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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 935 of 2013

Brajlal Dhratlahre S/o Late Dashru Prasad Dhratlahre Aged About 60 Years R/o Pendri Sahas, Post- Sargaon, P.S. Pathriya, Distt. Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Rakesh @ Golu S/o Manharan Sahu Aged About 22 Years R/o Torla, P.S. Pathriya, Distt. Bilaspur, Chhattisgarh (Driver)
2. Kedar Singh S/o Gurha Singh R/o Pendri Sahas, Post- Sargaon, P.S. Pathriya, District : Bilaspur, Chhattisgarh (Owner)
3. Branch Manager, Reliance General Insu. Co. Ltd., Shop No. 412, 413, Fourth Floor, Ravi Bhavan, Jaistambh Chowk, Raipur C.G., Thru- Branch Manager, Reliance General Insu.Co.Ltd., Link Road, Bilaspur, Chhattisgarh

---- Respondents

MAC No. 1227 of 2014

1. Rakesh @ Golu And Anr. S/o Manharan Sahu Aged About 22 Years R/o Torla, P.S. Patharia, Distt. Bilaspur, Now Distt. Mungeli C.G., Chhattisgarh (Driver)
2. Kedar Singh S/o Gurha Singh R/o Pendri Sahas, Post- Sargaon, P.S. Patharia, Distt. Bilaspur, Now Distt. Mungeli C.G. (Owner)

---- Appellants

Versus

1. Brijlal Dhritlahre S/o Late Dasru Prasad Dhritlahre Aged About 60 Years R/o Pendri Sahas, Post- Sargaon, P.S. Patharia, Distt. Bilaspur, Now Distt. Mungeli Chhattisgarh
2. Branch Manager, Reliance General Insu.Co.Ltd., Shop No. 412, 413, 4th Floor, Jaystambh Chowk, Ravi Bhawan, Raipur C.G., Through- The Branch Manager, Reliance General Insu.Co.Ltd. Link Road, Bilaspur, Chhattisgarh

---- Respondents

For respective Appellants	:	Mr. Rajesh Kumar Jain, Advocate and Mr. Vipin Singh Thakur, Advocate
For respective Respondents	:	Mr. Suryakant Mishra, Advocate and Mr. Rohitashva Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/02/2018

1. These are two appeals challenging the award dated 16.08.2013, passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, in Claim Case No.161/2011.
2. Vide the impugned award in a case of amputation of the left hand above the knee, the Tribunal has awarded a compensation of Rs.3,39,000/- with interest @ 6% per annum from the date of application.
3. While passing the impugned award, the Tribunal has exonerated the Insurance Company and has fastened the liability upon the Owner and Driver of the offending vehicle.
4. MAC No. 935/2013 is an appeal by the Claimant seeking enhancement and MAC No. 1227/2014 is an appeal by the Owner challenging the liability part.
5. The brief fact which stands admitted from the record is the date of accident i.e. 01.02.2010, the vehicle involved in the accident being TATA Magic bearing registration No. CG/10/T/1357. The vehicle which otherwise falls under the category of Light Motor Vehicle. The Owner of the vehicle being Kedar Singh. The vehicle being duly insured with the Reliance General Insurance Company Limited and the accident having occurred during the validity of the insurance policy. All these are undisputed facts.
6. Another admitted fact is that as a result of the accidental injury suffered by the Claimant there was an amputation of his left hand above the knee.
7. So far as the appeal by the Owner is concerned, the counsel for the Owner submits that the appeal preferred by the Owner is squarely covered by the recent Larger Bench decision of the Hon'ble

Supreme Court in the case of ***"Mukund Dewangan vs. Oriental Insurance Company Limited" AIR 2017 S.C. 3668*** and also in the case of ***"Sant Lal vs. Rajesh and Others"*** reported in ***AIR 2017 S.C. 4054*** and therefore the appeal deserves to be allowed. According to him the admitted factual position is that the Driver of the vehicle i.e. Rakesh @ Golu had a valid license to drive a Light Motor Vehicle. The vehicle involved in the accident was also a Light Motor Vehicle, except the fact that it was a commercial vehicle. This contention of the counsel for the Owner is not disputed by any of the parties appearing on behalf of the respondents. Under the circumstances, in the light of the two judgments referred to in the preceding paragraph, the appeal of the Owner deserves to be and is accordingly allowed and the liability of payment of compensation stands shifted upon the Insurance Company i.e. the Reliance General Insurance Company Limited.

8. Whatever amount, which has been deposited by the Owner at the time of filing of the appeal, shall be refunded to the Owner by the Insurance Company and the balance amount shall be deposited by the Insurance Company before the Tribunal. The appeal of the Owner i.e. MAC No. 1227/2014 accordingly stands allowed and disposed off.

9. So far as the appeal by the Claimant is concerned, it is contended by the counsel for the appellant that the income assessed by the Tribunal is unreasonably low and it has deserves to be suitably enhanced while computing the compensation, so also the compensation towards the disability caused is not reasonably assessed by the Tribunal and it has to be appropriately enhanced

considering the nature of the injury. He submits that the Tribunal has not sufficiently awarded under the other heads for which he was entitled for and prayed for the appeal to be allowed to the extent that the award of compensation amount is enhanced substantially.

10. Perusal of the record would show that the Claimant on the date of accident was 65 years. He is said to be working as an agriculturist and was earning his livelihood. The Tribunal has assessed the notional income of the Claimant at Rs.3000/-. Considering the fact that it is an accident, which took place in February, 2010, undisputedly even an unskilled labour during the said period would had been earning more than Rs.200/- a day i.e. Rs.6000/- a month. Under the circumstances, this Court assesses the income of the Claimant also at Rs.6000/- @ Rs.200/- a day, instead of Rs.3000/- as assessed by the Tribunal. Assessing Rs.6000/- as the monthly income, the yearly income would come to Rs.72,000/-.

11. Further, considering the nature of work, which the Claimant was performing and also considering the nature of injury, the Claimant has been left totally unemployed as he would not be able to do anything after the amputation of his hand to earn his livelihood. Thus, there is a total loss of earning capacity, which the Tribunal has rightly assessed at 100%. Thus, assessing the yearly income at Rs.72,000/- if the said is multiplied applying the multiplier of 7, the amount comes to Rs.5,04,000/-. It is ordered that the Claimant shall be entitled for an amount of Rs.5,04,000/- towards loss of earning capacity. In addition, the Claimant shall also be entitled for an amount of Rs.50,000/- towards pain and suffering.

12. Further, an amount of Rs.1,00,000/- is awarded towards the cost to be incurred for affixing of an artificial limb. In addition, the Claimant shall also be entitled for an amount of Rs.42,000/- as awarded by the Tribunal towards medical expenses incurred during treatment. In addition, the Claimant shall also be entitled for an additional amount of Rs.29,000/- towards incidental miscellaneous expenses to make the total compensation payable at Rs.7,25,000/-. It is ordered accordingly that the Claimant shall be entitled for a total compensation of Rs.7,25,000/- instead of Rs.3,39,000/- as awarded by the Tribunal.

13. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.

14. As a consequence, the appeal filed by the Claimant also stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved