NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 973 of 2014

- Branch Manager, The Oriental Insurance Company Limited The Oriental Insu. Co.Ltd., M.B. Tradecentre, Dhamtari, Tah. And Distt. Dhamtari, Chhattisgarh

---- Appellant/NA3

Versus

1. Sadhuram, S/o Indar Singh Sahu, Aged About 45 Years, R/o village Bhendra, Tah. Kurud, Distt. Dhamtari, Chhattisgarh (Claimant)
2. Minesh Kumar, S/o Aman Lal Sahu, Aged About 26 Years, caste Teli, R/o village Kondagaon, Post And P.S. Korar, District : Kanker, Chhattisgarh (NA1)
3. Jitendra Dewangan S/o Sonlal, caste-Kosta, Aged About 38 Years R/o village Kondagaon, Post And P.S. Korar, Distt. Kanker Chhattisgarh (NA2)

---- Respondents

MAC No. 1039 of 2014

- Sadhuram, S/o Inder Singh Sahu, Aged About 45 Years, R/o village Bhendra, Tah. Kurud, Distt. Dhamtari, Chhattisgarh

---- Appellant/Claimant

Versus

1. Minesh Kumar, S/o Aman Lal Sahu, Aged About 26 Years caste-Teli, R/o village Kondagaon, Post And P.S. Korar, Distt. Kanker, Chhattisgarh
2. Jitendra Dewangan, S/o Sonlal Aged About 38 Years, R/o village Kondagaon, Post And P.S. Korar, District : Kanker, Chhattisgarh
3. Branch Manager, Oriental Insu.Co.Ltd., M.B. Trade Center, Dhamtari, Tah. And Distt. Dhamtari, Chhattisgarh

----Respondents

For Appellant/Insurance Company	:	Shri Pankaj Agrawal, Advocate
For Respondents-2 and 3/NA1 and NA2	:	Shri Sunil Sahu, Advocate
For Respondent-1/Claimant	:	Shri AL Singroul, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
31.08.2020

1. Both these appeals are arising out of a common award passed in Claim Case-46 of 2014 by Additional Motor Accident Claims Tribunal,

Dhamtari (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed claim application in part and awarded a sum of Rs.3,29,400/- as compensation in a permanent disability case.

2. MAC-973 of 2014 is filed by the Insurance Company challenging the quantum of award based on the assessment of permanent disability of claimant to the extent of 60%, that proper opportunity to prove the breach of conditions of Insurance Policy has not been given as the driver of offending vehicle was not possessing valid and effective driving license on the date of accident.

3. The claimant has filed MAC-1039 of 2014 seeking enhancement of amount of compensation awarded by the learned Claims Tribunal.

4. Facts relevant for disposal of these appeals are that on 14.12.2012, when claimant was travelling on his Hero Honda Motorcycle bearing No.CG05 H 1029 and travelling from village Lakhanpuri to village Bhendra, stopped his motorcycle on the side of road to answer nature's call and thereafter talking on his Mobile Phone near parked motorcycle, at that relevant time, one Matador 709 bearing No.CG4G-8528 (for short,'offending vehicle'), driven by NA1 rashly and negligently, caused accident to the motorcycle and the offending vehicle turned turtle. In the said accident, claimant, rider of motorcycle suffered grievous injuries over his person including right hand and left leg. His left leg was amputated below knee. He was taken to the Community Health Centre, Charama, from where, he was immediately referred to Christian Hospital Bathena, Dhamtari, where he took treatment as in-patient from 14.12.2012 till

31.12.2012. During the course of treatment, his left leg was amputated below knee.

5. Injured claimant filed an application under Section 166 Motor Vehicle Act, 1988 pleading therein that prior to the date of accident, he was an able bodied man, earning Rs.150/- per day from agriculture labour work, but on account of amputation of his left leg below knee, he suffered permanent disability and unable to do any work for earning his livelihood. Claimant has sought compensation of Rs.7,96,000/- on account of injuries and permanent disability suffered by him.

6. NA1 and NA2, who are driver and owner of offending vehicle submitted reply denying the pleadings made in the claim application have further pleaded that NA1 was not driving the offending vehicle rashly and negligently at the time of accident, the amount claimed is highly exaggerated, NA1 was possessing valid and effective driving license and the offending vehicle was insured with the Insurance Company.

7. NA3/Insurance Company submitted reply to claim application and denied the pleadings made in the claim application with regard to the manner of the accident, injury and permanent disability suffered by the claimant. It was further pleaded that on the date of accident, NA1 was not possessing valid and effective driving license and he was not under employment of NA2. There was breach of conditions of Insurance Policy.

8. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties, held that NA1 while driving the offending vehicle rashly and negligently, dashed the motorcycle

and caused injuries to the claimant. Claimant suffered permanent disability and awarded a sum of Rs.3,29,400/-.

9. Shri Pankaj Agrawal, learned counsel for the appellant/Insurance Company in MAC-973 of 2014 submits that the Insurance Company has taken specific plea with regard to the breach of conditions of Insurance Policy but learned Claims Tribunal has not framed any issue. He also submits that the Investigating Officer after completion of the investigation, had submitted a report mentioning the details of offending vehicle which was filed as Ex.D3, the license particulars and the verification report of the license of NA1 issued by the RTO Office, Raipur as Ex.D2 in which it is categorically mentioned that the license number mentioned therein was not issued from the RTO Office Raipur. He further submits that the appellant /Insurance Company has also moved an application through his counsel representing before the learned Claims Tribunal for issuing summons to the RTO Officer, Raipur and Durg, but that application was turned down erroneously, and they were deprived of the opportunity to prove the pleadings with regard to breach of conditions of Insurance Policy. Learned counsel further contended that learned Claims Tribunal erred in assessing the loss of earning capacity to the extent of 60% in the facts and circumstances of the case and also awarding higher amount of compensation to the claimant.

10. Per contra, Shri AL Singraul, learned counsel representing the claimant/appellant in MAC-1039 of 2014 submits that learned Claims Tribunal has rightly taken into consideration the loss of earning to the extent of 60% as assessed by the expert on the basis of Disability

Certificate issued by the Doctor. Claimant suffered amputation of leg. He submits that the claimant was working as agricultural labour and after amputation of his leg below knee, he is unable to work as labour for the purpose of earning his livelihood. He also submits that learned Claims Tribunal erred in assessing the income of the claimant as Rs.3,000/- per month only; not awarding any amount towards future prospects and further not awarding any amount of compensation towards mental pain and agony and loss of amenities and joy in life, transportation expenses, attendant and further non-award of adequate amount of compensation towards non-pecuniary damages for which the claimant is entitled. He places his reliance on the judgment passed by Hon'ble Supreme Court in **R.D. Hattangadi vs M/s Pest Control (India) Pvt. Ltd. and others** reported in SCC (1995) 551 and in the mater of **Jagdish Vs Mohan and others** reported in (2018) 4 SCC 571 and in **Kajal Vs Jagdish Chand** reported in (2020) 4 SCC 413. He also submits that the claimant has also filed MAC-1039 of 2014, which is listed as item No.7 for enhancement of compensation.

11. Shri Sunil Sahu, learned counsel for driver and owner of offending vehicle submits that the submission made by learned counsel for the Insurance Company that proper opportunity to defend their case was not offered, is not correct. Learned Claims Tribunal afforded opportunity of hearing to the parties. Tribunal and dismissed the application, filed for examining witness of RTO Office, Raipur and Durg, with a reasoned order. That order was not challenged. He further submits that the Insurance Company has obtained verification report of the license from the RTO

Office, Raipur but not obtained any verification report of the license from RTO Office Durg and Kanker. NA1, driver of offending vehicle in his evidence has placed on record the extract of the driving license issued from the RTO Office, Durg, Bhilai, as Ex.D6c. He also submits that the Insurance Company has not made any effort to get the license issued from the RTO Office, Durg and DTO Kanker to be verified and therefore, the appellant Insurance Company cannot raise a ground that opportunity has not been afforded to prove the breach of conditions of Insurance Policy. With regard to the amount of compensation awarded to the claimant, he submits that learned Claims Tribunal based on the evidence available on record has rightly awarded just amount of compensation which does not call for any interference.

12. We have heard learned counsel for the respective parties. To appreciate submissions made by learned counsel for the Insurance Company we have perused the record of claim case. The Claims Tribunal has not formulated any specific issue in view of the specific pleading made by the Insurance Company with regard to the breach of conditions of Insurance Policy on account of valid and effective driving license not possessed by NA1, driver of offending vehicle. To this extent, learned counsel for the Insurance Company is correct. The Courts/Tribunals are required to frame specific issues on the basis of facts pleaded by the parties of the case. The appellant was aware about the issue involved in the case and also placed evidence and examined witness to prove breach of policy conditions. Perusal of record would further show that the accident took place on 14.12.2012 and on the same date, Police seized documents

from the possession of NA1 and his driving license bearing No.M/8957/R/08 having its validity period up to 01.07.2028. The said license which was available on record in the Police Case was obtained by the Insurance Company and got the same verified from the issuing authority. Copy of license bearing No. No.M/8957/R/08 has been placed on record along with Ex.D1, which shows that the copy of said license was issued from the licensing authority, Raipur for MCWG and LMV.

13. Copy of original extract of driving license is placed on record as Ex.D4, which mentions the authorisation of driving motorcycle with gear LMV and Transport Vehicle. Perusal of the document Ex.D4 would show that under Column 'A' First time issuance details is mentioned as from – CG19 DTO Kanker (District Transport Officer, Kanker). Appellant Company has not got the license Ex.D4 verified from District Transport Office, Kanker. This fact was admitted by the witness of Company, Pradeep Vishwas, NAW2.

14. NA1 was examined before the learned Claims Tribunal on 17.06.2014 and in his examination, he has placed the document Ex.D6C and Ex.D4 which is a driving license issued by the RTO Office, Durg and DTO Kanker. The Insurance Company though has taken a ground in the appeal that the Insurance Company has not been provided an opportunity to prove that NA1 was not possessing valid and effective driving license, but before this Court also Insurance Company has not produced any verification report from the RTO Durg and DTO Kanker when the copy of license has been placed in the records of the claim case, if not earlier, then, on 17.06.2014 as Ex.D4 and Ex.D6C. If the Insurance Company

could obtain the particulars of verification report of license to be issued from RTO Office, Raipur, then the Insurance Company could have also obtained the report from RTO Office, Durg and DTO Kanker. This appeal is filed before this court in the year 2014. One of the important and main grounds raised is with regard to valid license but even then, appellant has not bothered to get the license Ex.D4 and Ex.D6C verified from the concerned office.

15. In view of above, we are of the view that the appellant/Insurance Company though have taken plea of breach of conditions of Insurance Policy, but had not made proper effort to prove the same, particularly, to prove the copy of extract of driving license Ex.D4 to be not the license issued from DTO, Kanker. The license Ex.D4 authorised NA1 to drive MCWG and Transport vehicle LMV. Copy of the particulars of vehicle is available on record as Exhibit at Pg 60 of claim case record along with other additional documents, perusal of which would show that the gross vehicle weight is mentioned as 7250 kgs, which is less than 7500 kgs and comes within the definition of LMV as defined under Section 2(21) of the Act of 1988. Perusal of Insurance Policy would show that in the policy, gross vehicle weight has been mentioned as 7500 kgs which cannot be said to be correct in view of the copy of Registration Certificate at page 16 of unexhibited document, part of record of Claim case. It may be a typographical error by the employee of the Insurance Company while entering the same in the Insurance Policy. The Investigating Officer of the Insurance Company has filed report as Ex.D3 with regard to the information obtained by him from the RTO Office, Raipur in which the

maker name is shown as Tata Engg and Locomotive and year of manufacture as 2004, classification as 709/38/EX, weight of the vehicle has been shown as 7250 kg and classification of the vehicle as 'LGV' (Light Goods Vehicle).

16. The issue with respect to the person having a particular class of license authorizing to drive a particular category of vehicle, but on the date of accident found driving the vehicle other than the type of vehicle mentioned in the license, but of the same category, has been considered by the Hon'ble Supreme Court in the matter of **Mukund Dewangan v. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663** and held as under :-

> "60. Thus we answer the questions which are referred to us thus:
> 60.1 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.
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> 60.2 A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

> 60.3 The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained “medium goods vehicle” in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and “heavy passenger motor vehicle” in section 10(2)(h) with expression ‘transport vehicle’ as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.
>
> 60.4 The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the 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 as it was and has not been changed and there is 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.”

17. In view of aforementioned law laid down by Hon'ble Supreme Court, the person having driving license to drive LMV can very well drive Light Goods Vehicle also. The appellant/Insurance Company could not able to place on record the verification report or copy of license Ex.D4 and D6c before the learned Claims Tribunal or even before this Court. Burden to prove that the driver of vehicle was not possessing valid and effective Driving license is upon the Insurance Company, which was not discharged. In view of above discussion we do not find any force in the submission of learned counsel for the Insurance Company that proper opportunity of placing evidence has not been afforded to the appellant Company. The said submission of learned counsel for the appellant is repelled.

18. So far as the submission of learned counsel for the Insurance Company that learned Claims Tribunal erred in holding the loss of income to the extent of 60% is concerned, we have perused the copy of Disability Certificate (Ex.P13) issued by the District Medical Board, Dhamtari, in which it is mentioned as permanent disability, non-progressive, not likely to improve and re-assessment is not recommended, the percentage of disability has been shown as 60% on account of amputation of leg below knee. To prove the Disability Certificate, claimant examined Dr Vinod Pandey as AW2. In his evidence, he has stated that on account of amputation of his leg, claimant will face difficulty in walking without any support and in doing heavy work. In cross-examination, though the doctor has stated that the disability to the extent of 60% is with regard to the particular part of the body and not of the whole body, he also admits that if the claimant got artificial leg, then, he will be able to do some small work and can be benefited to walk.

19. From perusal of aforementioned evidence available on record, particularly, Ex.P13 Disability Certificate, the evidence of Dr Vinod Pandey (AW2), and the nature of occupation and work in which injured was employed, agricultural labour where the agricultural labour has to do all types of work. Labourers are required to do heavy work. They have to lift heavy articles, load heavy goods for which strength of both legs are equally needed, we do not find any infirmity in the assessment of loss of income of the claimant to the extent of 60%. This submission is also repelled.

20. The 3rd submission of learned counsel for the Insurance Company is with regard to application of multiplier of 13. In Ex.A7, MLC report, age of the claimant is mentioned as '50 years'. In other documents of Dhamtari Christian Hospital, where the claimant was admitted, his age is shown as '45 years'. In claim application and also in Permanent Disability Certificate, age of the claimant is mentioned as '45 years'. Age recorded in the MLC report is based on self assessment of the doctor on his own, and not on any documentary evidence. Looking to the grievousness of injuries, it appears that the claimant might not be in a position to even mention his details correctly. The age mentioned in other medical documents can be considered in the facts of the case. Hence, learned Claims Tribunal has assessed the age of claimant in between 46-50 years and applied multiplier of 13, which is in consonance with the law laid down by Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 12.

21. For the foregoing reasons, we do not find any merit in the appeal filed by the Insurance Company which is liable to be and it is hereby dismissed.

22. So far as the submission made by learned counsel for the claimant with regard to enhancement of compensation in MAC-1039 of 2014, and with regard to the assessment of income of the claimant as Rs.3,000/- to be on lower side in the facts and circumstances of the case, we have perused the record of claim case. Perusal of record would show that accident was of 14.12.2012 and the claimant failed to prove his income as pleaded in the claim application but at the same time, for the purpose of

calculating amount of compensation, income of person whose income could not be proved by any admissible piece of evidence, then, it is the duty upon the Court and Tribunal to assess the income of claimant notionally based upon the date of accident, occupation of injured/deceased wage structure, cost of living, price index. Considering the dat eof accident as of December 2012, we find is appropriate to fix the income of Rs.4,500/- per month. In addition to the income as assessed by this Court and looking to the permanent disability and permanent loss of income, we also find it appropriate to add 25% of assessed income towards future prospects as held by Hon'ble Supreme court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680, the appellant being in between 45-50 years of age.

23. Learned Claims Tribunal has awarded Rs.33,600/- towards medical expenses based on the medical bills, Rs.2,80,000/- towards loss of future income and only Rs.15,000/- towards mental and physical pain. Learned Claims Tribunal erred in not awarding any amount towards pain and suffering, loss of amenities and joy in life, transportation expenses, loss of income during the period of treatment and also towards attendant and special diet.

24. Learned counsel for the claimant has placed reliance in case of **RD Hattangadi** (supra), **Jagdish** (supra) and Kajal (supra) to support his argument with regard to the award of compensation in cases of permanent disability. The perusal of impugned award and quantum of amount awarded by learned Claims Tribunal in considered opinion of this Court in

the facts and circumstances of the case and looking to the nature of injuries suffered by the claimant is on lower side.

25. Hon'ble Supreme Court apart from the award of pecuniary damages, has also considered to award appropriate amount of compensation towards non-pecuniary damages suffered by the injured claimant in case of **R.D. Hattangadi** (supra).

26. In view of aforementioned law laid down by Hon'ble Supreme Court and the aforementioned discussion, the amount of compensation to be awarded to the claimant requires re-computation and re-consideration which is as under:

> Income of claimant/appellant in MAC-1039 of 2014 as assessed in preceding paragraphs, is Rs.4,500/- per month and Rs.54,000/- per annum.
>
> By adding 25% of established income towards future prospects, annual income of the claimant will come to Rs.67,500/- {54000 + (54000 x 25/100)}.
>
> Loss of income as assessed by learned Claims Tribunal which is also affirmed by this Court, is 60%. Now, yearly loss of income of claimant comes to Rs.40,500/- (67500 x 60/100)
>
> On the date of accident age of claimant was in between 45-50 years and appropriate multiplier is 13. By multiplying yearly loss of income with multiplier of 13, total loss of income will come to **Rs.5,26,500/-** (40500 x 13).
>
> Apart from above, claimant will be entitled for **Rs.33,600/-** towards medical expenses, based on the bills.
>
> Only Rs.15,000/- was awarded towards mental and physical pain. Looking to the crush injury suffered by the claimant and the period of treatment from 14th to 31st December, 2012, we find it appropriate to

enhance the amount from Rs.15,000/- to Rs.**25,000**/- towards pain and suffering.

As with the amputated leg, the claimant has to live for the whole of his life and is deprived of to lead a life like an ordinary person. The claimant has suffered loss of amenities and joy in life on account of permanent disability suffered by him of his leg and therefore, the claimant is entitled for a sum of Rs.**30,000**/- under this head.

The claimant is also entitled for a sum of **Rs.3,000/-** towards conveyance expenses, **Rs.5,000/-** for attendant and special diet and **Rs.9,000/-** for loss of income during the period of treatment.

Now, the claimant will be entitled for a total sum of **Rs.6,32,100/-** (526500 + 33600 + 25000 + 30000 + 3000 + 5000 + 9000) as compensation instead of Rs.3,29,400/- awarded by learned Claims Tribunal.

27. The aforementioned total amount of compensation of Rs.6,32,100/- shall carry interest @6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal shall remain intact. First liability to satisfy the amount of compensation is upon the Insurance Company.

28. In the result,

a) Appeal filed by the Insurance Company MAC-973 of 2014 is dismissed.

b) Appeal filed by the Claimant MAC-1039 of 2014 is allowed in part. The impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma