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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1163 of 2011

The Oriental Insurance Company Limited, R.S.S. Market, Power House Bhilai, District Durg (CG) (Insurer of Vehicle No. CG 07-L-3506)

---- Appellant

Versus

1. Ravishankar @ Lala Tiwari S/o Tamradhwaj Tiwari, aged about 28 years, occupation Security Guard, B.S.N.L. Office, Dhamtari, District Dhamtari, R/o Ganjpara Bemetara, Post & Tahsil Bemetara, District Durg (CG)
2. Narayan Tandan S/o Ganjan Singh Tandan, aged about 28 years, Caste Satnami, R/o village Funda, P.S. Ranchirai, Post & Tahsil Gunderdehi, District Durg (CG) (Driver of vehicle No. CG 07L 3506)
3. Hemram S/o Parghaniya, R/o Dhour, Post Dhour, PS Nandini, District Durg (CG) (Owner of vehicle No. CG 07 L 3506)

---- Respondents

For Appellant	:	Shri S. P. Sahu on behalf of Shri K. N. Chaturvedi, Advocate
For Respondent no.1	:	Shri Vaibhav A. Goverdhan, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

06/02/2018

Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 30.08.2011 passed by the Additional Motor Accident Claims Tribunal, Bemetara, District Durg (CG) in Claim Case No. 44 of 2009. Vide the impugned award, the Tribunal in an injury case has awarded compensation of Rs.1,33,560/- with interest at the rate of 6% per annum.

2. While passing the impugned award, the Tribunal has also assessed contributory negligence on the part of the claimant at 30% and the liability of payment of compensation to the extent of 70% was saddled upon the appellant Insurance Company.

3. The present appeal has been filed by the Insurance Company assailing the liability part on the ground that there was a criminal case registered against the drivers of both the motorcycles involved in the accident and before the criminal Court, the two drivers had admitted their guilty and they were punished with payment of fine which shows that they were held guilty of the offence before the Criminal Court. Therefore, the factor of contributory negligence should have been at the ratio of 50-50 between the two drivers and the finding of the Tribunal imposing contributory negligence of 30% against the claimant is erroneous and the same needs appropriate modification.

4. Counsel appearing for respondent no.1 claimant, on the contrary, submits that the claimant in the instant case has also filed a cross objection/ appeal under Order 41 Rule 22 of CPC seeking enhancement of compensation. He submits that the claimant had suffered grievous injuries and the doctor has assessed the disability at 45% but the Tribunal has not granted compensation for the disability part applying the principles laid down by the Supreme Court in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. He submits that the Tribunal has awarded a lump sum compensation of Rs.50,000/- towards disability part which deserves suitable enhancement. He submits that under the other heads also, the amount of compensation awarded seems to be on the lower side and the same deserves to be enhanced.

5. Having heard the contentions put forth on either side and on perusal of the record what clearly reflects from the proceedings drawn before the Court below is that the Insurance Company has not led any evidence before the

Tribunal and they only bank upon the documents of the criminal case which was registered against the two drivers. In the absence of any cogent evidence led by the Insurance Company, this Court does not find any strong case made out by the Insurance Company to interfere with the finding of the liability of payment of 70% saddled upon the Insurance Company.

6. The appeal of the Insurance Company thus being devoid of merits deserves to be and is accordingly dismissed.

7. So far as the cross objection/appeal filed by the claimant is concerned, undisputedly, on account of the accident that took place on 02.11.2005, the claimant suffered grievous injuries with couple of fractures on his right leg which ultimately had to be operated upon and he was also put upon steel rod and plate for his treatment. For all this, the claimant had to suffer a great amount of pain and sufferings so also considerable expenses towards treatment.

8. The doctors in the instant case AW-2 Dr. Shankar Dubey and AW-3 Dr. Vinod Kumar Pandey were examined to prove the treatment as well as the disability part and they have opined that the claimant has suffered disability of 45%. There is no sufficient evidence led by the other respondents. Though disability of 45% on the right leg of the claimant has been assessed but keeping in view the decision of the Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar and Another** reported in **(2011) 1 SCC 343**, this Court assesses the overall functional disability of the claimant at 25%. Thus, the claimant would be entitled for 25% of his income towards loss of earning capacity.

9. This Court finds the monthly income of the claimant assessed by the Tribunal at Rs.4,500/- to be just and reasonable considering the date of accident. Accepting Rs.4,500/- as the monthly income, the yearly income would come to Rs.54,000/-. The claimant would also be entitled for 40% of his income towards future prospects which comes to Rs.21,600/-. If the said amount is added with his yearly income, the figure comes to Rs.75,600/-. The claimant shall be entitled for 25% of the said amount towards loss of earning capacity which comes to Rs.18,900 which if multiplied applying the multiplier of 17, the amount comes to Rs.3,21,300/-. The claimant would also be entitled for Rs.1,23,800/- towards medical expenses as assessed by the Tribunal. In addition, under other heads like pain and suffering, mental agony and incidental expenses of special diet and transportation, this Court assesses a lump sum compensation of Rs.54,900/- instead of Rs.17,000/- as awarded by the Tribunal to make the total compensation payable at Rs.5,00,000/-. The claimant shall be entitled for 70% of the said amount of Rs.5,00,000/- which comes to Rs.3,50,000/-. It is ordered accordingly that the claimant shall be entitled for a total compensation of Rs.3,50,000/- instead of Rs.1,33,560/- as assessed by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. Accordingly, the appeal preferred by the Insurance company stands dismissed and the cross objection/appeal filed by the claimant stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola