NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1115 of 2014

- Deepak Kumar Manikpuri aged about 28 years, S/o Gurudev Prasad Manikpuri, Occupation-Driver of Vehicle R/o Village Qwater No. 107 R.D.A. Colony Heerapur Post Tatibandh, Thana Aamanaka Tahsil and District Raipur C.G.

-----Appellant

VERSUS

1. B.N. Shri Nivash S/o B. Aanand Rao R/o Shantoshi Nager, Thana Tikara Para Raipur Tahsil and District Raipur C.G. **-------Owner**
2. Royal Sundram Alliances Insurance Company Ltd. Branch Manager Branch Office Chawala Complex Meja 9th Floor Sai Nagar Devendra Nagar Raipur Tahsil and District Raipur C.G.

----Respondents

WITH

MAC No. 1204 of 2014

- Royal Sundaram Alliance Insurance Co. Ltd. Through Branch Manager Branch Office- Chawla Complex Mejazine Floor, Sai Nagar, Devendra Nagar Road, Raipur C.G.

  At present- Near Over-Bridge, Mova Pandri PS Pandari, Civil and Revenue Dist. Raipur C.G.

---- Appellant

Versus

1. Deepak Kumar Manikpuri aged about 28 years, S/o Gurudev Prasad Manikpuri Profession-Driver R/o Qtr No. 107, RDA Colony Hirapur, Post office Tatibandh, Police Station Amanaka, Civil and revenue Dist. Raipur C.G. **-------Claimant (Driver)**
2. B.N. Shriniwas S/o B.Anandrao Shriniwas R/o Santoshi Nagar, Police Station Tikrapara Civil and Revenue Dist. Raipur C.G. **-----Owner**

---- Respondents

MAC 1115/2014

For Appellant	:	Mr. A.L. Singroul, Advocate
For Respondent 1	:	None.
For Respondent 2	:	Mr. Bhashkar Pyasi, Advocate

MAC 1204/2014

For Appellant	:	Mr. Bhashkar Pyasi, Advocate
For Respondent 1	:	Mr. A.L. Singroul, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

25/11/2020

1. Both these appeals are arising out of award dated 26.08.2014 passed by learned 2nd Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh in claim case no. 132/2013, hence, both these appeals are being disposed of by this common order.

2. MAC No. 1115/2014 has been filed by the appellant-claimant seeking enhancement of the amount of compensation whereas MAC No. 1204/2014 has been filed by the Insurance Company challenging the impugned award on the ground of maintainability of claim application under Section 163-A of the Motor Vehicles Act, 1988 (for short "Act of 1988") and finding recorded by Claims Tribunal with regard to fastening liability upon the Insurance Company.

3. Facts relevant for disposal of these appeals are that on 20.12.2008 when Deepak Kumar Manikpuri was driving Maruti Van bearing registration no. CG 04HA 2876 (henceforth "offending vehicle") owned by non-applicant 1, going to Raipur from Bhilai, reached at intersection road near Khursipar Dabrapara at GE Road at that relevant time one another vehicle suddenly came from the front side and dashed the Maruti Van driven by Deepak Manikpuri. In the said accident, Deepak Manikpuri suffered grievous injuries, during the course of treatment his left leg was amputated below knee joint. He suffered injury over his jaw and lost his teeth. Deepak took treatment at Sector 9 Hospital Bhilai, thereafter, he was referred to Dr. Kadla Nursing Home, Raipur for his treatment. Accident was reported to concerned police station based upon which crime bearing no. 316/2008 was registered against unknown vehicle.

4. Appellant Deepak Manikpuri filed an application under Section 163-A of the Act of 1988 seeking compensation of Rs.26,50,000/- pleading therein that due to amputation of left leg below knee, he became permanently disabled and unable to perform his work, he was facing great difficulty in his movement and suffering from pain on the amputated leg. On the date of accident he was working as driver and earning Rs. 3,200/- per month. On account of permanent disability he is unable to do the work of driver.

5. Even after service of notice, non-applicant 1 owner of the offending vehicle did not appear and he was proceeded *ex parte*.

6. Non-applicant 2-Insurance Company submitted reply to the claim application pleading therein that the crime was registered against unknown vehicle, application in its form filed under Section 163-A is not maintainable and could have been filed under Section 161 of the Act of 1988. Claimant/ injured was not a 3^{rd} party, he was not possessed with valid and effective driving licence, as such there was breach of policy conditions. Insurance Company is not liable for any amount of compensation.

7. Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties, arrived at a finding that injured Deepak Manikpuri (claimant) suffered grievous injuries while driving Maruti Van (offending vehicle) owned by non-applicant 1, on account of accident with another motor vehicle. Claimant became permanently disabled. He was possessed with valid and effective driving licence and awarded sum of Rs. 4,74,123/- as compensation including Rs. 1,27,123/- towards medical expenditure.

8. Mr. A.L. Singroul, learned counsel for the appellant-claimant submits that the Claims Tribunal has assessed income of the appellant-claimant on lower side. Claimant has very specifically pleaded that on the date of

accident he was earning Rs. 3,200/- per month from occupation of driver but the Claims Tribunal without assigning any reason has assessed income as Rs. 3,000/- per month. It is further contended that the Claims Tribunal has assessed permanent disability to the extent of 50% only towards loss of earning capacity overlooking the percentage of disability mentioned in disability certificate as 80% vide Ext. 124, issued by the Medical Board. He further contended that though the permanent disability assessed by Medical Board in disability certificate is to the extent of 80% but for the purpose of awarding amount of compensation, loss of earning capacity of appellant-claimant has not been properly considered overlooking the occupation of appellant-claimant as driver. With amputated left leg appellant-claimant cannot be able to drive motor vehicle, hence, the loss of earning capacity suffered by appellant is 100% but the Claims Tribunal has erroneously computed amount of compensation treating loss of earning capacity as 50% only. He places his reliance on judgment passed by Supreme Court in the case of ***S. Suresh v. Oriental Insurance Co. Ltd.*** reported in ***2010 AIR SCW 437*** and ***Raj Kumar v. Ajay Kumar and another*** reported in ***(2011) 1 SCC 343***.

9. Mr. Bhashkar Pyasi, learned counsel for Insurance Company in MAC No. 1204/2014 submits that in the facts and circumstances of the case where as per case of claimant himself, there is involvement of other vehicle in accident but the owner, driver and Insurance Company of the said vehicle have not been arrayed as party respondents. F.I.R. was registered against unknown vehicle, hence in the facts of the case, application could have been filed under Section 161 of the Act of 1988 and not under Section 163-A of the Act. He further argued that as the claimant/ injured himself was driving the vehicle, claim application under Section 163-A is not maintainable. In support of his submission he places his reliance on the case of ***Oriental Insurance Company Limited v. Rajni Devi and***

others reported in **(2008) 5 SCC 736**, ***Ningamma and another vs. United India Insurance Company Limited*** reported in **(2009) 13 SCC 710**, ***Oriental Insurance Company Limited v. Meena Variyal and others*** reported in **(2007) 5 SCC 428** and case of ***Ramkhiladi v. United India Insurance Com. Limited*** reported in **AIR 2020 SC 527; (2020) 2 SCC 550**. He further contended that the claims Tribunal has erroneously recorded a finding on issue no. 3, that on the date of accident, claimant was possessed with valid and effective driving licence overlooking the evidence brought on record by the Insurance Company of Rajesh Bhargava NAW-1, licencing clerk of RTO Raipur. He submits that the Insurance Company has placed on record the licence verification report Ext. D-1 issued from RTO, Raipur intimating that the driving licence bearing no. D/8826/R was not issued from their office. He contended that when different verification reports of same licence were brought on record one stating that the licence was not issued from RTO, Raipur and other showing that the licence was issued from RTO, Raipur then the Tribunal ought to have call for the record/ licence register from the office of RTO, Raipur but Claims Tribunal has not conducted proper enquiry in terms of Section 168 of the Act and Rule 226 of Chhattisgarh Motor Vehicles Rule, 1994 for arriving at a correct finding with regard to licence. He further pointed out that the Claims Tribunal has awarded excessive amount of compensation. Quantum of amount and heads under which compensation is to be awarded in the application, filed under Section 163-A, is fixed under 2nd Schedule.

10. We have heard learned counsel for the respective parties and also perused the record.

11. We find it appropriate to first deal with the issue raised by the appellant-Insurance Company in its appeal no. 1204/2014 with regard to licence. Perusal of the record would show that the Insurance Company has

brought on record verification report of the licence possessed by claimant driver of the offending vehicle as Ext. D-1. The said report was obtained under Right to Information Act and the information was supplied to one Manoj Prasad, Advocate Raipur on 30.05.2012. Said information was signed by two persons which are marked as B to B and A to A. The information bears that the driving licence D/8826/R dated 05.08.2004 is not found to be issued as per official record. Claimant has also produced copy of verification report of the licence D/8826/R as Ext. P125. This verification report was issued on 21.02.2013 showing that the licence in question was issued from RTO, Raipur for a period from 05.08.2004 to 04.08.2024 in the name of claimant Deepak Kumar authorising him to drive motor cycle and LMV. In the bottom of that report it is mentioned that "issued through AshaID computer". Licencing clerk of RTO, Raipur was examined as NAW-1. In his evidence, this witness in paragraph 1 has stated that as per official record licence in question dated 05.08.2004 is not found to be issued. In that document, his signature is present as A to A and signature of Additional Regional Transport Officer is as B to B. In cross examination while confronting with the document Ext.P-125 he has stated that document Ext. P-125 appears to be issued from their office and the information has been given as per the computer record, hence, he can make statement after perusal of the record. He further admitted that the document Ext. P-125 bears his signature and in paragraph 3 of cross-examination he stated that he has issued the said document Ext.P-125 based on computer record. As per that licence verification report it was issued for motor cycle with gear and LMV for a period from 05.08.2004 to 04.08.2024. He further stated that he has not brought any record with him.

12. Learned counsel representing on behalf of Insurance Company before the Claims Tribunal had made prayer for re-examining the witness on the same date, but that was turned down by the Claims Tribunal by recording

that NAW-1, licencing clerk of RTO, Raipur has come for his examination before the Court without any record. Re-examination of this witness is denied only on the ground that Insurance Company has not called for any record.

13. The procedure to deal with the claim application is given under Section 168 of the Act of 1988, in which it is specifically mentioned that the claim application to be decided after giving opportunity to the parties of being heard, hold an enquiry into the claim and thereafter to make just award. Section 169 of the Act deals with the procedure and powers of the Claims Tribunal. Proceedings under Motor Vehicles Act for deciding the claim application and awarding the amount of compensation to the claimants is in the nature of enquiry when from the records it appears that two contradictory documents have been placed on record by both the parties issued by the same office then the Claims Tribunal ought to have directed/ ordered the witness NAW-1 to produce the relevant records of the issuance of subject licence. Perusal of evidence of NAW-2 would itself show that the witness has very specifically stated that he could state after going through the record. Duty under the Act of 1988 is fixed upon the Claims Tribunal to award just compensation and once the word 'just compensation' is used under the Act then it would be the just compensation for both the sides. Hon'ble Supreme Court in the case of **Rajkumar (supra)** has held thus:

> "16. …Sections 168 and 169 of the Act, 1988, make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth, who is required to 'hold an enquiry into the claim' for determining the just compensation. The Tribunal should, therefore, take an active role to ascertain the true and correct position so that it can assess just compensation. ..."

14. In light of the aforementioned dictum of the Supreme Court, if the facts of present case are taken into consideration the Claims Tribunal even when the witness who was examined before the Claims Tribunal has stated that he could state after going through the records. Tribunal has not exercised its power of issuance of direction to the witness to come with relevant records for further evidence, but has rejected the prayer made by learned counsel for the Insurance Company for re-examination of witness, observing that the Insurance Company has not sought for production of any record.

15. In view of the aforementioned facts and circumstances of the case and considering the provisions under the Act of 1988 as well as the dictum of Hon'ble Supreme Court, we are of the considered view that the Claims Tribunal has not conducted proper enquiry as envisaged under Section 168, Section 169 of the Act and Rule 226 of the Chhattisgarh Motor Vehicles Rule, 1994.

16. For the foregoing reasons, we allow the appeal filed by the Insurance Company, set aside the impugned award and **remit back** the case for deciding the claim application afresh, more so when, the appeal is filed by both the sides ie. claimant and the Insurance Company, one for seeking enhancement on the ground mentioned therein and other challenging the liability and maintainability of the claim application. Needless to mention that parties to the claim application will be at liberty to amend their pleadings, lead further evidence in support of their case, file any document. Looking to the date of accident ie. of the year 2008, we direct the Claims Tribunal to decide the claim application within a period of 5 months from the date of receipt of copy of order passed by this Court.

17. As we have already ordered for remand of the case back to the concerned Claims Tribunal, we are not entering into the merits of the appeal filed by the claimant seeking enhancement of the amount of

compensation or the ground raised by the appellant-Insurance Company with regard to maintainability of application filed under Section 163-A of the Act of 1988 and quantum of amount of compensation, we leave it open for the Claims Tribunal to decide all the issues, based on the material available before it, afresh.

18. Both the appeals are disposed of in the aforementioned terms. Records of the claim case be sent back forthwith.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan