(2019) 01 CHH CK 0164

In the Chhattisgarh High Court

Case No : MIscellaneous Appeal Of Compensatic No. 741, 742 Of 2014, 680 Of 2015

The United India Insurance Company Ltd & Others — APPELLANT

Vs

Dikesh & Others — RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 01 CHH CK 0164

Hon'ble Judges : Gautam Chourdiya, J

Bench : Single Bench

Advocate : Chitra Shrivastava, Sanjay Agrawal, P. Ramteke, P. Dhurandhar

Judgement

1. As all these three appeals filed under Section 173 of the Motor Vehicles Act arise out of the common award dated 31.3.2014 passed by II Additional Motor Accident Claims Tribunal, Balod (CG) in Claim Cases No.12/2013 & 65/2012, they are being disposed of by this common judgment.

2. As per averments in the claim petitions, on 20.2.2011 Nirmal Bhuarya and Dikesh were going from Village - Parsada to Village - Adjaal by Maruti Van bearing No. CG 07-M-3515. However, on the way, their vehicle was dashed by bus bearing No. CG 04-ZA-0688 (hereinafter referred to as "offending vehicle") which was being driven in a rash and negligent manner by non-applicant No.1 Krishna Ram Sahu, owned by non-applicant No.2 Mohd. Rashid and insured with non-applicant No.3/United India Insurance Co. Ltd. On account of this accident, both Nirmal Bhuarya and Dikesh suffered grievous injuries on various parts of their body.

3. Both the injured persons filed separate claim petitions under Section 166 of the Motor Vehicles Act for compensation. The Tribunal considering the evidence led by the parties, decided both the claim cases by common award, thereby awarding Rs.57,000/- in favour of injured claimant Nirmal Bhuarya and Rs.33,000/- in favour of injured claimant Dikesh, with interest @ 6% per annum

from the date of claim petition till realization, fastening liability on non-applicant No.3/United India Insurance Company Ltd. of satisfying the award.

4. Aggrieved by the said award, United India Insurance Co. Ltd. has filed appeals i.e. MAC Nos.741/2014 & 742/2014 challenging the liability fastened upon it and injured claimant Nirmal Bhuarya filed appeal i.e. MAC No.680/2015 seeking enhancement of compensation whereas, as informed by learned counsel for the parties, no appeal has been filed by other injured Dikesh before this Court till date.

5. MAC Nos. 741/2014 & 742/2014: Learned counsel for the appellant/insurance company submits that as per evidence adduced by the insurance company, permit was in fact issued for the vehicle bearing registration No. CG 04 ZA 0154 whereas the offending vehicle bears registration No. CG 04 ZA 0688 and as such, on the date of accident the offending vehicle was being plied without there being a valid permit. Being so, the Tribunal was not justified in fastening liability upon the insurance company as there was breach of policy conditions on the part of owner of the offending vehicle.

6. MAC No.680/2015: Learned counsel for the appellant/claimant submits that this appeal was initially filed by the injured claimant Nirmal Bhuarya, however, as during pendency of this appeal Nirmal Bhuarya died, his LRs were brought on record for prosecuting this appeal as per order dated 11.1.2016 passed by this Court. He submits that injured Nirmal Bhuarya sustained 50% permanent disability in the said accident due to fracture of femur bone of right thigh as well as fracture of tibia and fibula bones and there was stiffness in the right hip joint also. The disability certificate of Ex.P/10, issued by the District Medical Board, has been duly proved by the claimant witness AW-2 Dr. Prakash Bholarao. The above contention has not been controverted by the non-applicants. The injured was a mason by profession and due to 50% permanent disability his earning capacity has been badly affected but the same has not been considered by the Tribunal and further, no amount towards loss of future prospect has been granted by the Tribunal. Lastly he submits that income of the injured has also been taken on the lower side and even as per minimum wages at the relevant time, it should have been taken at least Rs.4,000/- per month.

7. Learned counsel for the insurance company supports the impugned award insofar as it relates to assessment of quantum of compensation whereas learned counsel for the claimant supports the impugned award to the extent it relates to fastening of liability upon the insurance company.

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

9. So far as breach of policy conditions is concerned, as per statement of NAW-2 Lakhanlal, clerk in RTO, Durg, examined on behalf of non-applicant No.3/ insurance company, initially permit was issued for vehicle bearing No.CG 04-ZA-0154, thereafter the said permit was transferred for vehicle No. CG 04-

ZA-0688 as per lease agreement for the period from 15.9.2010 to 14.9.2012. As per Ex.D/2C issued by RTO, Raipur, vehicle bearing No. CG 04-ZA-0154 has a valid permit for a period from 15.12.2007 to 14.12.2012 and vehicle bearing No. CG 04 ZA-0688 was taken on lease by Mohd. Rashid from Dubey Praksh Baghel. NAW-3 Ramchandra Kunjam, Clerk in Regional Transport Office, Raipur, has stated that RTO, Durg has the right of extension of the said lease agreement as the vehicle was registered with RTO, Durg. He states that the lease agreement from 1.8.2008 to 1.8.2010 mentioned in the RC Book is valid. Admittedly, in this case the accident occurred on 20.2.2011. Thus, from the evidence of NAW-2 Lakhanlal, adduced by insurance company itself, it stands proved that on the date of accident, the offending vehicle was having a valid permit. Further, NAW-1 Manoj Rai, Manager of United India Insurance Co. Ltd., also admits in para-9 that on the date of accident the offending vehicle was being plied on the basis of lease permit.

10. Thus, on the basis of above discussions, it stands proved beyond doubt that on the date of accident the offending vehicle was being plied with a valid permit and as such, there was no breach of policy conditions as contended by the insurance company. Therefore, the appeals filed by the insurance company are liable to be dismissed for being without any substance.

11. MAC No. 680/2015: As per evidence of Dr. Prakash Bholarao, (AW-2), MLC (Ex.P/3), X-ray report (Ex.P/4), injured Nirmal Bhuarya suffered fracture of femur bone of right thigh as well as fracture of tibia and fibula bones and there was stiffness in the right hip joint also. The disability certificate of Ex.P/10, issued by the District Medical Board, has been duly proved by the claimant witness AW-2 Dr. Prakash Bholarao, according to which the injured sustained 50% permanent disability, which was non-progressive and not likely to improve. AW-2 has further stated that due to fractures, the right leg of the injured got shortened by 8 cm, therefore, in future he has to be dependent upon crutch if surgical operation is not done for the same and this injury is permanent in nature. In para-6 he has stated that the injured cannot do the job of mason and labour. In cross-examination, AW-2 has admitted that stiffness in the hip joint may be reduced if the injured has physiotherapy treatment from an expert and experienced physiotherapist.

12. Thus, considering the overall facts and circumstances of the case, pleadings of the parties, the oral and documentary evidence adduced by them, in particular the statement of AW-2 Dr. Prakash Bholarao and the disability certificate of Ex.P/10 issued by the Medical Board and duly proved by the injured claimant, the nature of job of the injured, this Court is of the opinion that the permanent disability suffered by the injured claimant would definitely affect his earning capacity to the extent of 10%.

13. As regards income of the injured claimant, the Tribunal has assessed the monthly income of the injured as Rs.3000/-, however, considering the fact that the accident occurred on 20.2.2011, keeping in view the minimum wages and

the price index at the relevant time, this Court is of the opinion that monthly income of the injured can safely be taken as Rs.4000/-. Further, considering the age of the injured i.e. 40 years as is mentioned in the claim petition and disability certificate Ex.P/10, the nature of his job, having regard to the law laid down by the Hon'ble Supreme Court in Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121 and National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680, the applicable multiplier would be 15 and there has to be addition of 25% to the income of the injured towards future prospect. As regards the amount awarded by the Tribunal under other heads, the same being based on proper appreciation of the material available on record, needs no interference by this Court. Thus, the claimant is held entitled for compensation in the following manner:

Sl. No.

Heads

Calculation (in rupees)

01.

Income of the claimant @ Rs.4000/- per month.

48,000/- per annum

02.

25% towards future prospect

48,000 + 12,000 = 60,000/-

03.

Loss of earning @ 10%

6000/-

04

. Multiplier of 15 to be applied

90,000/-

05.

For pain and suffering

5,000/-

06.

For loss of comfort in life

25,000/-

07.

For attendant

5,000/-

08.

For nutritional diet

1,000/-

09.

For loss of two months' income

6,000/-

10.

For medical expenses

15,000/-

Total :

1,47,000/-

Therefore, after deducting the amount of Rs.57,000/- awarded by the Tribunal from the above amount, the additional compensation receivable by the claimants herein comes to Rs.90,000/-.

14. In the result:

MAC Nos. 741/2014 & 742/2014 filed by the insurance company being without any substance are hereby dismissed.

MAC No.680/2015 filed by the claimants is allowed in part with modification in the impugned award to the extent that the claimants herein are entitled for additional compensation of Rs.90,000/- with interest @ 6% per annum from the date of claim petition till realization. However, rest of the conditions of the impugned award shall remain intact.

