NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.100 of 2011

United India Insurance Co.Ltd., Through Branch Manager, Branch Office Rajendra Nagar, Bilaspur, Tehsil and District Bilaspur (C.G.) (Insurer).

---Appellant

Versus

1. Budhram Dheevar S/o Jhaduram Dheevar, aged about 55 years, R/o village Bhadaura, Police Station Masturi, Tahsil and District Bilaspur (C.G.) (Claimant).
2. Gopal Prasad S/o Faguram Sahu, R/o Village Salkhan, Police Station Shivrinarayan, District Janjgir-Champa (C.G.) (Driver).
3. Ramsai Yadav, R/o village Kharaud, Tahsil and Police Station Shivrinarayan, District Janjgir-Champa (C.G.) (Owner).

---Respondents

MAC No.259 of 2011

Budhram Dheevar S/o Jhaduram Dheevar, aged about 55 years, R/o village Bhadaura, Police Station Masturi, Tahsil and District Bilaspur (C.G.) (Claimant).

---Appellant

Versus

1. Gopal Prasad S/o Faguram Sahu, R/o Village Salkhan, Police Station Shivrinarayan, District Janjgir-Champa (C.G.) (Driver).
2. Ramsai Yadav, R/o village Kharaud, Tahsil and Police Station Shivrinarayan, District Janjgir-Champa (C.G.) (Owner).
3. United India Insurance Co.Ltd., Through Branch Manager, Branch Office Rajendra Nagar, Bilaspur, Tehsil and District Bilaspur (C.G.) (Insurer).

---Respondents

For Insurance Company	:	Shri H.B.Agrawal, Senior Advocate along with Shri Pankaj Agrawal, Advocate.

Shri Deepak Gupta, Advocate for respondent No.1 in MAC No.100/2011 and for appellant in MAC No.259/2011.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

15/01/2018

1. These are the two appeals challenging the common award dated 15/11/2010 passed by the learned Third Additional Motor Accident Claims Tribunal, Bilaspur in Motor Accident Claim Case No.88/2010.

2. MAC No.100/2011 is an appeal filed by the Insurance Company challenging the liability and MAC No.259/2011 is an appeal filed by the claimant seeking for enhancement.

3. So far as the appeal by the Insurance Company is concerned, the counsel for the Insurance Company challenging the impugned award submits that, the driver of the offending vehicle at the relevant point of time did not have a valid endorsement on his license permitting him to drive the commercial vehicle.

4. This ground raised by the counsel for the Insurance Company is no longer res-integra for the reason that, the Hon'ble Supreme Court has already laid to rest the said issue in the recent larger Bench decision in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 SC 3668]**.

5. In the light of the aforesaid judgment of the Supreme Court, the appeal of the Insurance Company does not have any force and the same deserves to be and is accordingly rejected.

6. However, it is observed that, the award so far as imposing penal interest of 12% if the award has not satisfied within a period of one month is harsh,

as the said direction passed by the Tribunal is on contrary to the judgment passed by the Supreme Court in the case of **National Insurance Company Limited Vs. Keshav Bahadur & Ors. [2004 2 SCC 370]**.

7. The award thus to the extent of imposing penal interest is set aside.

8. So far as the appeal by the claimant is concerned, the counsel for the claimant submits that, the Tribunal has awarded a total compensation of Rs.95,000/- whereas the injury sustained by the claimant is that of amputation of his right leg above the knee. He submits that, the Tribunal should have taken into consideration the amount of pain and suffering which the claimant has undergone so also the fact that, the claimant in the instant case must have been put to great loss of amenities in life. Similarly, he also would require to put an artificial limb for his free mobility. All these facts has not been properly considered by the Tribunal and the award therefore deserves to be suitably enhanced.

9. The counsel for the Insurance Company however submits that, taking into consideration the age of the claimant, the award seem to be just and reasonable and it does not warrant any interference.

10. Having heard the contentions put forth on either side and on perusal of record, undoubtedly, the deceased in the instant case at the time of accident was aged around 65-70 years.

11. From perusal of record it appears that, the claimant at the relevant point of time was a healthy person and was contributing some income to his family. The period of accident in the instant case is February-2009 where the

minimum wages of even an unskilled labour would had been more than Rs.150-200/- per day.

12. Thus, this Court assesses the monthly income of the deceased at Rs.4,500/- i.e. Rs.54,000/- yearly instead of Rs.36,000/- as has been assessed by the Tribunal.

13. Considering the fact that, the claimant is aged around 65-70 years, in view of the recent larger Bench decision of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & Ors. (SLP Civil No. 25590/2014, decided on 31/10/2017),** he would not be entitled for any compensation under the future prospects.

14. Thus, accepting Rs.54,000/- as the yearly income of the deceased and if the same is multiplied by applying multiplier of 5, the amount would come to Rs.2,70,000/-. It is ordered accordingly that, the claimant shall be entitled for a compensation of Rs.2,70,000/- towards loss of earning capacity. In addition, an amount of Rs.21,000/- awarded by the Tribunal towards medical expenses is ordered to remain intact. In addition, this Court is of the opinion that the claimant shall be entitled for an amount of Rs.1,00,000/- towards pain and suffering as also an amount of Rs.50,000/- towards loss of amenities in life. In addition, since it is a case of amputation, the claimant shall also be requiring to get an artificial limb fixed and for which also certain expenses would be incurred and this Court quantifies the said amount at Rs.1,00,000/-. In addition, the claimant would also be required to undergo future treatment for fixing of an artificial limb, etc. and during the course of post injury treatment, the claimant must have engaged an attendant to serve the claimant and for all these, this Court quantifies a lump sum compensation of Rs.60,000/- inclusive of the amount for special diet, incidental transportation, etc. Thus, the claimant shall be entitled for total compensation of Rs.6,00,000/- instead of Rs.95,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. It is made clear that the awarded amount shall not carry any penal interest.

15. As a consequence, the appeal of the Insurance Company stands rejected and the appeal of the claimant stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit