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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 836 of 2013

1. National Insurance Company Limited Branch Office- Kosa Badi Korba (CG) Through Divisional Manager, National Insurance Company Limited, Divisional Office - Taha Complex, Vyapar Vihar Road, Bilaspur, Tahsil and District Bilaspur (CG)

---- Petitioner

Versus

1. Arvind Kumar Deshlahre, S/o Hem Kumar Deshlahre Aged About 19 Years, Occupation- Cycle Mechanic, Through- case representative father- Hem Kumar Deshlahre S/o Bhagirathi, Caste-Satnami, aged about 45 years, R/o Mini Basti, Jarhabhata, Bilaspur, Police Station Civil Lines, Tahsil & District Bilaspur (CG).
2. Mohan Singh Thakur S/o Ramnath Singh Thakur, aged about 25 years, Occupation- Driver, R/o Sutarra, Police Station- Katghora, Tahsil Katghora, District Korba (CG).
3. M/s Sarvamangla Construction Company, Agrasen Bhavan Marg, Mission Road, Korba, District : Korba (CG)

---- Respondents

MAC No. 521 of 2018

1. Arvind Kumar Deshlahre, S/o Hem Kumar, aged about 19 years Occupation Cycle Mechanic. Through Next Friend, Father Hem Kumar Deshlare S/o Bhagirathi, Caste Satnami, aged about 45 years, R/o Mini Basti, Jarhabhata, Bilaspur, Police Station Civil Lines, Tahsil & District- Bilaspur (CG)

---- Appellant

Versus

1. Mohan Singh Thakur, S/o Ramnath Singh Thakur, Aged About 25 Years, Occupation Driver, R/o Sutarra, P.S. Katghora, Tahsil Katghora, District- Korba, (CG) (Driver Of Truck Bearing No. CG04-JB-1428).
2. M/s Sarvamangala Construction Company, Agrasen Bhavan Marg, Mission Road, Korba, District Korba (CG).............(Owner of Truck Bearing No. CG04-JB-1428)
3. The National Insurance Company Ltd, Branch Office- Kosa Badi, Korba (CG) Through Divisional Manager, National Insurance Company Ltd. Divisional Office Taha Complex, Vyapar Vihar Road, Bilaspur, Tahsil and District Bilaspur (CG)

---- Respondents

MAC No. 836 of 2013

For Appellant	:	Shri Qamrul Aziz, Advocate
For Respondent No.1	:	Shri R.K. Jain, Advocate
For Respondent No.2	:	None
For Respondent No.3	:	Shri Rajeev Bharat, Advocate

MAC No. 521 of 2018

For Appellant	:	Shri R.K. Jain, Advocate
For Respondent No.1	:	None
For Respondent No.2	:	Shri Rajeev Bharat, Advocate
For Respondent No.3	:	Shri Qamrul Aziz, Advocate

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

29/07/2019

1. As above two appeals arise out of common award dated 18.6.2013 passed by the learned 6th Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No.38/13, they are being heard together and disposed off by this common order.

2. Appellant Insurance Company has filed MAC No.836 of 2013 seeking setting aside of fastening of liability to pay awarded amount of compensation. Whereas, injured-claimant has filed MAC No.521/18 seeking enhancement of amount of compensation awarded by Claims Tribunal.

3. Brief facts relevant for disposal of above appeals are that on 31.1.2009 at about 8.45 a.m. the claimant along with one Sanjay Kumar was returning to his village Chakraway from Baitalpur-Sargaon on motorcycle bearing registration No.CG04/CM/2051. When they reached near Narayanpur Square (Chandrakhuir Square), one truck bearing registration No.CG04-ZB/1482, driven by non-applicant No.1, dashed their motorcycle as a result of which claimant suffered multiple grievous injuries on various part of body including his head, neck, waist & hand, and became unconscious. He was taken to Baitalpur Government Hospital but looking to grievousness of his injuries, he was referred to Bilaspur where he was admitted at Sanjeevni Hospital & Research

Centre. On diagnose, the doctor noticed fracture injury on neck bone (spinal bone). Claimant underwent surgery of his head & neck and thereafter he was discharged from hospital on 19.2.2019 with instructions for further treatment. Due to aforementioned injuries, the claimant suffered permanent disability as he is unable to move both his hands & legs and even not in a position to perform his day-to-day activities. On account of permanent disability suffered in the aforementioned accident, the claimant filed claim application claiming Rs.7,80,000/- as compensation.

4. Non-applicant No.1 & 2, who are driver & owner of offending vehicle, submitted their reply to claim application and denied all adverse pleadings made in claim application. They pleaded that the accident took place due to negligence on the part of claimant himself, however, since the offending vehicle is a 'heavy vehicle', the offence was registered against the driver of said vehicle. They also pleaded that the owner and insurer of motorcycle have not been arrayed as non-applicants, therefore, claim application is not maintainable.

5. Non-applicant No.3/Insurance Company also filed its reply to claim application and pleaded that on the date of accident, driver was not possessing valid & effective driving license to drive offending vehicle and as such, there was violation of condition of insurance policy,

therefore, the insurance company is not liable to indemnify the insured. It was also pleaded that the claimant was also contributory negligent; the owner & insurer of motorcycle have not arrayed as party to claim application and therefore claim application is not maintainable and liable to be dismissed as such.

6. The Claims Tribunal on appreciation of evidence available on record, allowed claim application in part; awarded a total amount of Rs.7,73,000/- as compensation to the claimant holding him to be 100% disabled. The Claims Tribunal also held that as there was no violation of conditions of insurance policy, therefore, non-applicants will be, jointly and severally, liable for payment of amount of compensation.

7. Learned counsel for appellant Insurance Company in MAC No.836/13 submitted that the Claims Tribunal erred in holding that there was no violation of condition of insurance policy because on the date of accident, driver of offending vehicle was possessing license to drive 'light motor vehicles' only, whereas the offending vehicle in the instant case is a 'heavy goods vehicle'.

8. Learned counsel appearing on behalf of claimant/ respondent No.1 in MAC No.836/13 submits that the Claims Tribunal on the basis of material and evidence available on record has rightly held that the insurance company failed to prove violation of any of the conditions

of insurance policy. He has also filed appeal bearing MAC No.521/18 for enhancement of the award.

9. Learned counsel for respondent No.3-owner of offending vehicle in MAC No.836/2013 submits that the Claims Tribunal has rightly passed the impugned award fastening liability on insurance company as on the date of accident the offending vehicle was insured with insurance company and the driver of offending vehicle was possessing valid and effective driving license to drive it.

10. I have heard learned counsel for the parties and perused the record of Claims Tribunal.

11. Ex.D-1 is the particulars of license issued by the District Transport Officer, Lohardaga (Jharkhand). Perusal of Ex.D-1 would show that initially the license was issued to driver of offending vehicle on 11.5.2002 authorizing him to drive 'light motor vehicle'. Later on, an endorsement was made as per Ex.D-1 authorizing its holder (non-applicant No.1) to drive 'heavy goods vehicle' w.e.f. 17.7.2002. This document (Ex.D-1) was proved by Shri Budhram Oraon, who at the relevant point of time was working as Clerk in the office of the District Transport Office, Lohardaga (Jharkhand). According to this witness, the license was initially issued on 11.5.2002 for 'light motor vehicles' only and subsequently, on 17.7.2002 an endorsement was made on Ex.D-1 authorizing its holder

to drive 'heavy goods vehicle' and validity of which was upto 10.5.2005 i.e. for a period of three years.

12. Ex.D-2C is a copy of Form-10 'State Register of Driving License', which was issued by the District Transport Office, Lohardaga (Jharkhand) wherein also endorsement of 'HGV' w.e.f. 17.7.2007 and valid upto 10.5.2005 is mentioned. Ex.D-3 is the particulars of driving license issued by the District Transport Officer, Ranchi wherein against Column No.9 pertaining to 'Vehicle Initially authorized to drive', the words 'LMV Only' has been mentioned. In Column No.10 pertaining to 'Detail of all renewals', it is mentioned that license No.1360/02 (Ex.D-1) was firstly renewed from 11.5.2002 to 10.5.2005 and thereafter on 11.5.2005 upto 10.5.2008 and then from 08.08.2008 to 7.8.2011.

13. Although above particulars issued by District Transport Office have been proved by witness No.2 of non-applicant No.3, however, this witness in his statement stated that license was issued for 'light motor vehicle (commercial)' having its validity upto 7.8.2011. From perusal of Ex.D-3 it is evident that it is nowhere mentioned that license is issued for 'light motor vehicle (commercial)' and it only mentions in Column No.9 that vehicle initially authorized to drive 'LMV only'. On the contrary, the contents of Ex.D-1 & Ex.D-2 contained an endorsement indicating that holder is authorized to drive 'heavy goods

vehicle', which was subsequently renewed for a period of three years from time to time, as mentioned in Ex.D-3. Needless to mention that validity period of license to be issued for transport vehicles is 03 years.

14. Section 10 (2) of the Act of 1988 provides the category of vehicles for which license is to be issued. Section 10 (2) is reproduced below for ready reference:-

> “(2) A learner's license or, as the case may be, driving license shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following cases, namely.-
> (a) motor cycle without gear;
> (b) motor cycle with gear
> (c) invalid carriage;
> (e) transport vehicle;
> (i) road roller;
> (j) motor vehicle of a specified description;

15. Clause (e) of sub-section (2) of Section 10 of the Act of 1988 provides for 'transport vehicle' which has been inserted by way of amendment w.e.f. 14.11.1994. Prior to the amendment, different classes of commercial vehicles were mentioned in clauses (e) to (h) of the Act of 1988, like medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle, but after the amendment all the classes of vehicle mentioned in clause (e) to (h) have been substituted by 'transport vehicle'. Currency of license to drive motor vehicle is provided under Section 14 of the Act of 1988. Clause (a) of sub-section (2) of Section 14 provides for currency period of license for transport

vehicle as '03 years'.

16. Keeping in mind the particulars of license, which has been produced by the insurance company itself, wherein there is an endorsement to the effect that driver is authorized to drive 'heavy goods vehicle'; the same was valid for a period of three years only and the fact that the offending vehicle comes within the category of 'transport vehicle', this Court is of the view that on the date of accident, non-applicant No.2-driver was having valid and effective driving license to drive offending vehicle. In view of aforementioned discussion and perusal of Ex.D1, D-2 & D-3, it is clear that driver of offending vehicle is possessing valid and effective driving license. Learned counsel for the appellant has only taken the contents of Sr. No.9 in Ex.D-3, which is the column showing initial date and its authorization on that date, but subsequently there was endorsement in license to drive 'heavy goods vehicle'. Sr. No.9 of Ex.D-3 cannot be read as the authorization to drive vehicle on the date of accident. It is to be read along with the period of consecutive renewals mentioned in Ex.D-3 along with Ex.D-1 & Ex.D-2(C) which makes clear that the license is to drive 'transport vehicle'. Thus, the submission made by learned counsel for insurance company that on the date of accident, driver of offending vehicle was not possessing valid & effective driving license is not sustainable and is hereby repelled.

Consequently, the appeal preferred by insurance company bearing MAC No.836/13 is liable to be dismissed and is hereby dismissed.

17. Learned counsel for appellant in MAC No.521/18 submits that the income of injured claimant as assessed by the Claims Tribunal is on lower side; no amount towards future prospects has been awarded and the amount awarded under other heads is also on lower side. He further submits that the damages under the non-pecuniary head like pain & sufferings, loss of amenities, loss of prospect of marriage etc. Hence, he prays for enhancement of award suitably.

18. Learned counsel appearing on behalf of respondents insurance company & owner of offending vehicle respectively, supported the impugned award and submitted that the Claims Tribunal has rightly assessed income of injured claimant because he failed to prove his income by adducing reliable and cogent piece of documentary evidence. The Claims Tribunal after considering overall facts, circumstances and evidence available on record, has rightly assessed compensation and the same does not call for any interference.

19. It is not in dispute that claimant/appellant suffered 100% permanent disability as both his hands and legs became non-functional on account of injuries sustained by him in

the motor accident in question. He became totally bedridden and even not able to perform his day-to-day activities. Although appellant in claim application pleaded that on the date of accident he was working as 'bicycle mechanic' and earning Rs.6,000/- per month, but he failed to prove his income by producing documentary evidence in support thereof and in such circumstance, the Claims Tribunal determined his monthly income at Rs.3,000/- on notional basis. However, looking to the facts of case at hand, nature of work as pleaded and stated by claimant/ appellant before the Claims Tribunal and also considering the price index & wage rate prevailing in State of Chhattisgarh at the relevant point of time, income of deceased cannot be said to be less than Rs.3,500/- per month. Thus, I am of the view that income of deceased can be taken as Rs.3,500/- per month, instead of Rs.3,000/- per month, as assessed by the Claims Tribunal.

20. Further, the Claims Tribunal has not granted any compensation under the head of 'future prospects'. The Hon'ble Supreme Court in catena of its decisions including in **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** has held that in case the deceased, victim of motor accident, was below the age of 40 years and not in permanent employment or self-employed, an addition of 40% of

established income of deceased towards future prospects should be made. Relevant paragraph of Pranay Sethi's case (supra) reads thus;-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

21. In the present case, at the time of accident the deceased was 19 years old and was self-employed i.e. Bicycle Mechanic, but the Claims Tribunal while calculating amount of compensation payable to claimant/appellant failed to add any amount to his annual income towards future prospects and thereby committed mistake, which is required to be corrected by this Court.

22. The Claims Tribunal awarded a lump sum amount of Rs.25,000/- under other heads, which in the opinion of this Court is on lower side. Looking to 100% permanent disability on account of injuries sustained in accident, the appellant is also entitled to damages for non-pecuniary loss, like pains & sufferings; loss of expectation of life and loss of prospects of marriage etc. Appellant suffered 100% permanent disability and will have to live with his disability for whole of his life, therefore, in the opinion of this Court, he is entitled for an amount of compensation

of Rs.50,000/- towards pains & sufferings. Appellant was 19 years of age at the time of accident and on account of the disability suffered by him in the said accident, he will also be deprived of enjoyment of married life. Taking into account all these aspects, this Court is inclined to grant an amount of Rs.1,00,000/- towards loss of amenities and loss of enjoyment of married life.

23. Further, on account of disability sustained by appellant-claimant in the said accident, he will have to remain bed-ridden and dependent on others for the whole of his life. He cannot walk or move about of his own and he could only move in wheeled chair. In such a situation, he would definitely require a permanent attendant throughout his life to assist him for all purposes including his day-to-day essential requirements. Taking into consideration this aspect of the matter, this Court is of the considered view that appellant is also entitled for an amount of Rs.1,00,000/- towards attendant.

24. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimant/appellant in MAC No.521/18.

25. Accordingly, income of appellant is taken as Rs.3,500/- per month and since at the time of accident, appellant was below the age of 40 years and was not in a permanent job, therefore, in view of law laid down in the

matter of **Pranay Sethi's case** (supra), the income of appellant is required to be increased by 40% towards future prospects, which comes to Rs.4,900/-(1400+3500). Thus, annual income of appellant for the purpose of calculating compensation comes to Rs.58,800/- (4900x12). By applying multiplier of 18, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.10,58,400/- (58800x18). Appellant is also entitled for a total sum of Rs.1,00,000/- towards loss of amenities in life & loss of enjoyment of married life; Rs.50,000/- towards pain & sufferings and Rs.1,00,000/- for attendant. Besides this, claimant/ appellant is also entitled for Rs.1,00,000/- towards medical expenses, as awarded by the Claims Tribunal. Thus, claimant/ appellant is now entitled for a total compensation of Rs.14,08,400/- (10,58,400 + 1,00,000 + 1,00,000 + 50,000 + 1,00,000) instead of Rs.7,73,000/-. The amount of compensation awarded by the Claims Tribunal shall carry interest @ 7.5% p.a. from the date of filing of claim application till its realization. This Court is not awarding interest on enhanced amount of compensation for the reason that this appeal has been preferred by the claimant/appellant after a lapse of about more than 4½ years, therefore, the insurance company is not liable to pay interest on enhanced amount of compensation. Rest of conditions mentioned in the impugned award shall remain intact.

26. Any amount already paid to claimant/appellant as compensation shall be adjusted from the total amount of compensation as calculated above.

27. In the result;

- MAC No.836/2013 preferred by appellant Insurance Company is dismissed.
- MAC No.521/18 preferred by claimant/appellant is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

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