NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1915 of 2018

- Branch Manager The Oriental Insurance Co. Ltd. Korba, Sada Complex, Korba, District- Korba, Chhattisgarh, Represented Through Its Asstt. Manager, T.P. Hub, Divisional Office, Bilaspur, Chhattisgarh.

----Appellant

Versus

1. Ramkumar S/o Trivenilal Kashyap Aged About 35 Years R/o Village Taga, P.S. Mulmula, Tahsil Akaltara, District- Janjgir-Champa, Chhattisgarh, Through Sukeetabai W/o Ramkumar Kashyap, (Wife Of Claimat), R/o Village Taga, P.S. Mulmula, Tahsil Akaltara, District- Janjgir-Champa, Chhattisgarh.

2. Shivram Kashyap S/o Lakhram Aged About 28 Years R/o Village Taga, P.S. Mulmula, Tahsil Akaltara, Distrct- Janjgir-Champa, Chhattisgarh.

3. Shivnand Yadav S/o Manharan Yadav Aged About 35 Years R/o Village Taga, P.S. Mulmula, Tahsil Akaltara, District- Janjgir-Champa, Chhattisgarh.

4. Rupesh Kumar Jaiswal S/o Ghanshyam Kishore Jaiswal At And Po- Akaltara, Tahsil Akaltara, District- Janjgir-Champa, Chhattisgarh.

---- Respondents

For Appellant	Shri R.N. Pusty, Advocate.
For Respondent No.1	Shri Anshul Tiwari, Advocate.
For Respondent Nos. 2 to 4	None, though served.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

11/03/2019

1. This appeal has been filed by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 29.06.2018 passed by the Motor Accident Claims Tribunal, Janjgir-Champa in Claim Case no. 86/2016, awarding total compensation of Rs.26,70,600/- in favour of the injured/claimant

with interest @ 8 per annum from the date of application till realization, fastening the liability on non-applicant no.3/Insurance Company jointly and severally along with non-applicant nos. 1, 2 & 4.

2. As per averments in the claim petition, on 21.11.2013 non-applicant no.2 Shivnand Yadav telphonically informed the claimant Ram Kumar about the mechanical break down of his tractor bearing no. CG11-D-1874 and trolley bearing no.CG11-DA-3764 near Gudiya Pond. While the claimant was repairing tractor, non-applicant no.2 Shivram Kashyup drove the tractor and trolley in a rash and negligent manner, as a result of which the trolley overturned and the claimant suffered grievous injuries on his waist. At the time of accident, non-applicant no.2 was registered owner of the tractor, non-applicant no.4 was registered owner of the trolley and the tractor and trolley were duly insured with non-applicant no.3.

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

4. Learned counsel for the insurance company submits that the tractor and trolley were owned by different persons, the accident occurred due to overturning of trolley which was insured for commercial purpose and since the driver non-applicant no.1 was having a licence to drive non-transport vehicle, on account of there being breach of policy conditions, the insurance company is

not liable to pay compensation to the claimant. He further submits that the accident occurred on 21.11.2013, the claimant could not prove his income and, therefore, as per minimum wages at the relevant time, the Tribunal should have considered his income as Rs.5,000/-. However, the Tribunal by wrongly applying the notification of the State Government for the year 2018, considered the monthly income of the claimant as Rs.12,000/- which is not sustainable in law. Lastly, he submits that the Tribunal has wrongly considered 100% functional disability of the claimant whereas considering the nature of injuries, particularly the fact that the injury was suffered by the claimant on the lower part of the limb, his functional disability could have been considered 50-60% only.

5. On the other hand, learned counsel for the respondent/claimant supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

6. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

8. So far as issue of breach of policy is concerned, as per Ex.NA-3C the tractor and trolley were duly insured with non-applicant no.3 at the relevant time. As per Ex.NA-4C, non-applicant no.1 was

having a licence to drive transport and non-transport vehicle which was valid from 04.01.2018 to 22.08.2033. Thus, on the date of accident, non-applicant no.1 was having a valid and effective driving licence to drive the vehicle. The Tribunal has not committed any illegality in fastening the liability on insurance company/non-applicant no.3 of satisfying the award.

9. So far as quantum of compensation is concerned, though the claimant has pleaded that he was earning Rs.15,000/- per month as Tractor Mechanic, however, no documentary evidence has been adduced by him in this regard. The Tribunal considering the notification of the State Government for the year 2018 assessed the income of the claimant as Rs.12,000/- per month. Since the accident occurred on 21.11.2013, the Tribunal was not justified in assessing the income of the claimant on the basis of notification of the State Government for the year 2018. Considering the minimum wages at the time of accident i.e. 21.11.2013, the income of the claimant can safely be taken as Rs.5,500/- per month.

10. So far as 100% functional disability of claimant is concerned, the Tribunal considering the disability certificate of Ex.A-42 issued by a team of five Doctors of District Hospital, Janjgir recorded a finding that claimant suffered 100% functional disability due to *Paraplegia* which is not curable. The claimant also examined Dr. Hari Singh Chandel as AW-2, who proved the disability certificate. The Insurance Company could not adduce any evidence to the

contrary in cross-examination of the said Doctor. Thus, considering the nature and extent of injury suffered by the claimant, the part of the body where the injury was caused and the nature of job of the claimant, this Court is of the opinion that the Tribunal was justified in assessing 100% functional disability of the claimant.

11. In view of above, considering the income of the claimant i.e. Rs.5,500/- per month, his age i.e. 35 years, keeping in view the judgments of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121 & National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** the claimant is held entitled for compensation in the following manner:

S.I. No.	**Heads**	**Calculation (in rupees)**
1.	Income of the deceased @ Rs.5,500/-	Rs.66,000/- per annum
2.	40% of (i) above to be added towards future prospects.	Rs.26,400/- Rs.66,000 + Rs.26,400 = Rs.92,400/-
3.	Multiplier of 16 to be applied	Rs.14,78,400/-
4.	Towards Medical Expenses	Rs.51,300/- (as awarded by the Tribunal)
5.	Towards lodging and other miscellaneous expenses during treatment	Rs.9,300/- (as awarded by the Tribunal)
6.	Towards Attendant	Rs.50,000/- (as awarded by the Tribunal)

7.	Towards pain and suffering	Rs.1,00,000/-(as awarded by the Tribunal)
8.	Towards Future Treatment	Rs.1,00,000/- (as awarded by the Tribunal)
9.	Towards Conveyance for future treatment	Rs.50,000/- (as awarded by the Tribunal)
10.	Towards Future Pain and Suffering	Rs.50,000/- (as awarded by the Tribunal)
11.	Towards Future Loss of Estate	Rs.1,00,000/- (as awarded by the Tribunal)
	Total Compensation	**Rs.19,89,000/-**

Since the Tribunal has awarded Rs.26,70,600/- whereas the claimant is entitled for a compensation of Rs.19,89,000/- as assessed above, the Insurance Company is entitled to recover the amount paid to the claimant in excess of its liability from the claimant in accordance with law. However, rest of the conditions of the impugned award shall remain intact.

12. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh