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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 592 of 2014

- Ramkhilawan Uraon son of Kushwa Uraon, aged about 19 years, Occupation-Dependent, resident of Village Khamhardih, Police Station and Tahisl Sarangarh, District Raigarh C.G.

-----Appellant

VERSUS

1. Rajaram Uraon son of Patiram Uraon, aged about 19 years, Occuapation-Tractor Driver, resident of village- Khamhardih, Police Station and Tahisl Sarnagarh, District Raigarh C.G.
2. Manoj Kesharwani son of late Jagdish Prasad Kesharwani, aged about 43 years, Occupation agriculturist, resident of Tiwari Gali, Sarangarh, Police Station and Tahsil Sarangarh, District Raigarh C.G.
3. I.C.I.C.I. Lombard General Insurance Company Limited through the Branch Manager, Branch Office-Devendra Nagar, Raipur C.G. **–----Insurer**

----Respondents

WITH

MAC No. 123 of 2016

- Manoj Kesharwani son of late Jagdish Prasad Kesharwani, aged about 43 years, Occupation agriculturist, resident of Tiwari Gali, Sarangarh, Police Station and Tahsil Sarangarh, District Raigarh C.G.

---- Appellant(owner)

Versus

1. Ramkhilawan Uraon son of Kushwa Uraon, aged about 19 years, Occupation-Dependent, resident of Village Khamhardih, Police Station and Tahisl Sarangarh, District Raigarh C.G.
2. Rajaram Uraon son of Patiram Uraon, aged about 19 years, Occuapation-Tractor Driver, resident of village- Khamhardih, Police Station and Tahsil Sarnagarh, District Raigarh C.G.
3. I.C.I.C.I. Lombard General Insurance Company Limited through the Branch Manager, Branch Office-Devendra Nagar, Raipur C.G.

---- Respondents

MAC 592/2014

For Appellant	:	Ms. Sharmila Singhai, Advocate
For Respondent 1	:	None.
For Respondent 2	:	Mr. Manoj Jaiswal, Advocate
For Respondent 3	:	Mr. Shailesh Tiwari and Mr. P. Acharya, Advocate

MAC 123/2016

For Appellant	:	Mr. Manoj Jaiswal, Advocate
For Respondent 1	:	Ms. Sharmila Singhai, Advocate
For Respondent 2	:	None
For Respondent 3	:	Mr. Shailesh Tiwari and Mr. P. Acharya, Advocate

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

Order on Board

Per Parth Prateem Sahu, J.

12/10/2020

1. Appellant-claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 26-03-2014 passed by Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh C.G. in claim case no. 38/2011 whereby learned Claims Tribunal allowed the claim application in part and awarded Rs. 25,000/- as compensation in a permanent disability case.

2. MAC No. 592/2014 has been filed by the claimant seeking enhancement of the amount of compensation. MAC No. 123/2016 has been filed by the owner of offending vehicle challenging the exoneration of Insurance Company from its liability.

3. Facts relevant for disposal of this appeal are that on 02-08-2011 applicant Ramkhilawan went to work as labourer on a tractor bearing registration no. CG 13D 5517 (hereinafter referred to as "offending vehicle") and trolley attached to it. At about 2:30 pm, he was returning while sitting on a trolley loaded with sand, when the vehicle reached near village Singhanpur *Muktidham,* non-applicant 1 driver of offending vehicle drove his vehicle rashly and negligently and turned it turtle. In the said accident, claimant Ramkhilawan came under the trolley and his left leg and left hand got injured. During the course of treatment left hand of the injured claimant was amputated from above elbow on account of which he suffered permanent disability. Accident was reported to concerned police station based upon which crime no. 65/2011 was registered. Claimant filed an application under

Section 166 of the Act of 1988 pleading therein that on the date of accident he was aged about 19 years, on account of motor accidental injures suffered by him, he became permanently disabled to earn his livelihood and claimed compensation of Rs. 19,25,400/- on different heads.

4. Non-applicant 1 /driver of the offending vehicle submitted reply to the claim application, denied the fact of accident, income and nature of occupation of the claimant was also denied. It was pleaded that on the date of accident, offending vehicle was transporting sand for agricultural purpose. When the vehicle was in motion, claimant tried to board on it, while so, he fell down and suffered injures. It is the negligence on the part of claimant himself.

5. Non-applicant 2 owner of the offending vehicle submitted reply to the claim application on similar line. He further pleaded that non-applicant 2 himself took the injured to government hospital ie. Kirodimal hospital, Raigarh where he expended Rs. 30,000/- for his treatment, he was shifted to Sanjivani Nursing Home, Raigarh without his knowledge for which he himself is liable. On the date of accident, non-applicant 1 was possessed with valid and effective driving licence and the offending vehicle was insured with I.C.I.C.I. Lombard Insurance Co., accident was a result of self-negligence of appellant-claimant.

6. Non-applicant 3-Insurance Company submitted reply to claim application, denying the fact pleaded therein regarding occupation/ engagement of the claimant as labourer and his income was also denied. Claimant suffered injuries from the trolley attached with tractor and not from the Tractor. Trolley was not insured by Insurance company, on the date of accident non-applicant 1 was not possessed with valid and effective driving licence, hence, there was breach of policy conditions.

7. Upon appreciation of pleadings and evidence brought on record by respective parties, Tribunal held that the claimant suffered simple injuries

not permanent disability, negligence of claimant to be not proved, permanent disability to be result of negligence in taking treatment, awarded compensation of Rs. 25,000/- and fastened liability upon non-applicant 1 and 2 jointly and severally.

8. Ms. Sharmila Singhai, learned counsel for the appellant submits that learned Claims Tribunal erred in holding that the appellant suffered simple injuries in the motor accident, permanent disability was on account of the negligence of the appellant in taking proper medical treatment. Tribunal erred in not considering amputation of the left hand above elbow on account of the motor accidental injuries suffered by the appellant-claimant, even after recording a finding that the appellant suffered motor accidental injuries when he was traveling on offending vehicle. She submits that the reasons recorded by the Claims Tribunal for the negligence on the part of the appellant in not taking proper treatment is not sustainable. Claimant on account of the wisdom of his parents took treatment by a *Vaidh* upon which they were having the faith that the fracture injuries could be recovered from his treatment and thereafter they approached hospital. Claimant cannot be held to be negligent in taking proper treatment for his disability. She submits that once the motor accidental injuries are proved then just amount of compensation ought to have been awarded considering permanent disability to the extent of 45% as assessed by doctor in disability certificate Ext. P-38. She further argued that non-applicant 2 admitted the appellant at District hospital but proper treatment was not available there, hence, the appellant took treatment from Sanjivani Nursing Home, Raigarh for which it cannot be said that the appellant has committed any fault. She further argued that the Claims Tribunal erred in exonerating the Insurance Company as on the date of accident offending vehicle was insured and premium for the labourers was also charged. Insurance Company accepted the premium for covering the risk of labourers then it is its liability to satisfy the amount of compensation. She places her reliance on the judgment

passed by the Supreme Court in the case of ***Sr. Anthony @ Anthony Swami v. Managing Director KSRTC*** reported in **2020 ACJ 1592,** ***Chanappa Nagappa Muchalagoda v. Divisional Manager, New India Insurance Company limited*** reported in **(2020) 1 SCC 796** and ***New India Assurance Company Limited v. Gajender Yadav and others*** reported in **2018 (11) SCC 630** to buttress her submission.

9. Mr. Manoj Kumar Jaiswal, learned counsel for Respondent 2 submits that the Claims Tribunal has rightly arrived at a finding that the permanent disability suffered by the appellant was on account of his self-negligence as he has not taken proper treatment immediately after the accident resulting in amputation of his left hand. He further submits that the Claims Tribunal has not taken into consideration the insurance of the offending vehicle, premium paid for the labourer and exonerated the Insurance Company from its liability. Owner of the offending vehicle has challenged the finding recorded by the Claims Tribunal exonerating the Insurance Company from its liability by way of filing MAC No. 123/2016. He submits that once the Tribunal has held that there was valid and effective insurance policy of the offending vehicle on the date of accident, the liability to pay the amount of compensation would be upon the Insurance Company. He also submits that even if the tractor was insured and trolley was not insured on the date of accident, injured appellant was traveling on trolley then also the Insurance company of tractor will be liable to satisfy the amount of compensation as the trolley itself is not a motor vehicle. After its attachment with tractor, it comes within the category of motor vehicle. He places his reliance on the judgment of Supreme Court in the case of ***Nagashetty v. United India Insurance Co. Ltd and others*** reported in **(2001) 8 SCC 56.**

10. Learned counsel for the Insurance Company submits that the Claims Tribunal has passed just award in the facts and circumstances of the case. He submits that exoneration of Insurance Company is on the ground that

the owner and driver of the offending vehicle have not placed the copy of driving licence before the Tribunal to prove that on the date of accident, non-applicant 1 was holding the licence. In absence of copy of licence on record, Claims Tribunal is justified in arriving at a finding that Respondent 1 was not possessed with valid and effective driving licence on the date of accident. He further contended that as per the pleadings made in the claim application itself the appellant was traveling on tractor trolley loaded with goods. Appellant met with an accident while traveling on a goods vehicle, there was no seating place either in tractor or trolley, no person, except driver, can travel on a tractor. In support of his contention he places reliance on rulings of ***New India Assurance Co. Ltd. v. Asha Rani & Ors.*** Reported in **(2003) 2 SCC 223,** ***National Insurance Company limited v. Baljit Kaur*** reported in **(2004) 2 SCC 1,** ***Oriental Insurance Company Limited v. Brij Mohan and others*** reported in ***(2007) 7 SCC 56*** and ***Pepsu Road Transport Corporation v. National Insurance Company*** reported in **(2013) 10 SCC 217**.

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

12. Sofar as, the submission made by the learned counsel for the appellant with regard to non-awarding of any amount towards permanent disability. Upon going through the document placed on record, it would reveal that the accident took place on 02-08-2011, the appellant's left hand and left leg came under the offending vehicle due to overturning of the offending vehicle. FIR was lodged on 22-08-2011 on that date while conducting MLC Ext. P-4, it was recorded as amputation of left hand upper arm above elbow joint. Document Ext. P-6 is the Medical document of Sanjivani Diagnostic Centre dated 12-08-2011. From the aforementioned documents, it is evident and crystal clear that the appellant suffered grievous injuries on his left leg and left hand, subsequently during the course of treatment within

the period of 20 days, his left hand was amputated above elbow. Claims Tribunal has not considered the evidence in its proper perspective but took hyper technical approach that the appellant initially approached to some *Vaidh* and took treatment and thereby acted with negligence in taking treatment of his injuries. It is the parent of the appellant who is resident of village, upon his wisdom, approached to *vaidh* where fracture treatment was provided. Approaching any *vaidh* for treatment itself will not disentitle the appellant for just compensation for disability suffered by him on account of motor accidental injuries ie. amputation of his left hand. Finding recorded by the Claims Tribunal that amputation of left hand is on account of negligence of appellant himself is not sustainable and it is hereby set aside.

13. Now we will consider that what will be the permanent disability suffered by the appellant and what will be the percentage of his functional disability affecting his earning capacity. Appellant has placed on record the disability certificate issued by Medical Board wherein it is mentioned that the appellant suffered 45% permanent disability, Dr. S.C. Awasthi was examined as AW-2 to prove the disability certificate. In his statement he has stated that on account of amputation of left hand above elbow of the appellant permanent disability certificate was issued mentioning the percentage of disability as 45%. Occupation of the appellant was a laborer and on the date of accident also he went to work on offending vehicle loaded with sand. A labourer cannot work from his one hand and the appellant is not an educated person to get some table work to be done by only one hand but on account of disability ie. amputation of left hand above elbow, he cannot able to do the work of labourer for which a person is required to have all the four limbs to be healthy. Award of compensation on the head of loss of earning capacity on account of permanent disability suffered by the claimant is considered by the Supreme Court in the case of ***R.D. Hattangadi v. Pest Control India Ltd.*** reported in **1995 (1) SCC 551,**

Rajkumar v. Ajay Kumar and another reported in **(2011) 1 SCC 343,** ***Chanappa Nagappa Muchalagoda v. Divisional Manager, New India Insurance Company limited*** reported in **(2020) 1 SCC 796** and **Anthony Swami (supra).**

14. In the aforementioned judgment, Hon'ble Supreme Court has held that percentage of disability mentioned in the certificate should only not be considered for awarding loss of earning capacity. Loss of earning capacity can be sometime more than the percentage of disability mentioned in the disability certificate and at time less than the percentage of permanent disability mentioned in the certificate. It depends upon the nature of occupation on which the injured was engaged. Hon'ble Supreme Court in case of **Rajkumar (Supra)** considered loss of one hand of a person and held the percentage of disability to be extent of 100%. In the case of **Chanappa Nagappa (supra)** while considering the claim of driver of the truck who suffered disability of his leg which has been assessed @ 37% for whole body held that the claimant suffered 100% disability as he will not be able to drive the motor vehicle. If in the light of aforementioned judgments passed by the Supreme Court, facts of the case are considered. Appellant was working as labourer of loading and on the date of accident he was doing work of loader of sand on tractor trolley. For doing manual labour work as appellant was doing, there is requirement of both the hands, by one hand, working of laborer or agricultural labourer is not possible.

15. Taking into consideration, the aforementioned facts and circumstances of the case where the appellant lost his left hand above elbow was working as laborer, we find it appropriate to consider schedule of Employees Compensation Act, 1923 for assessing loss of earning capacity. Percentage of loss of earning capacity as mentioned under paragraph 2 of Schedule 1 at Serial no. 3, amputation of hand, particularly, in between shoulder and elbow has been mentioned as 70%. Taking into consideration the overall

facts and circumstances of the case, loss of earning capacity as provided under the Employees Compensation Act with regard to amputation of arm in between the shoulder and elbow, we find it appropriate to hold the loss of earning capacity of the appellant-claimant to be 70%.

16. Now, we will deal with the income of appellant on the date of accident. Appellant has pleaded that he was earning Rs. 4,000/- per month from the work of labourer and carpentry. But the income has not been proved by placing any admissible piece of evidence on record. Looking to the date of accident ie. 02-08-2011, we find it appropriate to accept the income of the appellant as Rs. 4,000/- per month. The Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680*** has considered the award of future prospects and held thus:

> “59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax”

17. In the case at hand, age of the deceased was 19 years on the date of accident, hence there will be addition of 40% of established income towards future prospects. Appellant will further be entitled for the actual medical expenses incurred by him, compensation towards pain and sufferings, loss of amenities and joy in life, loss of income during the period of treatment and loss of marriage prospect. Tribunal awarded only Rs. 25,000/- as compensation towards pain and sufferings, attendant cost, special diet and loss of income considering it to be a simple injury. We cannot but deprecate the approach of Tribunal in holding the amputation of hand to be a simple injury. For the reasons stated above, now we will compute the compensation to be awarded to the appellant which is as under.

18. Income of the appellant has been taken as Rs. 4,000/- per month ie. Rs. 48,000/- per annum, by adding 40% towards future prospects in the established income of the appellant, total yearly income will come to Rs.67,200/- [Rs.48000x40% of Rs.48000], on the date of accident appellant was 19 years of age, therefore, appropriate multiplier would be of 18 which makes the total income of the appellant as Rs.12,09,600/-. As we have held loss of earning capacity as 70%; so 70% of the total income will come to Rs.8,46,720/- [70% of Rs.12,09,600/-]. Appellant will further be entitled for Rs. 25,000/- towards pain and sufferings, Rs. 40,000/- towards loss of amenities and joy in life, Rs. 20,000/- towards loss of marital prospect, Rs. 16,000/- towards loss of income during the treatment period, Rs. 4,000/- towards attendant, Rs. 10,000/- towards transportation and special diet and Rs. 22,000/- towards medical treatment. Now the appellant-claimant will be entitled for **Rs. 9,83,720/- [Rs.8,46,720 + Rs.25,000 + Rs.40,000 + Rs.20,000 + Rs.16,000 + Rs.4,000 + Rs.10,000 + Rs.22,000]** as total compensation instead of Rs.25,000/- as awarded by the Claims Tribunal.

19. The second ground made by the learned counsel for the appellant with regard to exoneration of Insurance Company from its liability. Respondents have not placed on record copy of licence neither before the Claims Tribunal nor before the proceedings before this Court. In the appeal filed by the owner of the offending vehicle bearing MAC No. 123 of 2016 also the owner of the offending vehicle has not placed copy of licence to controvert the finding recorded by the Claims Tribunal at paragraph 26 of the impugned award. The owner of the offending vehicle could have placed the licence before this Court for consideration if on the date of accident non-applicant 1 was possessed with valid and effective driving licence. But in absence of any licence of non-applicant 1, authorising him to drive offending vehicle, we do not find any infirmity in the finding recorded by the

Claims Tribunal that on the date of accident driver of the offending vehicle was not possessed with valid and effective driving licence and exonerated the Insurance Company on that ground. Further as per the pleadings made by the claimant in his claim application itself it is evident that at the time of accident appellant was traveling on tractor trolley loaded with sand ie. Goods carrying vehicle. No person is permitted to travel on goods vehicle except the owner of goods along with employee of the vehicle. In the instant case, offending vehicle is a tractor, there is no seating space either in tractor or trolley. Hence, in the tractor trolley, no person can travel except the 'Driver'. The issue of gratuitous passenger traveling in goods vehicle has been well settled by the Supreme Court in case of **Asha Rani (supra).** The issue with regard to the labourer traveling in trolley has been considered in **Brij Mohan (supra)** and it has been held to be breach of policy conditions.

20. Taking into consideration the aforementioned facts and circumstances of the case as well as the law laid down by the Supreme Court, we do not find any force in the submission made by the learned counsel for the appellant and owner of vehicle that the Insurance Company has been erroneously exonerated from its liability to satisfy the amount of compensation. The submission made by Ms. Sharmila Singhai as well as Mr. Manoj Jaiswal learned counsel for respective parties is not sustainable and it is hereby repelled.

21. In the result-

(i) MAC No. 592/ 2014 filed by the appellant-claimant is allowed in part, appellant/ injured shall be entitled for total amount of compensation of **Rs.9,83,720/-** along with interest @ 6% p.a. from the date of filing of claim application till its realization. The liability to satisfy the amount of compensation will be upon non-applicant 1 and 2/ Respondent 1 and 2- owner and driver of the offending vehicle.

(ii) MAC No. 123 of 2016 filed by the owner of the offending vehicle is dismissed.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Pawan