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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 683 of 2014

- Shriram General Insurance Company Limited Thru- Branch Manager, Branch Office- Third Floor, Vanijya Bhawan, Devendra Nagar, Raipur C.G., (**Insurer of Tractor No.C.G-04-D-5042**) **---- Appellant**

Versus

1. Tukesh @ Tokesh Kumar Nishad, S/o Jagat Ram Nishad Aged About 19 Years R/o Nisda, Thana- Arang, Distt. Raipur C.G., (**Claimant**)

2. Toshu @ Toshram Nishad S/o Lakhanlal Nishad Aged About 20 Years R/o Nisda, Thana- Arang, Distt. Raipur C.G., (**Driver of Tractor No. C.G-04-D-5042**)

3. Lakhanlal Nishad S/o Ghasiyaram Nishad Aged About 55 Years R/o Nisda, Thana- Arang, Distt. Raipur C.G., (**Owner of Tractor No. C.G-04-D-5042**) **---- Respondents**

MAC No. 927 of 2014

- Tukesh @ Tokesh Kumar Nishad S/o Jagat Ram Nishad Aged About 19 Years R/o Nisda, P.S. And P.O. Arang, Distt. Raipur C.G., (Claimant)

---- Appellant

Versus

1. Toshu @ Toshram Nishad, S/o Lakhanlal Nishad Aged About 20 Years R/o Nisda, P.S. And Post Office- Arang, Distt. Raipur C.G., (Driver of Tractor bearing registration No. C.G-04-D-5042)

2. Lakhanlal Nishad S/o Ghasiyaram Nishad Aged About 55 Years R/o Nisda, P.S. And Post Office- Arang, Distt. Raipur C.G., (Registered owner of Tractor bearing registration No. C.G-04-D-5042)

3. The Shri Ram General Insu.Co.Ltd. S/o Thru- Branch Manager, Branch Office, 3rd Floor, Vanijiya Bhawan, Devendra Nagar, Raipur, P.S. Devendra Nagar, P.O. Raipur, Tah. And Distt. Raipur C.G., (Insurer of Tractor bearing registration No. C.G-04-D-5042) **---- Respondents**

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in MAC No.683/14

For the Appellant	:Shri Sachin Singh Rajput, Advocate
For Respondent 1	:Shri Shivendu Pandya, Advocate
For Respondents 2 & 3	:None appears, though served

in MAC No.927/14

For the Appellant	: Shri Shivendu Pandya, Advocate.
For Respondents 1 & 2	: None appears, though served.
For Respondent 3	: Shri Sachin Singh Rajput, Advocate

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

04.07.2019

1. Since both these appeals arise out of common award dated 07.04.2014 passed by the 7th Additional Motor Accidents Claims Tribunal, Raipur, in Claim Case No. 120/2012 whereby a total amount of compensation to the tune of Rs.1,44,990/- with 6% interest per annum from the date of filing of claim petition till its realisation has been awarded, they are being disposed of by this common award.

2. Briefly stated the facts of the case are that on 13.02.2012 at about 7.00 PM, claimant Tukesh @ Tokesh Kumar Nishad, aged about 19 years, was coming from Aarang to Nisda while travelling in the offending vehicle, i.e., tractor attached with trolley bearing its registration No. C.G-04-D-5042. It is alleged in the claim petition that at the relevant time the vehicle in question was being driven rashly and negligently of its driver Toshu @ Toshram Nishad (Non-applicant 1), owned by Lakhanlal Nishad (Non-applicant 2) and insured by Shri Ram General Insurance Company Limited (Non-applicant 3). It is pleaded further that the alleged accident occurred due to rash and negligent driving of its driver of the vehicle in question and because of it, it turned turtle. As a result of which, the claimant sustained serious injuries and immediately thereafter he was hospitalised from 14.02.2012 to 20.02.2012. According to the further arguments made in the claim petition, the claimant suffered 45% disability as he sustained fracture on his left hand badly and owing to alleged accident, he is unable to perform his duties properly. It is alleged further that on account of the alleged accident, he incurred a sum of Rs.1,00,000/- towards medical treatment. The claimant has, thus, claimed total amount of compensation to the tune of Rs.7,00,000/-.

3. The aforesaid claim has been contested by non-applicants 1 & 2, driver

and owner of the vehicle in question by submitting, inter alia, that the alleged accident has not occurred because of rash and negligent driving of its driver and submit further that the driver of the offending vehicle was holding the valid and effective driving licence and since it was insured with the insurance company, therefore, in case of any liability being fastened, the same would be indemnified by the insurance company (non-applicant 3). The insurer/non-applicant 3 has contested the claim mainly on the ground that at the relevant time the vehicle in question was being used in utter violation of the insurance policy as the claimant was travelling in the said vehicle as a gratuitous passenger. It is alleged further that the driver of the offending vehicle was not holding the valid and effective driving licence, therefore, the insurance company is not liable to indemnify the insured.

4. After considering the evidence led by the parties, the Claims Tribunal, vide its award impugned, arrived at a conclusion that the alleged accident occurred on 13.02.2012 at 7.00 PM due to rash and negligent driving of the vehicle in question by its driver, namely, Toshu @ Toshram Nishad and held further that owing to the alleged accident, the applicant has sustained fracture on his left hand and has suffered permanent disability to the extent of 45% by relying upon the Permanent Disability Certificate (Ex.P.8). It held further that the applicant used to earn Rs.3000/- per month and while taking the permanent disability to the extent of 10% of his entire body, the loss of income has been assessed at Rs.300/- per month and that by applying multiplier of 18 and also by considering the expenses incurred on medical treatment and that by considering other heads, awarded total amount of compensation to the tune of Rs.1,44,990/- with interest @ 6% per annum from the date of filing of claim petition till its realisation. It held further that the vehicle in question was being driven in utter violation of the insurance policy as the driver of it was not holding the valid and effective driving licence, and therefore, the insurance company is not liable to

indemnify the insured. Accordingly, a direction was issued to the insurance company to first pay the amount of compensation and recover the same from the insured.

5. Being aggrieved, these appeals have been preferred by the appellant/insurance company as well as by the claimant. Shri Sachin Singh Rajput, learned counsel for the appellant/insurer in MAC No. 683/2014 submits that while exonerating the insurance company from its liability, the Claims Tribunal has committed an illegality in directing the insurer to first pay the awarded amount and recover the same from the insured while Shri Pandya, learned counsel for the claimant in MAC No. 927/14 submits that just and proper compensation has not been awarded to the claimant while assessing the permanent disability to the extent of 10% only instead of 45% as evidenced by permanent disability certificate (Ex.P.8)

6. I have heard learned counsel for the parties and perused the entire record carefully.

7. As far as the aforesaid contention of Shri Rajput is concerned, it remains no more *res integra*, as held in ***Manager, National Insurance Company Limited Vs. Saju P. Paul and another*** reported in **(2013) 2 SCC 41** where it has been held at paragraphs 20 & 26 as under:-

> **20.** The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (respondent no. 2 herein).
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> **26.** The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur (National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1: 2004 SCC (Cri) 370)* and *Challa Upendra Rao (National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517: 2005 SCC (Cri) 357)* should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years' old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be

> compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01.08.2011 (*National Insurance Co. Ltd. v. Saju P. Paul,* SLP No. 20127 of 2011) and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along-with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in the case of *Challa Upendra Rao (National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517: 2005 SCC (Cri) 357).*

8. Based upon the aforesaid principles laid down in the above matter, I do not find any infirmity in the award impugned whereby the learned Claims Tribunal has applied the principles of first pay and then recover the same from the insured while issuing the aforesaid direction as such. Therefore, the appeal preferred by the insurance company (MAC No.683/2014) deserves to be dismissed.

9. As far as the appeal (MAC No. 927/2014) preferred by the claimant is concerned, it appears that the amount of compensation as awarded by the Claims Tribunal deserves to be modified/enhanced.

10. True it is that by virtue of disability certificate (Ex.P.8), it has been opined by the Doctor treating the claimant that he has sustained 45% permanent disability on his left hand, however, the Claims Tribunal should not have reduced the same to the extent of 10%, looking to his job and injury sustained by him and his disability should have been taken into consideration to the extent of 20% instead of 10%. It appears further from the perusal of the record that the applicant has sustained serious injuries, and therefore, he is entitled to get requisite amount towards pain and agony, however, the Claims Tribunal has awarded just Rs.25,000/- towards this head, which according to me, deserves to be enhanced to the extent of Rs.50,000/-. Besides, a meagre amount of

Rs.5,000/- has been awarded under other heads, which also deserves to be enhanced upto Rs.20,000/-.

11. Accordingly, I assess the monthly loss of income of the claimant as Rs.600/- (3,000 x 20/100 = 600), yearly Rs.7200/- and that by applying the multiplier of 18 looking to the age of the claimant as 19 years, it would arrive at Rs.1,29,600/-. By awarding further sum of Rs.50,000/- and Rs.20,000/- as observed herein above, along with medical expenses of Rs.50,190/-, the claimant is, thus, entitled total amount of compensation to the tune of Rs.2,49,790/- instead of Rs.1,44,990/- as assessed by the Tribunal. The break-up of which is as follows:

a) Towards loss of Income :	Rs.1,29,600/-
b) Towards Medical bills:	Rs. 50,190/-
c) Towards Pain and Agony:	Rs. 50,000/-
d) Other heads:	Rs. 20,000/-

Total Compensation:	Rs.2,49,790/-
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12. The enhanced amount of compensation as awarded by this Court shall carry interest @ 6% per annum from the date of filing of claim petition till its realisation, as held by the Tribunal. As far as other conditions, as observed by the Tribunal, they shall remain intact.

13. For the foregoing discussions, MAC No. 683/2014 preferred by the insurance company is hereby dismissed and MAC No. 927/2014 preferred by the claimant is allowed in part to the extent indicated herein above. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Anjani