NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 356 of 2014

1. The United India Insurance Company Limited, through its Branch Manager, United India Insurance Company Limited, Branch Office Raigarh, Salrl Vila Complex, Chakradhar Nagar, Raigarh, District- Raigarh (C.G.).

---- Appellant

Versus

1. Nutan Prasad Dewangan, aged about Years S/o D. Dewangan, Occupation- Bus Driver, Bus No. CG-11-A-7530 R/o Post Teram, P.S. and Tehsil Sakti, Distrcit- Janjgir- Champa (C.G.).

2. Manohar Lal Kanwar, aged about Years, S/o B.R. Kanwar, Occupation Bus Owner, Bus No. CG-11-A-7530 R/o Village Sakti, Tehsil Sakti, Dsitrict- Janjgir-Champa, (C.G.).

Through Nutan Prasad Dewangan, R/o Post Teram, P.S. and Tehsil Sakti, District- Janjgir-Champa (C.G.).

3. Ramavtar, aged about 32 years, S/o Selhudas Vaishnav, Occupation- Business, Ready Made cloth (Retail) and Jajmani, R/o Village Bhedwan, P.S. and Tehsil- Sarangarh, District- Raigarh (C.G.).

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate.
For respondent No. 1 : Shri Basant Dewangan, Advocate.
For Respondent No. 3 : Shri H. S. Patel, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

05.02.2019

Heard.

1. This appeal has been filed by the appellant/Non-applicant No. 3/The United India Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") against the award dated 01.01.2014 passed by Additional Motor Accident Claims Tribunal,

Sarangarh, District Raigarh in Claim Case No. 07/2010 whereby in a injury case the Tribunal has awarded a total sum of Rs.3,52,900/- along with interest @ 6% per annum from the date of filing of claim petition, till its actual payment in favour of the claimant, fastening liability upon the appellant/Insurance Company to satisfy the award.

2. Facts of the case, as per claim petition, are that on 03.12.2009, Ramavatar- injured was coming back from the weekly market on his motor-cycle and when he reached near Suvatal, Non-applicant No. 2/respondent No. 2/driver while coming from the opposite direction by driving the offending vehicle (Bus) bearing registration No. CG-11-A-7530 rashly & negligently, dashed the applicant/claimant, as a result thereof, he sustained multiple injuries including permanent disability to the extent of 45%. Claimant/injured filed application under Section 166 of the Motor Vehicle Act and above mentioned award is passed in favour of claimant/injured.

(3) Learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal has failed to see that offending vehicle was being plied in violation of terms of policy conditions, as the vehicle was being driven on a route other than the route prescribed in the permit (Ex.D-4/c) Lavsara to Sarangarh through sakti, Malkharoda, Chapora, Dhabhra and the accident occurred near the village-Suvatal, therefore, the Tribunal has erred in fastening the liability upon the Insurance Company to pay compensation to the claimant / injured.

(4) Learned counsel for respondent No. 3/claimant has filed the cross-objection, in which he is seeking enhancement of the amount of

compensation under award on the ground that learned Claims Tribunal has considered the income of the claimant as Rs. 3,000/- per month, which appears to be on lower side, therefore, it should be enhanced to Rs.5,000/- per month. He further submits that no future prospect was awarded to the claimant as per the judgment rendered by the Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, and looking to the age of the claimant, 40% future prospect should be added to the income of the claimant. He also submits that amount of compensation awarded on the other heads are also appears to be lower side, which deserves to be enhanced suitably.

(5) Learned counsel for the respondent No. 1/Owner of the vehicle respondent No. 1 would submit that as per Section 149 of the Motor Vehicle there is no breach of route permit as the owner of the offending vehicle has obtained valid and effective permit for a particular route as per Ex. D/4c, and only due to some exigency on the date of accident, only some distance was covered from another village, for which the permit is not prescribed it cannot be said that he was not having valid and effective permit to drive the offending vehicle. He while relying upon the judgment of this High Court in the matter of **Bajaj Allianz General Insurance Co. Ltd. Vs. Powel Julius & Others** reported in 2013(2) CGLJ 395 submits that if any route of permit is diverted to some extent, it cannot be violation of permit conditions, therefore, learned Tribunal has rightly fastened the liability upon the Insurance Company, which does not call for any interference in the instant appeal.

(6) I have heard learned counsel appearing for the parties and

perused the material available on record.

(7) Firstly, I consider that whether this is a case for driving the offending vehicle without permit or not. On the date of accident, owner had a valid permit for driving the Bus as per Ex. D/4, only contention made by the learned counsel for the appellant/Insurance Company is that on the date of accident the driver of the offending vehicle has taken his vehicle from village which is not covered under the permit.

(8) A careful perusal of the material available on record and the evidence adduced by the parties, reveals that as per FIR (Ex.P-2), accident occurred at Suatal road, Sarangarh FIR was also lodged at the police Station-Sarangarh and as per FIR (Ex. P/2) it clearly shows that the village- Suatal is under Police Station-Sarangarh and the accident had occurred in between Suatal and Sarangarh. I discussed the matter regarding the breach of permit where the accident occurred, name of that place has not been mentioned in the permit but it can not be said to be breach of permit because the village where the accident occurred falls under the jurisdiction of Police Station where the FIR was lodged and that placed is mentioned in the permit. The explanation given by the owner is that at the time of accident, on the way of his destination the strike was being observed and due to his passengers' security he changed the route for some distance and went through village Suatal and there accident occurred. For this explanation, he has filed an application under Order 16 Rule 17 of CPC before the Tribunal but the learned Tribunal rejected that application, that explanation by the driver of the offending vehicle appears to be justified and reasonable. Therefore, there

is no breach of policy as per judgment in the matter of **Powel Julius & Others (supra)** Thus, in my opinion, the appellant/Insurance Company is held liable for payment of compensation to the claimants.

(9) So far as cross-objection filed by the claimant for enhancement of amount of compensation under award is concerned, according to the permanent disability certificate (Ex. P-47) issued by Dr. Sharad Awasthy (AW3), the claimant has sustained permanent disability to the extent of 45% and due to which claimant’s right leg was amputated from below the knee and it has also been proved by factual and cogent evidence. Furthermore, the claimant/injured was running shop of readymade clothes, due to the injuries suffered by him, claimant's working capacity was definitely affected, therefore, looking to the injuries and his nature of work, whole 45% permanent disability would be considered as functional disability for the purpose of computation of compensation. So far as the claimant's income is concerned he is running a shop of readymade clothes and looking to his nature of job, Rs. 3000/- per month income would be just and proper to assess compensation to the claimant/injured. As far as future prospect is concerned, at the time of accident claimant was aged about 32 years, therefore, in view of the judgment of the Supreme Court in the matter of Pranay Sethi (Supra), 40% future prospect would be applicable. Thus, the claimant is held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the claimant @ Rs. 3000/- per month.	Rs.3,000 x12= Rs. 36,000/- per annum
02.	40 % towards future prospect	Rs. 36000+14,400/- per annum = Rs.50,400/-
03.	Loss of earning @ 45%.	22680/-
04.	Multiplier of 17 to be applied	Rs. 3,85,560/-

05.	Towards Pain & suffering	Rs. 40,000/-
06.	Towards conveyance and special diet	Rs. 45,000/-
07.	For attendant	Rs. 10,000/-
08.	Loss of earning for three months	Rs.9000/-
09.	For Artificial limb	Rs. 40,000/-
10.	For Medical expenses	Rs.19,000/- (as awarded by the Tribunal)
11.	Total compensation	Rs.5,48,560/-

Since the Tribunal has already awarded Rs.3,52,900/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.1,95,660/- with interest @ 6% per annum from the date of application till realization. Rest of the conditions mentioned in the award shall remain intact.

10. In view of foregoing, the appeal filed by the appellant/Insurance Company, being devoid of merit, is liable to be and is hereby dismissed ***whereas*** cross-objection filed by the claimant for enhancement of the amount of compensation under award is allowed in part.

11. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita