NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 361 of 2018

The New India Insurance Company Limited Through Divisional Manager, Divisional Office No.2, Behind Jivan Bima Office, Jivan Bima Marg, Pandri Raipur, District Raipur, Chhattisgarh

----Appellant

Versus

1. Gufran Khan @ Pappu Khan S/o Shri Mohammad Isan Aged About 27 Years R/o Moti Nagar, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh (Claimant)
2. Devendra Dorle S/o Laxman Rao Dorle Aged About 23 Years R/o Lakhe Nagar, Sudhir Mukharjee Ward, Police Station Purani Basti, Raipur, District Raipur, Chhattisgarh (Driver)
3. Shankar Nath S/o Late Bhanwar Nath Aged About 28 Years R/o Santoshi Nagar, Tikrapara, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh (Owner)

---- Respondents

For Appellant : Mr. Shivendu Pandya, Advocate

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

05/03/2018

1. Heard on I.A. No.1, which is an application for condonation of delay. For the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 20 days in filing the appeal stands condoned.

2. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 07.10.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 35/2012.

3. Vide the impugned award, the Tribunal in an injury case has awarded a compensation of Rs.11,77,232/- with interest @ 6% per annum from the date of application.

4. The challenge to the impugned award is two folds; firstly the Claimant in the instant case has been assessed disabled at 100%, whereas the Doctor has certified the disability at 50%, thus the finding of the Tribunal is erroneous. The second ground of challenge is that the interest awarded is not justified for the reasons that there has been a considerable delay on the part of the Claimant in leading evidence before the Tribunal and thus the interest should not have been granted from the date of application, but should have been from a later stage.

5. Perusal of the record more particularly the nature of injury as has been found out by the Tribunal and the reference of which as has been discussed in paragraphs No. 14 & 20 of the impugned judgment, it clearly reflects that because of the accidental injury, the Claimant has lost his senses below his waist and he has been confined to the wheel chair for his movement. The Claimant was 27 years old at the time of accident. The Doctor who has been examined is an Orthopedic Specialist and who has also treated the Claimant all along. Though the counsel for the Insurance Company submits that the disability certificate firstly was not of a medical board and secondly the assessment of 100% is bad in law, but what clearly reflects is that the Claimant has suffered injury on his spinal cord and has lost his senses below his waist and is unable to stand or move independently or freely without the aid of a wheel chair.

6. The finding of the Tribunal in assessing the loss of earning capacity at 100% thus cannot be found fault with. So far as the issue of interest is concerned, taking into consideration the gravity of the injury so also the period of treatment, which the Claimant was

undergoing all along justifies any delay if it has been caused in leading his evidence before the Tribunal. The dates which are relevant in this regard is that the date of accident was 03.11.2009, the claim application was filed on 16.09.2010, the written statement by the Insurance Company was filed on 11.03.2011, the issues were framed on 18.06.2013, thereafter the affidavit of Claimant was filed on 27.11.2013 and he was cross examined only on 21.08.2014, thereafter again the matter was adjourned for quite some time for the evidence of the Claimant, who inspite of summons did not appear. All these would show that there has been a periodical progress in the case and which cannot be construed to be an inordinate delay. Moreover considering the nature of injury, which the Claimant had sustained, wherein he has lost his senses below his waist, it would be difficult to presume the Claimant to contest his claim case before the Tribunal with equal promptness as in case of other injuries or in the death case, where they are able to move in a better manner.

7. Given the facts and circumstances, this Court does not find the two grounds raised by the Insurance Company strong enough to interfere with the impugned award.

8. The appeal thus deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved