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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 19/09/2018

Judgment delivered on : 14/12/2018

MAC No. 962 of 2012

- The Oriental Insurance Co. Ltd Through Its Branch Manager, Main Road Jagdalpur, Dist. Bastar C.G.

---- Appellant

Insurer

Versus

1. Radhe Lal Sardul S/o Devnath Sardul, Aged About 26 Years R/o Village Bastar Police Chouki Bastar, District Bastar (CG)

2. Lakheshwar S/o Lakhmu Ram Baghel Aged About 29 Years R/o Village Bagbahrar Para Bastar Post Bastar, Dist. Bastar C.G.,

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate.
For Respondent No.1	:	Shri P.K. Tulsyan, Advocate.

Hon'ble Shri Gautam Chourdiya, J
C A V Judgment

This appeal has been filed by the appellant/insurance company under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) against the award dated 18.4.2012 passed by First Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (CG) in Claim Case No.145/2010 whereby in injury case the Tribunal has awarded Rs.6.22 lacs with interest @ 6% p.a. from the date of application till realization in favour of the claimant, fastening liability on the non-applicants jointly and severely.

02. As per averments made in the claim petition, on 3.10.2007 Radhelal Sardul (claimant), aged 26 years, earning Rs.5000/- per month, was travelling in Jeep bearing No. CG 17 ZT 0189, owned and

driven by non-applicant No.1, and was going from Jagdalpur to Bastar. However, due to rash and negligent driving of the said vehicle by non-applicant No.1, it turned turtle and Radhelal suffered grievous injuries, he was admitted in Maharani Hospital, Jagdalpur, thereafter in Vardan Hospital, Raipur and then shifted to hospital at Vishakhapattanam. At the time of accident, the offending vehicle was insured with non-applicant No.2/appellant herein.

03. On claim petition being filed by the injured claimant under Section 166 of the Act claiming compensation to the tune of Rs.13 lacs, the Tribunal considering the evidence led by both the parties by the impugned award granted compensation in favour of the claimant as mentioned above.

04. Learned counsel for the appellant submits that the Tribunal has wrongly considered 40% loss of future income of the claimant on account of injuries sustained by him in the accident without there being any cogent evidence on record. Further, the Tribunal has erred in assessing income of the claimant as Rs.5000/- per month which is very much on the higher side. He also submits that the appellant had taken Rs.25/- as premium for the occupant-passenger of the offending vehicle and therefore, the maximum liability, if any, of insurance company in respect of such occupants is limited only up to Rs.50,000/-. Even otherwise, the policy is an Act only policy and therefore, in the present case, risk of the claimant is not covered under the policy. Lastly he submits that as per Indian Motor Tariff, the insurance company had limited liability in this case.

05. On the other hand, learned counsel for the respondent No.1/claimant supports the impugned award and submits as per evidence of AW-2 Dr. VK Jha and AW-3 Dr. Lakhan Thakur, 62% disability was caused to the claimant due to injuries suffered by him in the said accident and AW-2 Dr. Jha has explained in his evidence as to how he assessed the permanent disability of the claimant. The evidence of AW-2 finds due corroboration from the evidence of AW-3 Dr. Lakhan Thakur and AW-4 Dr. RBP Gupta. Though the claimant has sustained 62% permanent disability but the Tribunal has considered

only 40% loss of earning due to this disability whereas record goes to show that at the time of accident the claimant was 26 years of age, working as civil contractor of Class-C, due to injury sustained in the accident his right leg is shortened by 1 ½ inch and as such, his working ability has been badly affected. In these circumstances, it cannot be said that loss of earning capacity of the claimant assessed by the Tribunal to the extent of 40% is on the higher side.

06. Heard learned counsel for the parties and perused the material available on record.

07. Regarding limited liability of the insurance company, the arguments advanced by learned counsel for the insurance company is not acceptable in view of the fact that witness of the insurance company NAW-1 Vikrampal Singh himself admits in para-3 of his evidence that for the passengers travelling in the offending vehicle, the company had taken Rs.225/- as additional premium and therefore, the company has unlimited liability in respect of such passengers in the event of any accident. Even as per Ex.D/2 i.e. insurance policy, it is evident that the company had taken Rs.225/- extra premium along with basic premium and the sitting capacity of the vehicle is 9. From perusal of the insurance policy, it is seen that it has nowhere been mentioned in the policy that the insurance company has limited liability. So far as Indian Motor Tariff is concerned, having gone through the same it is found that no such specific provision is there in the Indian Motor Tariff as to limited liability of the insurance company.

08. As regards loss of earning of the claimant to the extent of 40% as assessed by the Tribunal, from the pleadings and evidence available on record it is found that the claimant had suffered 62% disability on account of injuries sustained in the aforesaid accident. The claimant examined AW-2 Dr. VK Jha, who medically treated him at Raipur hospital; AW-3 Dr. Lakhan Thakur and Dr. RBP Gupta who treated him at Maharani Hospital, Jagdalpur. As per medical evidence, the right leg of the claimant is shortened by 1 ½ inch, he would have difficulty in future in doing his daily and routine work and his disability was of moderate degree. The Tribunal considering the medical

evidence as also the nature of job of the claimant i.e. civil contractor has rightly assessed loss of his earning to the extent of 40%. Further, the considering the pleadings of the claimant and the evidence adduced by him, this Court finds that the Tribunal was justified in taking the income of the claimant as Rs.5000/- per month.

09. For the reasons stated above, this Court is of the view that the Tribunal has committed no illegality or perversity in passing the impugned award granting compensation of Rs.6.22 lacs with interest as mentioned above in favour of the claimants, fastening liability on the non-applicants jointly and severely. Accordingly, the appeal filed by the insurance company being *sans* merits is liable to be dismissed and is hereby dismissed.

Sd/

(Gautam Chourdiya)

Judge

Khan