NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1023 of 2014

- Shriram General Insurance Company Limited, Through Branch Manager, Shri Ram General Insurance Company Limited, E/8, I.P. RIICO, Industrial Area, Sitapura, Jaipur Rajasthan, 302022

------Petitioner

VERSUS

1. Shiv Kumar Dewangan S/o Bhagirathi Dewangan, aged about 23 years, R/o Imlibhatha, Tahsil and District Bilaspur C.G. **------Claimant**
2. Birbal Yadav S/o Bhurwa Yadav aged about 25 years, R/o Village Tikripara, Takhatpur, Thana, Takhatpur, District Bilaspur C.G. **------Driver**
3. Rajendra Singh Thakur S/o Shri Bhuwan Singh Thakur R/o House No. 13 Sheetla Ward, Radhakrishna Ward, Kawardha, C.G. **------Owner**

-------**Respondents**

WITH

MAC No. 56 of 2015

- Shivkumar S/o Bhagirathi Dewangan, aged about 23 years, R/o Imlibhatha, Tahsil and District-Bilaspur C.G. **------Appellant/Claimant**

VERSUS

1. Birbal Yadav S/o Bhurwa Yadav, aged about 25 years, R/o village Tikripara, Takhatpur, Police Station Thakhatpur, District Bilaspur C.G.
2. Rajendra Singh Thakur S/o Shri Bhuwan Singh Thakur, R/o Qtr. No. 13, Shitla Ward, Radhakrishna Ward Kawardha C.G.
3. Shriram General Insurance Company Limited, through Manager Issuing Office 10003E-Rilco Industrial Area Sitapur, Jaipur, Tahsil and District Jaipur Rajasthan

----------Respondents

MAC No. 1023/2014

For Appellant	:	Mr. Sachin Singh Rajput, Advocate
For Respondent No. 1	:	Mr. Qamrul Aziz, Advocate
For Respondent No. 3	:	Mr. Devesh Chand Verma, Advocate

MAC No. 56/2015

For Appellant	:	Mr. Qamrul Aziz, Advocate
For Respondent 2	:	Mr. D.C. Verma, Advocate
For Respondent 3	:	Mr. Sachin Singh Rajput, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, J.

14/08/2020

1. As both these appeals are arising out of the common award dated 30.06.2014 passed in claim case No. 56/2012 by First Additional Motor Accidents Claims Tribunal, Bilaspur, hence both these appeals are being disposed of by this common order.

2. MAC No. 1023/2014 is filed by Non-applicant 3/ appellant herein challenging the quantum of the award and also the ground of breach of conditions of insurance policy for not having valid and effective driving licence with Respondent 2/ Non-applicant 1 driver of the offending bus. MAC No. 56/2015 is filed by claimant Shivkumar for enhancement of the award on the grounds mentioned therein.

3. Facts relevant for disposal of these appeals are that on 06-07-2011 claimant/ respondent 1 boarded on bus bearing Registration No. CG 10G 0220 (offending bus) going from Bilaspur to Pandariya, on the way, the offending bus met with an accident near Gunsari road due to rash and negligent driving of offending bus by Respondent 2/ Non-applicant 1 driver. In the aforementioned accident, claimant suffered grievous injuries over his right hand and it got amputated from above elbow. He was taken to Community Health Centre, Takhatpur. Looking to the grievousness of the injury, claimant was referred to CIMS Hospital Bilaspur. Claimant filed an application under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs. 29,07,000/- mentioning therein that he was employed with Nitin Stores as gas and cooker mechanic and earning Rs. 6,000/- per month and Rs. 2,000/- from part-time work.

4. Respondent 2/ Non-applicant 1 driver of the offending bus chosen not to appear even after service of notice and he was proceeded *ex parte*.

5. Respondent 3/ Non-applicant 2 owner of the offending bus denied the injuries suffered by the claimant on account of accident from offending bus. It is also pleaded that on the date of accident, offending bus was insured with Non-applicant 3-Insurance Company, hence liability, if any,

would be upon the Insurance Company for payment of amount of compensation.

6. Non-applicant 3/ Appellant- Insurance Company submitted reply to the claim application while denying the fact of accident further pleaded that the driver was not possessing valid and effective driving licence, there was no valid permit and fitness, thereby there was breach of conditions of insurance policy, therefore, Insurance Company is having no liability to satisfy the amount of compensation, the amount of compensation as claimed is highly exaggerated.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that the claimant suffered accidental injuries on account of rash and negligent driving of the offending bus by its driver Non-applicant 1, claimant suffered permanent disability, breach of conditions of insurance policy was not found to be proved and awarded a total sum of Rs. 9,63,000/- as compensation.

8. Learned counsel for Appellant-Insurance Company submits that the learned Claims Tribunal erred in fastening the liability upon the Insurance Company without considering that on the date of accident, driver of the offending bus was not possessing valid and effective licence. He further contended that the amount of compensation awarded to claimant is on higher side, income assessed by the Tribunal is on higher side without there being any prove of income as pleaded by the claimant. Learned Claims Tribunal awarded the amount on loss of income towards the permanent disability without considering that the claimant failed to prove the functional disability and seeks for modification of impugned award by recomputing the amount of compensation.

9. Mr. Qamrul Aziz, learned counsel representing the claimant submits that appellant- Insurance Company has failed to prove breach of conditions of insurance policy in accordance with law, the Insurance Company has not

examined any witness on its behalf to prove the fact of breach of conditions of insurance policy. While opposing the submissions made by the learned counsel for the Insurance Company on the quantum of award of compensation, he submits that the amount of compensation awarded by the Tribunal is not on higher side but is much on lower side and, therefore, the claimant has also preferred an appeal bearing No. MAC No. 56/2015 seeking enhancement of amount of compensation. He submits that the learned Claims Tribunal has not considered 100% loss of income in the facts and circumstances of the case, looking to the amputation of right hand above elbow of claimant. He submits that the Claims Tribunal erred in assessing the monthly income of the claimant as Rs. 5,000/- ignoring the salary certificate placed on record by the claimant. It is further contended that the Claims Tribunal erred in not awarding any amount towards loss of future prospects for the purpose of calculating the amount of compensation in a case where claimant suffered permanent disability and that too to the extent of 85% as assessed by the Doctor who issued disability certificate, amount of compensation on other non-pecuniary damages is on lower side in the facts and circumstances of the case and submits that the impugned award passed by the learned Claims Tribunal to be suitably enhanced and impugned award to be modified accordingly. He also submits that the appeal filed by appellant-Insurance Company is without any substance and, therefore, it be dismissed accordingly.

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

11. Sofar as, the ground raised by the learned counsel for the appellant-Insurance Company with regard to breach of conditions of insurance policy; from perusal of record, it reveals that except pleadings in the reply to claim application, appellant/ Non-applicant 3- Insurance Company has not proved the fact of breach of conditions of insurance policy by placing

cogent and admissible piece of evidence on record, in fact, Insurance Company has not examined any witness in support of its plea. In the aforementioned facts of the case where the Insurance Company has not led any evidence in support of his pleadings, we do not find any error in the finding recorded by the learned Claims Tribunal that Appellant/ Non-applicant 3-Insurance Company failed to prove that there was breach of conditions of insurance policy.

12. Sofar as, the quantum of amount of compensation awarded to the claimant is concerned. Perusal of the pleadings made in the claim application would show that the claimant suffered amputation of his right hand above elbow along with other injuries suffered by him. In support of his pleadings claimant has placed on record MLC report prepared on 06-07-2011 at about 1:35 P.M. by Medical Officer of Community Health Centre, Takhatpur wherein it is mentioned that *complete crush injury over right arm*, it also appears that *only skin remaining lost of bone below right arm upper 1/3rd* as Ext. A-4; Ext. A-5 is the document prepared by CIMS Hospital, Bilaspur in which it is mentioned that *traumatic amputation of right humorous M/3rd*; discharge ticket Ext. A-6, bears the date of admission as 06-07-2011 and date of discharge as 09-09-2011. Claimant also filed on record the disability certificate as Ext. A-7 issued by District Medical Board, Bilaspur wherein suffering of disability appears as *A/E Amputation Rt* and percentage of disability as 85%. In support of the above, claimant has examined Dr. Vijay Kumar Mishra who was working as Medical Officer, District Hospital, Bilaspur to prove Ext. P-7 disability certificate. In his evidence, he further stated that the disability certificate given by him is with regard to his right hand.

13. To appreciate the submission made by the learned counsel for the Insurance company, we have considered the pleadings made in the claim application that he was working at gas and cooker repairing shop.

Discharge ticket Ext. A-6 issued by CIMS Hospital, Bilaspur mentions the diagnosis as *near complete amputation of Rt upper limb, distal part supported by skin tag, crushing of distal part of upper limb Rt side.* Disability certificate Ext. A-7 mentions 85% disability suffered by the claimant in which his photograph is also pasted, from where perusal of which, nature of injury and the part of amputation of right hand of claimant can be clearly seen. Loss of income suffered by disability is to be ascertained by taking into consideration several factors like part of body over which permanent disability has been found, nature of occupation and whether he was prevented or discharged from the previous activities and functions. The Hon'ble Supreme Court as in case of ***Rajkumar v. Ajay Kumar and another*** reported in **(2011) 1 SCC 343** has considered the method of ascertaining the functional disability affected the loss of income of injured and held thus:

> "13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether *(i)* the claimant is totally disabled from earning any kind of livelihood, or (*ii)* whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or *(iii)* whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.
>
> 14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event

> the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of “loss of future earnings”, if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.
>
> 15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

Hon'ble Supreme Court in its another judgment of ***Chanappa Nagappa Muchalagoda v. Divisional Manager, New India Insurance Company limited*** reported in **(2020) 1 SCC 796** considering its earlier judgment on the point of amputation of part of body and held thus:

> “14. The aforesaid judgments are instructive for assessing the compensation payable to the appellant in the present case. As a consequence of the accident, the appellant has been incapacitated for life, since he can walk only with the help of a waling stick. He has lost the ability to work as a driver, as he would be disqualified from even getting a driving licence. The prospect of securing any other manual labour job is not possible, since he would require the assistance of a person to ensure his mobility and manage his discomfort. As a consequence, the functional disability suffered by the appellant must be assessed as 100%.
>
> 15. We affirm the judgment of the High Court on assessing the income of the appellant at Rs. 4000 p.m. as per the evidence of his employer. The “functional disability” of the appellant is assessed as 100%, and the relevant factor would be 201.66 as per Schedule IV to the Act. Consequently, the

> compensation payable to the appellant would work out to Rs. 4,83,984 under Section 4 of the Act."

14. If the facts of the case at hand are considered in the light of the aforementioned law laid down by the Hon'ble Supreme Court where the claimant suffered amputation injury above the elbow which is mentioned in the discharge ticket as <u>near complete amputation of right upper limb</u>, the claimant was doing work of semi-skilled labour (work of repairing). Looking to the amputation of his right hand, there will be no prospect of securing other manual labour job as the labour job cannot be possible with one hand. Taking support of dictum of Supreme Court in case of **Chanappa Nagappa Muchalagoda (supra),** we do not find any error in the finding recorded by the Claims Tribunal assessing the loss of income due to permanent disability to the extent of 85%.

15. In view of the above, the submission made by the learned counsel for the Insurance Company that the Claims Tribunal erred in ascertaining the functional disability to be without any proof is not sustainable and it is hereby repelled.

16. The learned Claims Tribunal, for the purpose of assessing the loss of income towards the percentage disability has assessed the income of the deceased as Rs. 5,000/- per month which also in the opinion of this court, looking to the nature of work as pleaded in the claim application which remain un-controverted, cannot be said to be on higher side. Claims Tribunal has not awarded any amount towards loss of future prospects, loss of amenities and joy in life, conveyance expenses and further awarded very meagre amount towards the mental pain and agony.

17. In view of the above, the amount of compensation to be awarded to the claimant requires re-computation which is as under.

18. Income of the deceased as assessed as Rs. 5,000/- per month i.e. Rs.

60,000/- per annum, age of the claimant is shown as 23 years which is less than 40 years, therefore, there will be an addition of 40% of the established income towards future prospects as per the law laid down by the Hon'ble Supreme Court in the matter of ***National insurance Company Ltd. v. Pranay Sethi*** reported in **(2017) 16 SCC 680**. By adding 40% of the established income in the income of the claimant, total income comes to Rs. 84,000/- [Rs.60,000+40% of Rs.60,000]. As it is held that claimant suffered loss of future income to the extent of 85% which comes to Rs. 71,400/-. On the date of accident, claimant was 23 years of age, therefore, appropriate multiplier would be 18 with the yearly loss of future income. After applying multiplier of 18, total yearly loss of future income comes to Rs. 12,85,200/-. Claimant will further be entitled for Rs. 40,000/- towards loss of amenities and joy in life, Rs. 20,000/- towards pain and mental and physical sufferings, Rs. 20,000/- towards medical expenses, Rs. 5,000/- towards special diet, Rs. 20,000 (Rs.5,000x4) towards loss of income during the period of treatment, Rs. 5,000/- towards conveyance expenses. Now, the claimant will be entitled for total sum of **Rs. 13,95,200/- (in words: Rupees Thirteen Lac Ninety Five Thousand and Two Hundred Only)** [Rs.12,85,200 + Rs.40,000 + Rs.20,000 + Rs.5,000 + Rs.20,000 + Rs.5,000] instead of Rs. 9,63,000/-. The aforesaid amount will carry interest @ 6% from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

19. In the result, MAC No. 1023/2014 filed by Insurance Company (appellant/ Non-applicant 3) is hereby dismissed and MAC No. 56/2015 filed by the claimant is allowed in part and the impugned award is modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge

Pawan