NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 947 of 2015

The Oriental Insurance Company Ltd. Through Divisional Manager Divisional Office- 2nd Floor, Hotel Amar Palace, Phoolbag Chouraha Gwalior M.P. Through- Branch Office Near Rajendra Park Chowak, Old R.T.O. Building Durg Chhattisgarh

---- Appellant/claimant

Versus

1. Indrejeet Singh S/o Deep Singh Alias Dev Singh Aged About 40 Years R/o Baspara, Durg Zilla Durg Chhattisgarh

2. Bhura Pandit S/o Bala Prasad Pandit, Aged About 35 Years R/o Kesharwani Colony, Ward, No. -14, Murana, Zilla - Murana M.P. Driver Of Truck Bearing Registration No. M.P.07-H.B./1756.

3. Ahbishek Sharma S/o Suresh Sharma R/o Laxmipurum, Transport Nagar Gwalior M.P. Owner Of Vehicle Truck Bearing M.P./07-H.B./1756, District : Gwalior, Madhya Pradesh

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Adv.
For Respondents	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

15/05/2019

This appeal is by the insurance company/non-applicant No.3 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 17.4.2015 passed by 4th Additional Motor Accident Claims Tribunal, Durg (CG) in Claim Case No.0001714/2011 awarding total compensation of Rs.6,10,800/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No.3.

02. As per claim petition, on 28.3.2011 when the claimant, 40 years of

age, earning Rs.8000/- per month as a Lathe Operator, by riding motorcycle bearing No. CG 07 K 3748 reached Bus Stand, Durg, non-applicant No.1 Bhura Pandit by driving Truck bearing No. MP 07 HB 1756, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner, dashed the claimant as result of which the claimant suffered grievous injuries on various parts of his body including 19% permanent disability due to amputation of toes of left leg.

03. On claim petition being filed by the injured claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company that though she has raised various grounds in the memo of appeal but is not pressing all those grounds and is confining her argument only to the following extent:

(i) that as per evidence adduced by the insurance company, at the time of accident the driver/non-applicant No.1 was not having a valid and effective licence to drive the offending vehicle, the vehicle was not registered, was not having a valid permit and fitness certificate also.

(ii) that as per Ex.P/1 disability certificate, the claimant suffered 19% permanent disability but the Tribunal considered 50% functional disability which is against the settled principles of law.

05. As submitted by learned counsel for the appellant, no counter appeal has been filed by the respondents.

06. Heard learned counsel for the appellant and perused the material available on record.

07. It is not in dispute that as per Ex.D/3 the offending vehicle along with its registration book, permit, fitness certificate and driving licence of its driver were seized from possession of non-applicant No.1 Bhura Pandit/driver and in the said seizure memo validity of these documents has also been mentioned. As per evidence adduced by insurance

company of NAW-1 Shanturam Sahu, Administrative Officer of Oriental Insurance Co. Ltd., in paras 4 to 7 of his statement, he has admitted that the particulars of the licence of non-applicant No.1 were issued by RTO, Puraina, the same were sent to that RTO for verification, but the report has not yet been received from the RTO and therefore, the insurance company is unable to submit the said report before the Tribunal. No other evidence was adduced by the insurance company. Thus looking to the fact that particulars of driving licence, fitness certificate, permit, registration were available with the insurance company as has been admitted by its witness NAW-1, no evidence in rebuttal could be adduced by the insurance company, the Tribunal was fully justified in fastening liability on the insurance company on the ground of there being no breach of policy conditions.

08. Though as per Ex.P/1, the claimant sustained 19% permanent disability due to amputation of toes of left leg, however, considering the evidence of AW-4 Dr. ML Jain according to whom skin grafting of claimant's leg was done, the claimant cannot perform his work with the same efficiency as he used to do before accident, the nature of his job i.e. Lathe Operator, this Court is of the opinion that the functional disability of the claimant assessed by the Tribunal as 50% is liable to be reduced to 30%.

09. From perusal of the award it is seen that the Tribunal has not awarded any amount towards future prospect. Therefore, considering the facts and circumstances of the case, the overall evidence adduced by the parties, the income of the claimant, his age at the relevant time i.e. 40 years, the nature of his job, 30% functional disability of the claimant, keeping in view the decision of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121*** and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the claimant is entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the claimant @ Rs.4,500/- per	54,000/- per annum

	month.	
02.	25% of (i) above to be added towards future prospects.	54,000 + 13,500 = 67,500/-
03.	30% functional disability,	20,250/-
04.	Multiplier of 15 to be applied	3,03,750/-
05.	Towards medical expenses	1,25,800/- (as awarded by Tribunal)
06.	Towards pain and suffering	50,000/- (as awarded by Tribunal)
07.	Towards nutritional diet	10,000/- (as awarded by Tribunal)
08.	Towards conveyance	10,000/- (as awarded by Tribunal)
09.	Towards attendnat	10,000/- (as awarded by Tribunal)
	Total:	**5,09,550/-**

10. In the result, the appeal is allowed in part with modification in the impugned award to the extent that non-applicant No.3/insurance company is liable to pay Rs.5,09,550/- as compensation with interest @ 6% p.a. from the date of application till realization to the claimant. If any amount in excess of the above liability has been deposited by the insurance company and not paid to the claimant, the same shall be refunded to it. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan