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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 960 of 2017

1. Suraj Lanjewar S/o Kamal Das Lanjewar, Aged About 20 Years R/o Kosa Nagar, Marathi Mohalla, Supela, Bhilai, Shankar Nagar, Tahsil And District Durg (C.G.).

---- Appellant/Claimant

Versus

1. Ravi Kumar Satnami S/o Makhan Lal Satnami, Aged About 27 Years R/o Suragi, P.S. Lalbag, District Rajnandgaon, (C.G.). (Driver)
2. Punendra Kumar Sahu S/o Hajariram Sahu, Ward No.29, Lakholi, District Rajnandgaon (C.G.). (Owner)
3. National Insurance Company Limited, Kamthi Line Rajnandgaon, (C.G.), Through National Insurance Company Limited, Divisional Office Akash Ganga, Supela, Bhilai, District Durg (C.G.). (Insurance Company).

---- Respondents

For Appellant : Shri S.M. Ali, Advocate.
For Respondent Nos. 1 & 2 : Shri Shashi Bhushan Tiwari, Advocate.
For Respondent No. 3 : Shri R.N. Pusty, Advocate.

MAC No. 1256 of 2017

1. The National Insurance Co. Ltd. Kamthi Line, Rajnandgaon, Chhattisgarh, Through National Insurance Co. Ltd. Divisional Office Akashganga, Supela, Bhilai, District Durg (C.G.) (Non-Applicant No.3)

---- Appellant

Versus

1. Suraj Lanjewar S/o Kamaldas Lanjewar, Aged About 25 Years R/o Kosa Nagar, Marathi Mohalla, Supela, Bhilai, Shankarnagar, Tahsil And District Durg (C.G.) (Claimant)
2. Ravi Kumar Satnami S/o Makhanlal Satnami, Aged About 32 Years R/o Suragi, P.S. Lalbag, District Rajnandgoan (C.G.) (Driver)
3. Punendra Kumar Sahu S/o Hajariram Sahu, Ward No. 29, Lakholi, District Rajnandgaon (C.G.) (Owner).

---- Respondents

For Appellant : Shri R.N. Pusty, Advocate.
Respondent Nos. 1 : Shri S.M. Ali, Advocate.
For Respondent Nos. 2 & 3 : Shri Shashi Bhushan Tiwari, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

29/04/2019

1) As both above appeals filed under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") arise out of the common award dated 06/05/2017 passed by Additional Tribunal of First Additional Motor Accident Claims Tribunal, Durg (C.G.) in Claim Case No. 2534/2013 awarding total compensation of Rs. 7,70,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants Driver, Owner and Insurance Company. Aggrieved by this award Insurance Company has filed **MAC No. 1256/2017** challenging the liability alongwith quantum, regarding permanent disability and finding of 100% functional disability considered by the learned Tribunal.

2) From the same award the claimant Suraj Lanjewar also filed **MAC No. 960/2017** aggrieved by the award seeking enhancement in the award. Looking to the fact that both the appeal arise from the same award, they are disposed of by this common judgment.

3) As per averments of claim petition, on 12/06/2012 at around 11:30 P.M. while Suraj Lanjewar, 20 years of age, earning Rs. 6000/- per month as labour/helper, was sitting in vehicle Tata DI bearing No. CG08 B 2767 for loading and unloading goods, the non-applicant No. 1/Ravi Kumar Satnami, driver of offending vehicle driving the same rashly and negligently and turn turtle. It is further averred that claimant sustained grievous injury resulting in 70% permanent disability as a consequence of injury sustained in Vertebra. At the time of accident, the offending vehicle was owned by non-applicant No. 2 and insured with Non-applicant No. 3/appellant. After considering evidence of the

parties, as above mentioned award is passed in favour of claimant considering 100% functional disability arising from 70% permanent disability and fastening liability upon Insurance Company.

4) In appeal **MAC No. 1256/2017** filed by Insurance Company, learned counsel for the appellant Insurance Company submitted that in this case disability certificate of 70% permanent disability Ex. P-11 issued by Doctor in favour of claimant, is neither a treating Doctor nor the certificate has been issued after due examination according to the guidelines of Government. He further contends that the certificate is not issued by Board of Doctors as per rule and without any reason 70% permanent disability has been considered by learned Tribunal as resulting in 100% functional disability. Only particular part of the body of claimant has sustained grievous injury and permanent disabled and not in respect of whole body. Functional disability could not have been assessed on higher side at 100% due to alleged 70% permanent disability vide certificate Ex. P-11.

5) Learned counsel for the Insurance Company also submitted that in this case, as per Dehati Nalsi, FIR, final report and as per statement of the claimant Suraj Lanjewar himself Ex. D-1, claimant was siting in the offending vehicle as a Band Party member alongwith other members of Band and it is not permissible under Motor Vehicles Act and as per policy. They are all gratuitous passengers. As per pleading of the claimant in is claim he was working as a labour but as per Ex. D-1 statement given to the Police Officer, he is a Band Party member and after performing his job as band party member returning in offending vehicle and as on afterthought, he has changed his version for taking the benefit under Insurance Policy in collusion with the owner and driver and filed the claim contending that he was a helper of the vehicle. As per policy no risk is cover for the gratuitous passengers in carried on goods vehicle. It is specially contended by the counsel for the insurer that there has been

breach of policy as all the members of the Band Party were being carried in a goods vehicle and no any risk is cover under the policy. Therefore, the learned Tribunal wrongly fastened liability upon Insurance Company on the finding that the claimant was working as a labour in the insured vehicle.

Learned counsel for the appellant further submits that in Ex. P-11 issued by Dr. Akhilesh Yadav there is no mention of the fact that the claimant sustained any permanent disability and as per the photograph attached to the certificate, claimant is standing without any support. Therefore, 100% permanent disability considered by the learned Tribunal is absolutely against the evidence available on record.

6) On the other hand, learned counsels for the respondents owner, driver and claimant opposed the contention made by the counsel for the appellant Insurance Company. Both counsels submitted that as per pleadings of the claimant Suraj Lanjewar in Para -6 of claim, he was earing Rs. 6000/- per month. As in para 4 he was working as a labour/coolie for loading unloading goods in ensured vehicle, therefore, the claimant is covered under the policy and he was not a member of Band Party. Learned Tribunal rightly fastened liability upon the Insurance Company, looking to the evidence available on record and only on the basis of the Investigating Officer, it cannot be said that claimant was not working as labour in the offending vehicle.

Learned counsel for the respondent/claimant further submits that certificate for 70% permanent disability issued by Doctor of District Govt. Hospital, who is an Orthopedic Doctor and after considering the entire injury and paralysis in the parts of body of the claimant. Looking to job and other circumstances, 100% functional disability is considered just and proper. Only on the basis of that the certificate in favour of claimant is not issued by Medical Board of District Hospital, it cannot be discarded on that ground.

7) Heard also **MAC No. 960/2017** filed by claimant Suraj Lanjewar**.** Learned counsel for the appellant in this appeal, contends that the income is considered on lower side and the same is needs to be enhanced appropriately.

8) Learned counsel for Insurance Company, Owner and Driver opposed the contention made by counsel for appellant.

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

10) First the appeal filed by the Insurance Company i.e. **MAC No. 1256/2017** is considered. As per Ex. P-1 final report, the charge sheet filed under section 173 of Cr.P.C., offending vehicle was driven by Ravi Kumar Satnami, who is non-applicant No. 1 and Band Party members after performing Band were returning in offending vehicle including the claimant Suraj Lanjewar, who was also a member of Band Party and sustained injury due to accident arising out of that vehicle. Ex. P-2 FIR was recorded on the basis of Ex. P-3 Dehati Nalsi promptly reported just after accident by one of the members of Band Party. As per Ex. D-1, the statement of claimant Suraj Lanjewar recorded by Investigating Officer as per Ex. D-1 previous statement of claimant, he was also a member of Band party and after performing his job, was returning by offending vehicle. This statement is recorded by NAW-1 Dhanna Lal Pathare, who is Investigating Officer and recorded as claimant stated. Therefore, the claimant himself has relied upon the documents Ex. P-1, P-2 and P-3 which were filed by the claimant himself. He cannot escape from the contention made in these documents and as per Ex. D-1 he also stated he was a member of Band party and only for the purpose of taking the undue benefit, he took a contrary stand that he has working as a labour for loading and unloading goods in offending vehicle. Learned Tribunal while accepting the contention of the claimant that he was engaged as an employee for loading and unloading purpose in the offending

vehicle, has eschewed from consideration the contents of Ex. P-1 to Ex. P-3 which clearly recorded the fact that the claimant was a member of Gouri Kripa Band Party and on the date of incident the said Band Party had travelled in the vehicle from Bhilai to Raipur, Khamtarai for a marriage function and after completion of function they all was returning in offending vehicle. As per statement of Dhanna Lal Pathare NAW-2, there were 10 to 12 persons of Band Party carried as passengers in offending vehicle. As per Ex. D-1, statement of Suraj Lanjewar claimant himself, approximately 15 persons were carried as passengers in the vehicle (offending vehicle) and that fact is also supported from Ex. P-3 as per which the member of Band Party were returning in offending vehicle. Looking to the entire evidence as per Ex. P-1 to P-3, Ex.D-1 and statement of the Investigating Officer of crime No. 123/2012, Dhanna Lal Pathare, examined before Tribunal as NAW-2 who also supported the contention made in FIR and Ex. D-1, statement given by Suraj Lanjewar, it is proved by the Insurance Company that at the time of accident, claimant and other Band Party members alongwith claimant were travelling in offending vehicle as a Band Party member and no risk is covered in respect of those persons carried in offending vehicle which is a goods vehicle. Therefore, the learned Tribunal wrongly fastened the liability upon Insurance Company.

11) The contention of the learned counsel for the respondents/ driver and owner respondent Nos. 2 & 3 the Ex. D-1 is not signed by the Suraj Kumar Lanjewar, therefore, that document cannot be considered as a genuine statement of the claimant. Looking to the Ex. D-1 as recorded under section 161 of Cr.P.C. during investigation of criminal case by investigating officer as stated by claimant just after the accident and statement recorded under section 161 of Cr.P.C., there is no requirement of signature of witness on that statement, therefore, contention made by respondent counsel has no substance.

12) Therefore, the learned Tribunal fastened liability upon Insurance Company against the evidence available on it is in breach of policy to carry any person who is belonging to the Band Party as a passenger in a goods vehicle and it is impermissible under the law and as per Policy there is no risk cover for gratuitous passengers in goods vehicle.

13) User of the vehicle for carrying a Band Party member as passenger, is against the policy. No any risk of such passengers covered under the policy and claimant has failed to prove that he was working as a labour/coolie for loading unloading goods. It is not proved as per the documents filed by the claimant himself vide Ex. P-1, P-2 & P-3 and contrary to his previous statement as per Ex. D-1.

14) In this case, the passengers including the claimant were being carried in goods vehicle in the backside of cabin called Dalla which is also not permissible and no risk is covered for those passengers according to the policy, therefore, the finding of learned Tribunal that claimant was working as labour and he is entitled to be indemnifies by Insurance Company, is not sustainable. Therefore, liability fastened upon Insurance Company is **set aside** but looking to the facts and circumstances of the case and policy issued by the Insurance company applies the law laid down in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796 and Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762,*** the Insurance Company of offending vehicle is directed to pay and recover form the owner.

15) Now considering the contention made by counsel for claimant in **MAC No. 960/2017** regarding the assessment of income on lower side is considered. In this case counsel for the Insurance Company also challenges the 100% functional disability of claimant as determined by Tribunal against 70% permanent

disability certificate issued in favour of claimant. Doctor issuing the certificate has examined by the claimant. Doctor Akhilesh Yadav (AW-2) examined on behalf of claimant also admitted, in fact, in para 7 of his cross-examination that certificate has been issued without considering in which part of the body or joint permanent disability is sustained and in para-4 also admitted the fact that in Ex. P-11, he has not given the descriptions as to on what count the permanent disability has been assessed.

16) Learned Tribunal in para 32 of its award considered income of claimant at Rs. 36,000/- per annum and 70% permanent disability. Looking to the lower limb of the claimant is paralyzed 100% loss of earning is just and proper and in the considered view of the Court there is no need of any interference in this award looking to all the facts and circumstances of the case and for awarding just and proper compensation with all lenient view considered by the learned Tribunal. Appeal of the claimant is dismissed and liability on Insurance Company is exonerated.

17) In the result the appeal filed by the Insurance company is **allowed**. The insurance Company is exonerated from liability, however looking to the facts and circumstances of the case as stated above the Insurance Company is directed to pay the amount of compensation to the claimant, if not already paid by it and recover the same from the owner of the insured vehicle in the execution proceedings and the appeal filed by the claimant is **dismissed** accordingly.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant