AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 627 of 2017

- The Oriental Insurance Company Limited Through Its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Civil And Revenue Distt. Bilaspur, Chhattisgarh Pin- 495001

---- Appellant

Versus

1. Ramdayal Sahu S/o Sunhar Sahu, Aged About 53 Years R/o Tulsi, P.S. Kharora, Distt. Raipur, Chhattisgarh ....Claimant,

2. Omprakash Chaturvedi S/o Dasruram Chaturvedi, Aged About 29 Years R/o Chhadiya, P.S. Kharora, Distt. Raipur, Chhattisgarh ....Driver,

3. Hemlata Ali W/o Kasam Ali, R/o A-27, Khamhardih, Shankar Nagar, Raipur, Distt. Raipur, Chhattisgarh ....Regd. Owner,

4. Hemant Dewangan S/o Gulsingh Dewangan, R/o And P.S. Kharora, Distt. Raipur, Chhattisgarh ....Unregd. Owner,

---- Respondents

For Appellant	:	Shri RN Pusty, Adv.
For Respondent No.1	:	Smt. Seema Dixit, Adv.
For Respondent No.2	:	None.
For Respondent No.3	:	Shri AL Singroul, Adv.
For Respondent No.4	:	None.

MAC No. 900 of 2017

- Ramdayal Sahu S/o Sunhar Sahu, Aged About 50 Years R/o Village Tulsi, Police Station Karora, District Raipur, Chhattisgarh ....Claimant,

---- Appellant

Versus

1. Omprakash Chaturvedi S/o Dusruram Chaturvedi, Aged About 26 Years R/o Village Chadiya, Police Station And Tahsil Kharora District Raipur, Chhattisgarh ....Driver Of The Offending

Vehicle,

2. Hemlata Ali W/o Kasam Ali, R/o A-27 Khamhardeih Shankar Nagar Raipur, District Raipur, Chhattisgarh ....Registered Owner Of The Offending Vehicle

3. Hemant Dewangan S/o Gulsingh Dewangan, R/o Village Kharora, Police Station And Tahsil Kharora District Raipur, Chhattisgarh ....Unregistered Owner Of The Offending Vehicle,

4. The Oriental Insurance Company Limited, Through Its Branch Manager, Madina Building Court Square Raipur District Raipur, Chhattisgarh ....Insurer Of The Offending Vehicle,

---- Respondents

For Appellant	:	Smt. Seema Dixit, Adv.
For Respondent No.1	:	None.
For Respondent No.2	:	Shri AL Singroul, Adv.
For Respondent No.3	:	None.
For Respondent No.4	:	Shri R.N. Pusty, Adv.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

28/02/2019

As both these appeals arise out of the same award dated 17th January, 2017 passed by First Additional Motor Accident Claims Tribunal, Balouda Bazar in Claim Case No.27/2014, awarding compensation of Rs.3,39,169/-in favour of the injured claimant with interest @ 7% per annum from the date of claim petition till realization, fastening liability on non-applicant No.4/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner of the offending vehicle, they are being disposed of by this common judgment.

02. As per claim petition, on 28.10.2013 claimant Ramdayal Sahu, aged about 50 years, earning Rs.6000/- per month from agricultural work, by riding on the motorcycle which was being ridden by Laxminarayan as a pillion rider was coming back to his residence. However, on the way, non-applicant No.1 Omprakash Chaturvedi by

driving the vehicle Tata Mazic bearing No. CG 04 JA 8217, owned by non-applicant No.2 (registered owner), subsequently owned by purchaser non-applicant No.3 and insured with non-applicant No.4, in a rash and negligent manner, dashed the said motorcycle, as a result of which claimant Ramdayal Sahu suffered grievous injuries whereas Laxminarayan died on the spot.

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

04. **MAC No.627/2017**: This appeal has been filed by the insurance company challenging the liability as well as the issue of permanent disability. Learned counsel for the appellant/insurance company submits that at the time of accident, the driver/non-applicant No.1 was having a licence to drive LMV whereas the offending vehicle was a transport vehicle and as such, he was not competent to drive the offending vehicle without there being any endorsement to this effect in his driving licence. Therefore, the Tribunal was not justified in fastening liability on the insurance company. Secondly, he contends that the Tribunal has wrongly considered the 50% permanent disability, which itself has not been duly proved by the claimant by examining the treating doctor or the doctor issuing such certificate, as the functional disability. He submits that even if 50% permanent disability is taken into account, the same was in relation to a particular limb and not the whole body and therefore, the functional disability cannot be considered as 50%. Reliance is placed on the decision in the matter of ***Raj Kumar Vs. Ajay Kumar & another, (2011) 1 SCC 343***.

05. On the other hand, learned counsel for the respondent/claimant submits that the Tribunal has rightly fastened liability on the insurance company as the offending vehicle falls in the category of LMV and the driver was having a valid licence for driving LMV on the date of accident. She places reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663.***

As regards the issue of permanent disability, she submits that considering the fact that the claimant is a labour doing the agricultural work and the nature of injury suffered by him, in fact the claimant suffered 100% loss of earning whereas the Tribunal has considered only 50% loss of earning. She submits that the disability certificate Ex.A/75 has been duly exhibited and proved by the claimant and no objection was raised by the insurance company or owner or driver at the time of tendering the said document in evidence. Therefore, the insurance company has no right to challenge the said document in appeal.

06. **MAC No.900/2017**: This appeal has been filed by the claimant seeking enhancement of compensation mainly on the ground that income of the claimant has wrongly been considered by the Tribunal as Rs.3000/- whereas even as per minimum wages it should have been Rs.5000/- per month; looking to the age of the claimant i.e. in between 50 and 55 years and nature of his job, he is also entitled for 10% addition towards future prospect in view of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. Likewise, under the other heads also the amount awarded by the Tribunal being on the lower side needs to be enhanced suitably. However, she submits that the amount awarded towards medical expenses is just and proper.

07. Learned counsel for the insurance company submits that the Tribunal has wrongly assessed the functional disability to the extent of 50%, as argued above. However, he supports the award so far as it relates to assessment of compensation under other heads.

08. Learned counsel appearing for the respondent/registered owner has duly assisted the Court.

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

10. As regards the issue of breach of policy conditions, it is not in dispute that on the date of accident, non-applicant No.1 was having a valid and effective licence to drive LMV. As per Ex.A/9 i.e. insurance policy, the gross weight of the offending vehicle is 1550 kg.

11. At this juncture, the principles of law laid down in ***Mukund Dewangan*** (supra) are to be noted as the question involved herein, as to whether a driver who is having a license to drive the "light motor vehicle" is competent to drive "transport vehicle" of that class in absence of such an endorsement, was considered in the said case and it was held therein as under:-

> "Held, the effect of amendment of Form 4 by insertion of "transport vehicle" related only to categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same – There was no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect – Further held, even otherwise the Form could not control the substantive provisions carved out in Ss. 10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment – Interpretation of Statutes – Basic Rules – Harmonious Construction – Subordinate/Delegated Legislation/Rules Under the Act – Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)"

12. Applying the ratio of law laid down by the Supreme Court in the matter of Mukund Dewangan (supra), it is apparent that the driver/non-applicant No.1 was holding a valid and effective driving license and even in absence of any endorsement as such in his driving license authorizing him to drive the offending vehicle, it cannot be held that he was not possessing the valid and effective driving license at the relevant time.

13. So far as the issue of permanent disability is concerned, looking to the permanent disability certificate of Ex.A/75, the treatment documents and bills submitted by the claimant Ex.A/11 to A/74, the fact that no objection was raised by the insurance company or owner or driver of the offending vehicle before the Tribunal in this regard, it cannot be said the document of Ex.A/75 is a fake or forged document and as such, the Tribunal was justified in assessing the permanent disability of the claimant as 50% on the basis of said document. However, considering the fact that the said disability of 50% was in respect of a particular limb and not the whole body, considering the nature of injury, the part of the body where the injury was caused i.e.

leg, the nature of work of the claimant i.e. labour and agriculture, his functional disability can safely be considered as 40% and not 50% as has been considered by the Tribunal. Further, considering the minimum wages of unskilled labour at the relevant time, the income of the claimant can safely be taken as Rs.5000/- per month and in view of decision in Pranay Sethi (supra), he is also entitled for 10% addition thereof towards future prospect. Thus, considering the overall facts and circumstances of the case, the oral and documentary evidence on record, the age of the claimant i.e. in between 50-55 years, the nature of his job, the pain and suffering he must have undergone, the expenses incurred by him in conveyance, attendant, special diet and loss of income during treatment, keeping in view the decisions of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121*** and *Pranay Sethi* (supra), the claimant is held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the claimant @ Rs.5,000/-per month.	60,000/- per annum
02.	10% of (i) above to be added towards future prospects.	60,000 + 6,000 = 66,000/-
03.	40% Loss of earning	26,400/-
04.	Multiplier of 13 to be applied for assessing total loss of earning	3,43,200/-
05.	Towards medical expenses	91,569/- (as awarded by Tribunal)
06.	Towards attendant	3,000/-
07.	Towards conveyance	6,000/-
08.	Towards special diet	3,000/-
09.	Loss of earning during treatment for three months @ Rs.5,000/- per month	15,000/-

10.	For pain and suffering	10,000/-
	Total:	**4,71,769/-**

Since the Tribunal has already awarded Rs.3,39,169/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.1,32,600/- with interest @ 7% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

14. In the result, the both the appeals are allowed in part with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)

Judge

Khan