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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 863 of 2012

- Branch Manager, The Oriental Insurance Company Ltd., Branch- Ambikapur, Office- Near Ambedkar Chowk, Ambikapur, district- Surguja (C.G.).

---- Appellant

Versus

1. Manoj Kumar Pandey, S/o Shri Kashinath Pandey, aged about 26 years, Occupation- Driver, R/o Mohalla Bouripara, P.S. & Tahsil Ambikapur, District- Surguja (C.G.).

2. Smt. Pushpa Devi D/o Shri Ramprakash Dubey W/o Shri Virendra Nath Pandey (Patwari) aged about 35 years, (owner of vehicle Marshal Jeep No. C.1G. 15/2610) R/o Mohalla Bouripara (Beside Heera Hardware lane) P.S. & Tahsil Ambikapur, District- Surguja (C.G.).

---- Respondents

For Appellant : Shri Pankaj Agrawal, Advocate.
For Respondent No. 2 : Shri A. N. Bhakta, Advocate & Shri Vivek Bhakta, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

19.09.2018

1. This is appellant/insurer's appeal against the award dated 07.01.2012, passed by the Motor Accident Claims Tribunal, Surguja (for short 'the Tribunal') in claim case No. 126/2003.

2. Brief facts of the case are that on the fateful day i.e. 24.07.2003, Marshal bearing registration No. C.G. 15-2610, owned by respondent No. 2 and driven by respondent No.1, was coming from Raipur to Ambikapur, when the said vehicle reached near barrier of Dharsiwa, one

truck bearing registration No. M.P. 23-B 3721 was parked on the road recklessly without indication or parking light and due to which, being a dark night, the marshal dashed against the said truck, as a result of which respondent No. 1/claimant sustained multiple injuries resulting into permanent disability to the extent of 75%.

3. As against the compensation of Rs.14,02,478/- claimed by claimant/respondent No. 1- Manoj Kumar by filing application under Section 163-A of the Motor Vehicles Act, 1988 (for short 'MV Act') for the multiple injuries sustained by him in the motor accident on 24.07.2003, the Tribunal awarded a total sum of Rs. 5,01,000/- as compensation along with interest @ 7 percent per annum from the date of application till its actual payment.

4. The Tribunal, on a close scrutiny of the evidence led, held : the accident had occurred due to collision between Marshal bearing registration No. CG 15-2610 being driven by respondent No.1 and the truck bearing registration No. M.P. 23B-3721 which was standing on road without indication; respondent No.1/claimant sustained multiple injuries resulting in permanent disability to the extent of 75%; appellant /insurance company liable for payment of compensation to the claimant as it could not establish violation of policy conditions; assessed and awarded aforesaid sum to the claimant.

5. Learned counsel for the appellant filed appeal on the ground that the learned Claims Tribunal has erred in accepting the medical certificate produced by the respondent No.1/claimant showing multiple injuries to the extent of 75% permanent disability and holding the cost of earning capacity to 75% also, without examining the treating doctor / author of the certificate in view of the judgment of the Supreme Court in the matter

of **Rajesh Kumar alias Raju Vs. Yudhvir Singh and another** reported in **(2008) (3) T.A.C. 17 (S.C.).**

6. Learned counsel for the appellant further submits that Insurance Company has duly proved the negligent act of the claimant and owner of the vehicle and, therefore, the appellant/Insurance Company is not liable to pay compensation to the respondent No.1/claimant.

7. Learned counsel for the respondent No. 2/owner relying upon the judgments of the Supreme Court in the matter of **United India Insurance Co. Ltd. Vs. Sunil Kumar and another {Civil Appeal No. 9694 of 2013, decided on 24.11.2017)** and **Shivaji and Other Vs. Divisional Manager united India Insurance Co. Ltd. And ors.** reported in **AIR 2018 SC 3705** would submit that in a proceeding under Section 163-A of the Motor Vehicles Act, compensation on structured formula basis- Death of driver in accident- it is not open for the Insurer to raise any defence of negligence on the part of driver to counter claim for compensation, therefore, the Claims Tribunal has rightly fastened the liability to pay compensation upon the appellant/Insurance Company, which does not call for any interference in the instant miscellaneous appeal.

8. I have heard learned counsel appearing for the parties and perused the record of Claims Tribunal including the award impugned.

9. Applying the ratio of law laid down by the Supreme Court in the above-cited cases (supra) in the present case, it is apparent that respondent No.1 taken long treatment continuously after the incident and certificate to this effect was produced and proved by the respondent vide Exs.P/4/5/6/7/13 and bill and vouchers of continuous treatment Ex.P/14 to Ex.P/13 were also produced and during the treatment the victim was also treated by the higher medical department.

10. Considering all the facts & circumstances of the case, further considering the multiple injuries sustained by the respondent No.1/claimant and bills and vouchers produced by respondent No.1 in

support thereof, the certificates issued by District Medical Board cannot be doubted and the said documents are accepted by the Tribunal in continuation to the document proved as per Ex. P/4 to Ex. P/113 and permanent disability certificate is issued in favour of respondent No.1/claimant by concerned Medical Board and that documents are not contrary proved and that document also admitted on record as per Ex. P/15 is marked and there is no objection made by the appellant/Insurance Company when that documents are taken on record.

11. In view of the judgments of the Supreme Court in the matters of **Sunil Kumar (supra)** & **Shivaji and Others (supra)** and the provisions contained in Section 163-A of the Act, 1988, on the basis of structural proforma in the matter of compensation claimed by the claimants, appellant/insurer can not raise the plea of contributory negligence on the part of the owner and driver of the offending vehicle and, thus the Tribunal has rightly fastened the liability of payment of compensation upon the Insurance Company, I do not find any illegality in the impugned award warranting interference by this Court in the instant claim petition.

11. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Gautam Chourdiya)
Judge

Amita