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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 108 of 2015

- Prabhat Kumar Ahirwar S/o Shri Sooraj Prasad Aged About 33 Years R/o Gokulpur Ward Dhamatari Tahsil And Distt. Dhamtari C.G.,

---- Appellant

Versus

1. Roopu Rathi And Ors. S/o Late Kanhaiya Lal Rathi Aged About 52 Years R/o Gujrati Colony Dhanatari, Tahsil And Dist. Dhamatari C.G.,

2. Vijay Maheshwari S/o Late Soorajmalji Near Ratnbandhan Naka, Dhamatari Tahsil And Distt. Dhamatari C.G.,

3. The Oriental Insurance Company Limited S/o Thru- M.B. Trade Center, Second Floor Dhamatari Dist. Dhamatari C.G.,

---- Respondents

For Appellant	:	Shri Malay Jain, Advocate.
For Respondents No.1 &2	:	Shri Sameer Oraon, Advocate.
For Respondent No.3	:	Shri Neelkanth Malviya, Advocate

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

24.07.2019

1. This Miscellaneous Appeal has been preferred by the claimant under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the propriety of the Award dated 13.12.2014 passed by the Principal Motor Accidents Claims Tribunal, Dhamtari (C.G.), in Claim Case No. 117/2013, by which, the Claims Tribunal, while allowing the claim in part, has awarded a total sum of Rs.55,900/- with 6% interest per annum from the date of filing of Claim Petition till its realisation. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 12.12.2012 the claimant

Prabhat Kumar Ahirwar was going on his motorcycle bearing its registration No.C.G.07/LK/1629 from Gokulpur for purchasing medicines and as soon as he reached near the Cristian Hospital at Dhamtari, his motorcycle was dashed vehemently by the offending vehicle (motorcycle) bearing its registration No.C.G.05/K/5710 from its opposite side. As a result of which, he sustained injuries on his left leg and hand as also on several parts of his body. At the relevant time, the offending vehicle, owned by non-applicant No.2 Vijay Maheshwari and insured with non-applicant No.3/The Oriental Insurance Company Limited, was being driven rashly and negligently by its driver Roopu Rathi (non-applicant No.1). On account of the alleged accident, the applicant, who was a driver and was involved in transporting business as well, instituted a Claim Petition under Section 166 of the Act of 1988 alleging, inter alia, that he used to earn Rs.15,000/- per month and has suffered permanent disability to the extent of 40%, therefore, entitled to total amount of compensation to the tune of Rs.17,78,000/-.

3. While disputing the alleged occupation and income of the claimant, it is pleaded by the non-applicants No. 1 & 2, the driver and owner of the offending vehicle, that the claimant himself was responsible for the alleged accident and has not suffered any kind of permanent disability as such, and therefore, not entitled to any amount of compensation from them.

4. The non-applicant No.3/The Oriental Insurance Company Limited contested the claim by saying that the claimant himself was responsible for the alleged accident as he was driving his vehicle without any valid and effective driving licence. It is contested further on the ground that the driver of the offending vehicle was also not holding the effective and valid driving licence and vehicle in question was being driven in violation of the insurance policy, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 12.12.2012 at 09.30 PM on account of the rashness and negligent driving of the driver of the offending vehicle and the applicant/claimant has not suffered the permanent disability due to the said accident. It held further that the vehicle in question was being used in violation of insurance policy as its driver was not holding any kind of driving licence and that by exonerating the insurance company from its liability, awarded a total sum of Rs.55,900/- with 6% interest per annum from the date of filing of Claim Petition till its realisation.

6. Being aggrieved, the claimant has preferred this appeal. Shri Malay Jain, learned counsel for the applicant submits that the award impugned as passed by the Claims Tribunal is apparently on lower side. While inviting attention to permanent disability certificate (Ex.P.26), it is submitted by him that the applicant has suffered permanent disability to the extent of 40% and as such the amount of compensation of Rs.3,000/- as awarded towards mental and physical agony is apparently on lower side. According to his further submission, the applicant, who was injured badly and was undergone surgery, would be required to be compensated by just and proper compensation. Lastly, he submits that while exonerating the insurance company, the Tribunal ought to have applied the principles of pay and recover by directing the insurance company to pay first the amount of compensation and then to recover the same from owner and driver of the offending vehicle.

7. Shri Neelkanth Malviya, learned counsel for non-applicant No.3/insurance company submits that in absence of any documentary evidence showing applicant's involvement in the alleged profession as well as of his monthly income, the Claims Tribunal has not committed any illegality in passing the

award impugned. According to him, since the owner has not filed the appeal, therefore, direction of pay and recover, as contended by the applicant, deserves to be rejected.

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

9. From perusal of the record, it appears that on account of the alleged accident occurred on 12.12.2012 at 09.30 PM, the applicant was injured badly and was immediately admitted at Bathena Hospital and was shifted thereafter to the Gupta Hospital at Dhamtari where he was undergone surgery and Cancellous Screw was inserted into his left leg while undergoing surgery. It appears further from the statement of Dr. Vinod Kumar Pandey, examined as applicant's witness No.3, that the bone fracture of his left leg could not be cured completely and he could be able to manage the table work only. It appears further from his evidence that the alleged disability certificate (Ex.P.26) is approved only upto 28th of February, 2014 and as per the recommendation mentioned therein, he has not appeared for his further treatment. Be that as it may, considering the alleged certificate (Ex.P.26), vis-a-vis, the statement of said Doctor, the amount of compensation as assessed by the Claims Tribunal, particularly, with regard to mental and physical agony to the tune of Rs.3,000/- appears to be extremely on lower side and, thus, deserves to be enhanced in this regard. Since the applicant has failed to establish his alleged occupation and income by way of cogent and reliable evidence, and therefore, by considering the totality of the facts and circumstances of the case, it would be just and proper to award him lump-sum amount of Rs.50,000/- towards mental and physical agony, instead of Rs.3,000/-, as awarded by the Claims Tribunal. Thus, the applicant is entitled to total sum of Rs.1,02,900/-

(Rs.52,900 + Rs.50,000) instead of Rs.55,900/- and, the enhanced amount of compensation, i.e., Rs.47,000/- (Rs.1,02,900 – Rs.55,900) shall carry interest at the rate of 6% per annum from the date of filing of Claim Petition till its realisation.

10. Since the driver of the offending vehicle was not holding the valid and effective licence at the time of accident, therefore, the Tribunal has not committed any illegality in exonerating the insurance company from its liability. Now, the question which arises for determination is as to whether principle of pay and recover could be made under such circumstances, however, remains no more *res integra* as held in the matter of ***Manager, National Insurance Company Limited Vs. Saju P. Paul and another*** reported in **(2013) 2 SCC 41** wherein 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 1.8.2011 (*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).*

11. By applying the aforesaid principles to the case at hand, I hereby direct the non-applicant No.3/the Oriental Insurance Company Limited to first pay the amount of compensation of Rs.1,02,900/- with 6% interest per annum from the date of filing of Claim Petition till its realisation to the applicant / claimant and then to recover the same from the owner and driver of the offending vehicle in execution proceedings arising in this very case.

12. In view of the foregoing discussions, the appeal is allowed in part and the award impugned is hereby modified to the extent indicated herein above. No order as to costs.

Sd/-

(**Sanjay Agrawal)**
Judge

Anjani