owner has led any evidence before the Tribunal and they were also proceeded ex-parte. The Insurance Company though had filed their Written Statement, but did not lead any evidence to substantiate any of the contentions that they had raised.

9. Though there was no evidence led by any of the respondents, the Tribunal has taken note of the documents which were collected by the police authorities in the criminal case registered against the driver of the Tractor and has drawn an inference of the driver not having a license at the time of accident.

10. So far as the Insurance Company is concerned, true it is that the vehicle involved in the accident was duly insured. However, as regards there being any breach of policy condition, the Insurance Company has not led any evidence whatsoever. In the absence of any evidence by the Insurance Company to establish the breach of policy condition, this Court is of the opinion that the contention of the Insurance Company does not seem to have been proved or established before the Tribunal.

11. Under the given factual matrix of the case, particularly, taking note of the fact that the owner and driver have not appeared before the Tribunal nor have they entered appearance before this Court, it appears that the driver at the relevant point of time was not having a license or atleast it has not been produced before the Tribunal which they were supposed to do.

12. Given the circumstances, this Court is of the opinion that it is a fit case where the doctrine of 'pay and recovery' can be applied and the payment of compensation part can be fastened upon the Insurance Company with liberty to recover the same from the owner and driver. It is ordered accordingly.

13. So far as the quantum of compensation is concerned this Court is of the opinion that, a lump sum amount of Rs.20,000/- awarded by the Tribunal is unreasonably low as compared to the grievous injuries that the claimant had sustained on his right leg where he had suffered two fractures and had to be operated upon for his treatment. The doctor has also proved the disability part to be 45%. Taking into consideration the decision of the Hon'ble Supreme Court in the case of **Raj Kumar v. Ajay Kumar & Anr. [2011**

1 SCC 343] this Court is of the opinion that, though the doctor has assigned the disability on the right leg at 45%, but this Court assesses the overall disability of the claimant considering the nature of injury to be at 25%.

14. Considering the fact that the accident is of September-2009, the minimum income of even an unskilled labour during the said period would be somewhere around Rs.150-200/- per day i.e. Rs.4,500-6,000/- per month. Thus, this Court assesses the notional monthly income of the injured at Rs.4,500/-.

15. Accepting Rs.4,500/- as the monthly income of the injured, the yearly income would become Rs.54,000/- to which the claimant would also be entitled for 40% towards future prospects which is Rs.21,600/- which if added to the yearly income, the amount would become Rs.75,600/-. 25% of the said amount would be Rs.18,900/-. Thus, Rs.18,900/- is the loss of earning capacity of the claimant per year which if multiplied by applying multiplier of 15, the amount would come to Rs.2,83,500/-. It is ordered accordingly that the claimant shall be entitled for compensation towards loss of earning capacity of Rs.2,83,500/-. The rest of the amount awarded by the Tribunal shall remain intact which brings the total compensation payable at Rs.2,89,500/- instead of Rs.26,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

16. As ordered earlier, the liability of payment of compensation shall be upon the Insurance Company with liberty to recover the same from the owner and driver.

17. The appeal stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit