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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 908/2014

1. Branch Manager, The Oriental Insurance Company Limited, Branch Office P.B. 51, Malviya Nagar, Durg, C.G.

---- Appellant/Claimant

Versus

1. Mhod. Ajam S/o Abdul Aziz, aged about 21 years, R/o Mastan Para, Sukma, Tahsil Konta, District Dantewada, C.G.
2. Ramesh Kumar Jain S/o Ramcharndra Jain, aged about 42 years, R/o Shanker Nagar, Durg, Police Station Mohan Nagar, District Durg, C.G.
3. Payal Travels, G.E. Road, Durg, Through Manager, Payal Travels, Office Durg, C.G.

---- Respondents

For Appellant	: Shri Pankaj Agrawal, Advocate.
For Respective Respondents	: Shri Praveen Dhurandhar & Shri A.L. Singroul, Advocate.

MAC No. 909/2014

1. Branch Manager, The Oriental Insurance Company Limited, Branch Office P.B. 51, Malviya Nagar, Durg, C.G.

---- Appellant/Claimant

Versus

1. Kishan Lal Patle, S/o Kushoba Patle, aged about 46 years, R/o 36 QTR. 11/20, behind Nagar Palika School, Jagdalpur, District Bastar, C.G.
2. Ramesh Kumar Jain S/o Ramcharndra Jain, aged about 42 years, R/o Shanker Nagar, Durg, Police Station Mohan Nagar, District Durg, C.G.
3. Payal Travels, G.E. Road, Durg, Through Manager, Payal

Travels, Office Durg, C.G.

---- Respondents

For Appellant : Shri Pankaj Agrawal, Advocate.
For Respondent No.2 : Shri A.C. Sahu, Advocate.

<u>MAC No. 05/2015</u>

1. Mhod. Ajam S/o Abdul Aziz, aged about 21 years, R/o Mastan Para, Sukma, Tahsil Konta, District Dantewada, Now District Sukama, C.G.

---- Appellant/Claimant

Versus

1. Ramesh Kumar Jain S/o Ramcharndra Jain, aged about 42 years, R/o Shanker Nagar, Durg, Police Station Mohan Nagar, District Durg, C.G.
2. Payal Travels, G.E. Road, Durg, Through Manager, Payal Travels, Office Durg, C.G.
3. Branch Manager, The Oriental Insurance Company Limited, Branch Office P.B. 51, Malviya Nagar, Durg, C.G.

---- Respondents

For Appellant : Shri Praveen Dhurandhar, Advocate.
For Respective Respondents : Shri R.N. Pusty & Shri P. Dutta, Advocate.

<u>MAC No. 06/2015</u>

1. Kishan Lal Patle, S/o Kushoba Patle, aged about 46 years, R/o 36 QTR. 11/20, behind Nagar Palika School, Jagdalpur, District Bastar, C.G.

---- Appellant/Claimant

Versus

1. Ramesh Kumar Jain S/o Ramcharndra Jain, aged about 42 years, R/o Shanker Nagar, Durg, Police Station Mohan Nagar, District Durg, C.G.
2. Payal Travels, G.E. Road, Durg, Through Manager, Payal Travels, Office Durg, C.G.
3. Branch Manager, The Oriental Insurance Company Limited, Branch Office P.B. 51, Malviya Nagar, Durg, C.G.

---- Respondents

For Appellant	: Shri Praveen Dhurandhar, Advocate.
For Respective Respondents	: Shri Pankaj Agrawal & Shri P. Dutta, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

12.12.2018

1. As all these above four appeals arise out of the common award dated 20.06.2014 passed by the Additional Claims Tribunal FTC, Bastar at Jagdalpur in claim cases No. 50/2013 & 51/2013, they are being disposed of by this common judgment.
2. As per averments made in the claim petitions, on 02.10.2006, the claimants namely Kishan Lal Patle and Mhod. Ajam were travelling in the bus bearing Registration No. CG07/E/0797 (hereinafter referred to as offending vehicle). However, due to rash and negligent driving of the said vehicle by non applicant N0.1 Ramesh Kumar Jain, the

said vehicle dashed a stationary Truck bearing No. CG17/H/0174 which was parked by the side of the road. As a result this accident, the claimants suffered fracture in their left leg and sustained permanent disability.

3. On claim petitions being filed by claimants Kishan Lal Patle and Mhod. Ajam under Section 166 of the Motor Vehicle Act claiming compensation of Rs. 5,37,300/- and Rs. 4,98,000/- respectively. The claims Tribunal vide award dated 03.02.2011 passed in their claim cases No. 385/2009 and 387/09 awarded compensation of Rs. 80,000/- in favour of claimant Kishan Lal Patle and Rs. 1,40,600/- in favour of claimant Mhod. Ajam with interest at the rate of 6% per annum from the date of application till its realization, fastening liability on Non-applicants No. 1 & 2 / Driver and Owner of the offending vehicle. While exonerating the non-applicant No.3 / Insurance Company on the ground of breach of policy conditions.

4. Being aggrieved by the aforesaid award, the non-applicant No.2 Payal Travels, Owner of the offending vehicle, preferred appeals i.e. MAC 579/2011 and MAC 580/2011 challenging the liability upon him in claim cases No. 387/2009 and 385/2009. This Court vide order dated 03.12.2012, considering the submissions of the respective parties and the material available on record remanded the matter to the Tribunal for deciding the issue of liability afresh

after affording proper opportunity of hearing to the parties. However, this Court directed the Tribunal not to re-examine the quantum part and to decide the issue of liability only.

5. The Tribunal after remand of the matter, considering the pleadings of the respective parties and the evidence adduced in support thereof, passed a fresh award dated 20.06.2014, thereby fastening liability on non-applicant No.3 / Insurance Company of satisfying the award. The Tribunal, as directed by this Court did not disturb the findings recorded by it in respect of quantum of compensation and kept the same intact.

6. Being aggrieved by the aforesaid award dated 20.06.2014 passed in claim cases No. 50/2013 and 51/2013, non-applicant No.3 / Insurance Company has filed appeals i.e. MAC No. 909/2014 and 908/2014 respectively, challenging the finding of the Tribunal fastening liability upon it. The claimants Kishan Lal Patle and Mhod. Ajam have also filed appeals i.e. MAC No. 6/2015 and MAC No. 5/2015 seeking of enhancement of compensation awarded by the Tribunal in claim cases No. 50/2013 and 51/2013 respectively.

7. **MAC Nos. 908/2014 and 909/2014 :** Learned counsel for the appellant/Insurance Company submits that the Tribunal has wrongly fastened liability of satisfying the award on the Insurance Company whereas according to the evidence adduced by the Insurance Company, on the date of accident

Non-applicant No.1 was not having a valid and effective driving licence to drive the offending vehicle.

8. On the other hand, learned counsel appearing for the respondents supported the impugned award insofar as it relates to fastening of liability on the Insurance Company.

9. So far as the issue of liability is concerned, the burden lies upon the Insurance Company to establish by adducing cogent and reliable evidence that on the date of accident the offending vehicle was being driven in contravention of the policy conditions. As per Insurance Policy Ex.D-6 which has been duly proved by NAW-2 Vikram Pal Singh, the offending vehicle was insured with non-applicant No.3 on the date of accident. As per Ex.D-9 non-applicant No.1 / Driver was having a licence to drive heavy passenger vehicle and the same was valid on the date of accident. No evidence to the contrary has been adduced by the Insurance Company to show that the said licence of non-applicant No.1 was either forged or obtained in an illegal manner, rather from the over all evidence, oral and documentary, available on record and the law governing the field, it stands proved that on the date of accident Non-applicant No.1 Driver was having a valid and effective driving licence to drive the offending vehicle. Being so, the finding recorded by the Tribunal, fastening liability on the Non-applicant No.3 of satisfying the award cannot be faulted with and the same is hereby affirmed.

10. The appeals filed by the Insurance Company being without any substance are liable to be dismissed.

11. **<u>MAC No.5/15 and 5/16 :</u>**Learned counsel for the appellant/claimant Kishan Lal Patle submits that the Tribunal has not awarded sufficient amount of compensation for the injuries suffered by the claimant in the accident. The Tribunal has wrongly held that there is no loss of future income, did not consider the loss of future prospect, did not award sufficient amount towards loss of reasonable enjoyment in life and awarded only Rs.20,000/- towards pain and suffering. The Tribunal did not award any amount towards medical treatment, special diet, assistant and other conventional heads, therefore, the amount awarded by the Tribunal of Rs.80,000/- in favour of claimant Kishan Lal Patle is required to be enhanced suitably.

Learned counsel for the appellant/claimant Mohd. Ajam submits that the Tribunal has wrongly considered monthly income of the claimant as Rs.3,000/- whereas according to evidence adduced by the claimant it should have been considered as Rs.5,000/-. Since, the claimant suffered 45% permanent disability, therefore, considering the nature of his job, his loss of earing capacity ought to have been considered 100% and not 20% as assessed by the Tribunal. The Tribunal has erred in not awarding any amount towards future prospect, future medical treatment, assistant and other heads and the award of Rs.5,000/- towards pain and suffering, Rs.5,000/- towards loss of reasonable enjoyment in life and Rs.1,000/- towards special diet being very much on the lower side also deserves to be enhanced suitably.

12. On the other hand, learned counsel for the respondent/ Insurance Company supports the impugned award insofar as it relates to assessment of compensation by the Tribunal.

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

14. **MAC No.5/15 :** Considering the evidence of Dr. Virendra Jha AW-3, who had treated the claimant Mohd. Azam, the injuries suffered by him, the disability certificate Ex.A-9 isued by the District Medical Board, the claimant suffered 45% permanent disability and the Tribunal has assessed the loss of earning on account of such permanent disability to the extent of 20%. Keeping in view the over all evidence, oral and documentary, this Court is of the opinion that the Tribunal has not committed any illegality in assessing the loss of earning to the claimant to the extent of 20%. Likewise, the Tribunal was also justified in assessing the income of the deceased as Rs.3,000/- on the basis of minimum wages because no evidence was adduced by the claimant to show that at the time of accident he was earning Rs.5,000/- as claimed. So far as age of the claimant

assessed by the Tribunal as 21 years is concerned, the same is also justified as the claimant himself has pleaded in the claim petition that at the time of accident he was 21 years of age. Thus, the Tribunal was justified in assessing the loss of earning as Rs. 1,29,600/- after multiplier of 18. The Tribunal has definitely erred in not awarding any amount towards loss of future prospect and, therefore, keeping in view the decision of Hon'ble Supreme in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, considering the age of the deceased and the nature of his job, 40% of his actual income is to be added thereto towards loss of future prospect. However, considering the nature and extent of injuries, the period of hospitalization and the age of the claimant, this Court is of the opinion that the amount awarded by the Tribunal under other heads is not sufficient and the same needs to be enhanced in the following manner:-

Heads	Calculation (in rupees)
Income of the claimant @ Rs.3,000/- per month	Rs. 36,000/- per annum
40% towards future prospect	Rs.36,000/- + Rs. 14,400/- = Rs. 50,400/- per annum.
Loss of earning @ 20%	Rs. 10,080/-
Multiplier of 18 to be applied	Rs.1,81,440/-
Loss of earning for two months	Rs.6,000/-

Total loss of earning	Rs.1,87,440/-
For Loss of reasonable enjoyment in life	Rs.15,000/-
Nutritional diet	Rs.1,000/- (as awarded by the Tribunal)
Towards attendant	Rs.5000/-
Towards conveyance	Rs.3000/-
Towards pain and suffering	Rs.10,000/-
Total Compensation	Rs.2,21,440/-

Since the Tribunal has already awarded Rs.1,40,600/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.80,840/- with interest as awarded by the Tribunal.

15. **MAC No.6/15** : Considering the fact that the claimant Kishan Lal Patle was in Government Service as Head Constable at the time of accident and thereafter he got promotion, it cannot be said that due to accident he suffered any financial loss or loss of future prospect. However, considering the fact that the claimant sustained 60% permanent disability in his left leg and the nature of his job, this Court is of the opinion that he is entitled for compensation in the following manner:-

Heads	Calculation
Loss of earning	Rs.50,000/- (as awarded by the Tribunal)

Towards pain & suffering	Rs.40,000/-
Loss of reasonable enjoyment in life	Rs.40,000/-
Conveyance	Rs.5,000/-
Special diet	Rs.10,000/-
Attendant	Rs.5,000/-
Total Compensation	**Rs.1,50,000/-**

Since the Tribunal has already awarded Rs.80,000/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.70,000/- with interest as awarded by the Tribunal.

16. In the result :

- MAC Nos. **908/2014 & 909/2014** filed by the Insurance Company without any substance are liable to be and are here by dismissed.
- MAC Nos. **5/15 & 6/15** filed by the claimants are allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the award shall remain intact

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh