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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 421 of 2015

- Rakesh Sahu aged about 16 years, S/o Jagmohan Sahu, Minor Through legal Guardian Father Jagmohan Sahu Village- Kukra, Thana- Mandir Hashoud, District Raipur (C.G.)

---- Appellant/Claimant

Versus

1. Lobhan Sahu aged about 33 years S/o Shri Subal Sahu, R/o Village- Mohbhattha, Thana- Saja District- Durg (C.G.)

   (Driver)

2. Rakesh Sinha S/o Shri Tilak Ram Sinha R/o Village- Chhota Ashok Nagar, Guriyari Thana- Guriyari, District Raipur (C.G.)

   (Owner)

3. Reliance General Insurance Company Limited, Raipur (C.G.)

   (Insurer)

---- Respondents/Non-applicants

And

Miscellaneous Appeal (Civil) No. 420 of 2015

- Shah Dev Sahu aged about 20 years, S/o Dani Ram, Village- Kukra, Thana- Mandir Hashoud, District Raipur (C.G.)

---- Appellant/Claimant

Versus

1. Lobhan Sahu aged about 33 years S/o Shri Subal Sahu R/o Village- Mohbhattha, Thana- Saja, District- Durg (C.G.)

   (Driver)

2. Rakesh Sinha S/o Shri Tilak Ram Sinha R/o Village Chhota Ashok Nagar, Guriyari Thana- Guriyari, District Raipur (C.G.)

   (Owner)

3. Reliance General Insurance Company Limited, Raipur (C.G.)

   (Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri A.L. Singroul, Advocate
For other Respondents 1 & 2	:	Ms. Arpana Singh, Advocate
For Respondent No. 3	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

21.02.2019

1. Above both appeals i.e. M.A.(C) No. 421 of 2015 & M.A.(C) No. 420 of 2015 arise out of the same accident occurred on 21.01.2008 involving the same vehicle- Auto-Trolley bearing registration No. CG-04/J/6034 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.

2. Both appeals arise out of separate award dated 23.01.2015 passed by the Third Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Cases No. 183 of 2011 and 279 of 2011 awarding compensation in favour of the Claimants of Rs.2,64,688/- (Claim Case No. 183 of 2011) & Rs.41,000/- (Claim Case No. 279 of 2011) with interest @ 6% per annum from the date of claim applications till realization respectively fastening liability on non-applicant No.3 alongwith non-applicants No.1 & 2 jointly and severally.

3. Brief facts necessary for disposal of both appeals are that on 21.01.2008 Claimants namely Rakesh Sahu and Shah Dev Sahu were going towards Lakholi from village Kukra by motorcycle Hero Honda bearing registration No. CG-04/CW/6761 which was being ridden by Claimant- Shah Dev Sahu and Claimant- Rakesh Sahu was the pillion rider of the same. On the way, between village Kukra to Lakholi, near Saipan the offending vehicle- Auto-Trolley No. CG-04/J/6034 was coming towards Lakholi in a rash and negligent manner which was being driven by non-applicant No.1, owned by non-applicant No.2 and was insured with non-applicant No. 3 and it dashed the motorcycle. As a result thereof, both Claimants sustained grievous injuries on various parts of the body and right legs of both Claimants were fractured.

4. In both appeals, cross-objections have also been filed by non-applicant No.3/Insurance Company under Order XLI, Rule 22 of the Code of Civil Procedure for exonerating it from liability along with applications for condonation of delay in filing the cross-objections.

5. In M.A.(C) No. 421 of 2015 arising out of Claim Case No. 183 of 2011, learned counsel for the Appellant/Claimant submits that at the time of accident, Claimant/Appellant Rakesh Sahu aged about 16 years, was a student and had not started earning. He also submits that as per Ex.-P/73, the Appellant suffered 40% disability due to accident and long life his work would be affected. He further submits that the Tribunal has committed grave error in not assessing the notional income of the Claimant, therefore, no multiplier has been used and no amount towards future prospects has been granted to him.

In M.A.(C) No. 420 of 2015 arising out of Claim Case No. 279 of 2011, he submits that Appellant Shah Dev Sahu aged about 20 years, was a driver at the time of accident and was earing Rs.3,500/- per month, but the Tribunal has assessed the income of the Appellant as Rs.3,000/- per month and very low amount has been awarded as compensation which deserves to be suitably enhanced.

6. On the other hand, learned counsel for Insurance Company/non-applicant No.3 opposes the contentions made by learned counsel for the Appellants/Claimants. He submits that the Tribunal has committed grave legal error in fastening the liability upon the Insurance Company it ought to have held that the policy placed on record is fake on the date of accident and the offending vehicle was not insured with the company as such no liability can be fastened upon the company.

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

8. First this Court considers M.A.(C) No.420 of 2015 arising out of Claim Case No. 279 of 2011:

Admittedly, due to accident, right leg of Appellant Shah Dev Sahu was fractured and he was admitted in Hospital for one week and was not doing the work of driver for about one month. But, the Appellant has not produced any X-ray report before the Tribunal regarding his right leg was fractured. Though, the

Claimant has pleaded that he was earning Rs.3,500/- per month as driver but no documentary evidence in support thereof has been adduced. Therefore, the Tribunal was justified in assessing loss of income for one month as Rs.3,000/-. In addition to that looking to the grievous injuries sustained by the Appellant and he was hospitalized for one week, the Tribunal has awarded Rs.25,000/- for medical treatment; Rs.10,000/- for pain & suffering; Rs.2,000/- for attendant and Rs.1,000/- for special diet. Thus, the Tribunal considering all the relevant aspects of the matter has rightly awarded total compensation of Rs.41,000/- to the Appellant/Claimant, which needs no interference by this Court, therefore, the appeal filed by Claimant Shah Dev Sahu deserves to be dismissed.

9. M.A.(C) No.421 of 2015 arises out of Claim Case No. 183 of 2011:

As regards the assessment of disability of the Claimant/Appellant (Rakesh Sahu) to the extent of 40% by the Tribunal, as per Ex.-P/73, a certificate of disability issued by the District Medical Board, Mahasamund, the Appellant had suffered 40% disability in relation to the particular limb of the body and not in relation to the whole body, therefore, this Court is of considered view that the Appellant has suffered 15% disability for earning capacity in future.

10. Considering the facts and circumstances of the case, particularly the fact that it is not disputed by both the parties that Appellant/Claimant is a minor aged about 16 years on the date of accident and had not started earning, in the opinion of this Court, ends of the justice would be served, if the income of the Claimant is considered as Rs.3,000/- per month i.e. Rs.36,000/- per annum on notional basis. Further, considering the age of the Appellant i.e. 16, functional disability i.e. 15% in future and 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 ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680***, the Claimant/Appellant (Rakesh Sahu) is held entitled for compensation in the following manner:-

Sl.No.	**Head**	**Calculation**
1	Income of the injured-Appellant/Claimant (Rakesh Sahu)	Rs.3,000/- per month i.e. Rs.36,000/- per annum
2	40% towards future prospects added to annual income	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/- per annum
3	Loss due to 15% functional disability	Rs.7,560/-
4	Multiplier of 18 applied	Rs.7,560/- x 18 = Rs.1,36,080/-
5	For medical treatment and medical bills	Rs.99,688/- (as awarded by the Tribunal)
6	For pain & suffering	Rs.50,000/- (as awarded by the Tribunal)
7	For special diet during treatment	Rs.5,000/- (as awarded by the Tribunal)
8	For attendant	Rs.10,000/- (as awarded by the Tribunal)
	Total Compensation	**Rs.3,00,768/-**

Since the Tribunal has already awarded Rs.2,64,688/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.36,080/-.

11. So far as liability is concerned, the Tribunal has considered the said issue at length in its award from paras 22 to 29. The Tribunal considering the pleadings and evidence of the respective parties, the judgment of Hon'ble Supreme Court in ***S. Iyyapan*** Vs. ***United India Insurance Company Limited & Anr., 2013 (3) A.C.C.D. 1337 (S.C.)*** and the fact that no evidence has been adduced by the Insurance Company to prove that non-applicant No.1 was not having a valid and effective driving licence on the date of accident and that there is no fundamental breach of any of the policy conditions, held Insurance Company for liable to pay compensation to the Claimant. Close scrutiny of oral evidence on record, this Court finds no illegality or infirmity in the finding so recorded by the Tribunal.

12. Resultantly, the appeal filed by Claimant- Rakesh Sahu i.e. M.A.(C) No. 421 of 2015 is allowed in part and the impugned award is modified to the extent that the Claimant/Appellant shall be entitled to a total enhanced amount of compensation of Rs.36,080/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the application till realization. However, rest of the conditions of the impugned award shall remain intact.

13. The appeal filed by Claimant- Shah Dev Sahu i.e. M.A.(C) No. 420 of 2015 is dismissed.

14. Consequently, cross-objections filed by the Insurance Company/non-applicant No.3 in both above appeals are rejected.

15. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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