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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 694 of 2012

The Oriental Insurance Co. Ltd. through Manager, The Oriental Insurance Co. Ltd. Manendragarh road, Banaras Chowk, Ambikapur, Distt. Surguja (CG).

---- Appellant

Versus

1. Khajan Chand Jindal S/o late Ram Bhagat Singh, aged about 55 years. R/o Bishrampur, PS Bishrampur, Distt. Surguja (CG).
2. Lakhan Lal Gupta S/o KP Gupta, Aged about 48 years R/o village Chalgali, PS Chalgali, Tah. Vadrafnagar, Distt. Surguja (CG). Presently residing at Sai Baba Travels C/o Vijay Ingole, DC Road, Ambikapur (CG). Surguja.
3. Vijay Kumar Ingole S/o Atma Ram Ingole, R/o DC Road, Sai Baba Travels, Ambikapur, Distt. Surguja (CG).

---- Respondents

For Appellant	:	Shri Hanuman Prasad Agrawal, Advocate.
For Claimant	:	Shri Avinash Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

12.02.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company against the award dated 25.04.2012 passed by the Motor Accident Claims Tribunal, Surguja (in short, the Tribunal) in Claim Case No.95/2008. Vide the said impugned award, the Tribunal in an injury case has awarded a compensation of Rs.10,81,200/- to the claimant along with interest @ 7 percent per annum from the date of application.
2. The brief facts relevant for adjudication of the case is that, the claimant was travelling in a Bus bearing registration No.CG-15-A-2838 owned by the respondent No.3 and driven by respondent No.2

on the date of accident i.e. 26.04.2008. It is said that during the course of operation of the said Bus, the claimant who was travelling in the said Bus on the said date met with an accident which occurred because of the overhead electricity wire which broke and fell on account of which the claimant sustained burn injuries.

3. The claimant has filed a claim application under Section 166 of the Motor Vehicles Act which stood decided vide impugned award under challenge in the present appeal.

4. The insurance company has challenged the award on the ground that the liability has been wrongly fastened upon the insurance company. It is contended that the accident itself is not proved as there was no FIR registered in respect of the said accident. Neither was the electricity Board made a party whose electricity line had broken causing the accident. It is also contended that the accident had occurred because of the negligence of the claimant himself and that the owner, driver and the Bus were not in any manner responsible for the accident to occur. In addition, the claimant also has not supported his claim application by furnishing any suitable document to establish their claim.

5. The contention of the appellant-insurance company is also that the claimant while climbing the Bus had not caught hold of any portion of the Bus neither had he entered into the Bus and as such it cannot be said that the Bus was involved in the accident so as to fasten the liability upon the insurance company.

6. A perusal of records would show that the claimant in support of his

contention had examined himself and two persons out of which one Ramnivas Agrawal was an eyewitness who was travelling in the same Bus involved in the accident. In addition to these three witnesses, the claimant had also examined three doctors to establish the disability and injury part.

7. On the contrary, the insurance company had not led any evidence before the Tribunal to substantiate their contentions in any manner. The insurance company could have got examined their investigator who had conducted an investigation in respect of the accident. Neither was there any officer of the insurance company examined to establish that the Bus was not involved in the accident, nor have they examined any other witness to show that the claimant had sustained injuries before he entered or while trying to enter into the Bus so as to absolve them of their liability. Meanwhile, the owner of the Bus however has entered appearance and has denied the accident part though there is an eyewitness Ramnivas Agrawal, who has been examined.

8. In the absence of any evidence led by the insurance company, the contentions which have been put forth by the counsel for the insurance company are not sustainable and the appeal is totally devoid of merit. The same deserves to be and is accordingly rejected.

9. So far as the claimant is concerned, it is submitted that he has also preferred an application under Order 41 Rule 22 CPC seeking enhancement of compensation. The contention of the claimant is that the Tribunal ought to have awarded much more than what has been

awarded taking into consideration the income tax return of the claimant which would show that he was earning income of more than Rs.1,00,000/- a month at the time of accident. However, a perusal of records would show that the source of income of the claimant was from a general provision store which he was operating which otherwise he is also operating after the accident and as such there was no loss of income so as to seek enhancement of compensation on this ground.

10. In the given facts and circumstances of the case, this court does not find any strong case made out by the claimant seeking for enhancement of compensation by way of cross appeal. Thus, the cross appeal also stands rejected.

11. As a result both, the appeal of the appellant-insurance company as well as the cross appeal filed by the claimant stand rejected.

Sd/-

(P.Sam Koshy)
Judge

inder