

GAHC020004362020



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : MACApp./16/2020**

THE DIVISIONAL MANAGER AND ANR  
NEW INDIA ASSURANCE CO.LTD. DIVISIONAL OFFICE  
DIMAPUR

2: THE NEW INDIA ASSURANCE CO LTD  
BOKAJAN  
ASSAM  
VERSUS

NAZIRUL HAQUE AND 2 ORS  
S/O SAYED NAZRUL HAQUE  
PA SANTIPUR PS BORPATHAT  
KARBIANGLONG  
ASSAM

2:LONGTHAKAR ENGTI  
S/O LT. PHULSON ENGTI  
R/O PHULSON ENGTI  
R/O NOTHONG GAON  
PO AND PS KHATKATI  
ASSAM  
3:TENSON KRO  
S/O LT. MONIRAM KRO  
R/O HIDIPI DESOI KRO VILLAGE  
PO HIDIPI DALLAI  
KARBIANGLONG

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Advocate for : PFOSEKHO PFOTTE  
Advocate for : M WABANG appearing for NAZIRUL HAQUE AND 2 ORS

Date of Hearing : 07.11.2023  
Date of Judgment: 16.02.2024

**BEFORE  
HON'BLE MR. JUSTICE BUDI HABUNG**

**JUDGMENT& ORDER  
(CAV)**

Heard Mr. Pfosekho Pfotte, learned counsel for the appellants and Mr. M. Wabang, learned counsel for respondent No. 1.

**2.** This is an appeal under Section 173 of the Motor Vehicles Act, 1988 filed by the appellants against the impugned judgment and award dated 04.05.2020, passed by the learned Member, Motor Accident Claims Tribunal, Dimapur, Nagaland in MAC Case No. 14/2016.

**3.** The brief fact of the case is that on 31.08.2015, an accident occurred at NH-39 when a vehicle bearing Registration No. AS 09B 7681 (Maruti Alto K10), knocked down the claimant/Respondent and his wife due to rash and negligent driving of the driver of the said offending car. As a result, the claimants sustained grievous injuries to their bodies including chest injury. The claimants were shifted to G.D. Hospital & Research Centre and thereafter underwent further prolonged medical treatment at Patna under the supervision of Orthopedic Doctor, but in vain, and they were rendered permanently disabled and now, the claimant cannot resume his occupation/work making him jobless, losing his bright future prospect and now spending his life in agony, misery and passing through other passage of life.

**4.** The respondent/claimant then had filed a MAC Case before the

Motor Accident Claims Tribunal (MACT), Dimapur, Nagaland, being registered as MAC Case No. 14/2016. The said MAC Case was contested by the respondents/appellants. During the trial of the case, the claimant's wife, Jesmin Begum was examined as PW-1 and produced 22 (twenty-two) numbers of documents in evidence as Exhibits 1-22. After completion of the trial and upon hearing the parties, the learned Tribunal passed judgment on 04.05.2020, whereby the appellant/respondent has been directed to pay the following award:

*"Loss of future earning on account of permanent disability:  
Rs.13,44,000/-*

*i.e. 40% of Rs. 20,000x12x14 (multiplier)*

*Medical expenses: Rs. 2,69,620/-*

*Pain, shock, suffering etc: Rs. 50,000/-*

*Incidental expenses during treatment/conveyance etc: Rs. 50,000/-*

*Loss of amenities in future life: Rs. 50,000/-*

*TOTAL: Rs. 17,63,620/- (Rupees Seventeen lacs sixty three thousand six hundred twenty) only. Minus interim award of Rs.25,000/-=Rs.17,38,620/-"*

And ordered that the claimant, Shri Nazirul Haque is entitled to get the awarded amount of Rs. 17,38,620/- (rupees seventeen lakhs thirty eight thousand six hundred and twenty) with interest @9% per annum from the date of filing the claim petition till the payment from the opposite party/New India Assurance Company Limited. The opposite party/insurer was further directed to pay the

awarded amounts within one month from the date of the said order.

**5.** Being aggrieved by the quantum of amount passed in the above MAC Case No. 14/2016, the appellants has filed this instant appeal *inter alia* on the following grounds:

(i) That the claimant has not exhibited any cogent proof of income, therefore, the income as claimed by the claimant remains disproved. But the income of the claimant on exhibition of a document alone and without examining the author of the document had accepted the document and calculated the award rendering the award excessive and unreasonable.

(ii) That the claimant has not examined the Doctor, thus, depriving the appellant/opposite party from cross-examining the author of the exhibit (alleged Disability Certificate) to prove the authenticity of the exhibit so also to reveal the nature of injury sustained by the claimant within the provision of Section 142 of the Motor Vehicles Act, 1988.

(iii) That the order as regards the loss of future earning suffers from perversity, as it is against the learned Members own finding that the claimant has failed to substantiate the loss of income to permanent disability.

(iv) That the learned Member, MACT, Dimapur failed to assess the Functional Disability to assess the loss of future earning capability of the claimant but rather on the mere inference of the document

issued by a doctor showing the disability at 40%, proceeded to make an assessment of the 40% disability for permanent disability and passed the judgment.

(v) That the learned Member, had awarded excessive amount on pain, shock, suffering, incidental expenses during treatment/conveyance and loss of amenities in future life.

(vi) That by awarding an interest @9% per annum has acted in violation of the law laid down in **Sarala Verma's** case reported in **(2009) 6 SCC 121** and code of Civil Procedure, 1908, in as much as, the Motor Vehicles Act, 1988 under Section 171 has not prescribed any specified rate of interest.

**6.** The learned counsel for the appellants while submitting that there is an excessive amount granted to the claimants has taken reliance on the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** at paragraph 52 which is reproduced herein below:

*"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule*

*in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."*

**7.** In view of the Hon'ble Supreme Court's decision in the above cited case, the learned counsel for the appellants prays that the award granted under the head "medical expenditure" for Rs. 2,69,620/ (rupees two lakhs sixty-nine thousand six hundred and twenty); "pain, shock, suffering etc." for Rs. 50,000/- (rupees fifty thousand); "incidental expenditure during treatment/conveyance etc." for Rs. 50,000/- (rupees fifty thousand); and "loss of amenities in future life" for Rs. 50,000/- (rupees fifty thousand) should be struck off. He further submits that the claimants are entitled only for "loss of future earning" of Rs. 3,44,000/- (rupees three lakhs forty-four thousand), "pain, shock, suffering" for Rs. 50,000/- (rupees fifty thousand) and "incidental expenditure during treatment/conveyance etc." for Rs. 40,000/- (rupees forty thousand) and prays for setting aside of the impugned judgment and award dated 04.05.2020 passed by the learned Member, MACT, Dimapur.

**8.** *Per contra* the learned counsel for respondent No. 1 submits

that in the instant case third party is involved and the respondent/ claimant, in favour of whom the award has been granted is a third party in the insurance and hence, the same should not be interfered with. The learned counsel for the respondent claimant submits that the insurance company has come for appeal on various grounds of defence, however, the ground taken by the appellants does not come in the purview of Section 149(2)(a)(old), which is reproduced herein below:-

*"149(2)(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely: -*

*(i) a condition excluding the use of the vehicle –*

*(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or*

*(b) for organized racing and speed testing, or*

*(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or*

*(d) Without side-car being attached where the vehicle is a motor cycle, or*

*(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or*

*(iii) a condition excluding liability for injury caused or contribution to by conditions of war, civil war, riot or civil commotion."*

In view of the above, the appeal filed by the appellants is not maintainable.

9. The learned counsel for the respondent further submits that the injury sustained by the respondent/claimant is of permanent nature and the same was not disputed by the appellants in the entire trial before the Tribunal. He further submits that all the cash memo of the medical expenditure incurred by the respondent claimant for Rs. 4,44,180/- (rupees four lakhs forty-four thousand one hundred and eighty) has been produced and exhibited before the Court and the same was not disputed by the appellant/respondent during the trial. It is also submitted that the respondent claimant, at the time of the accident was serving as a Manager, however, he was discharged from service after the incident and he had produced the last Salary Certificate which was exhibited before the learned Tribunal. The learned counsel for the appellants/respondents was given an opportunity to cross-examine and conducted cross-examination upon the claimant and thus, there is no question of not giving an opportunity to cross-examine the witness, hence, the appellants has no defense under Section 149(2)(a). The learned counsel for the respondents has taken reliance upon the decision of the Hon'ble Supreme Court in the case of **Syed Sadiq & Others vs. Divisional Manager United India Assurance Company Ltd.**, reported in **(2014) 2 SCC 735**. The relevant paragraphs are reproduced herein below:-

*"8. The appellant/claimant in his appeal further claimed that he had been earning Rs. 10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs. 3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this*

regard, this Court, in the case of Ramchandrappa v. Manager, Royal Sundaram Alliance Company Limited[2], has held as under:

"13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs. 4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs. 3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs. 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs. 3000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, Appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs. 100/- to Rs. 150/- per day or Rs. 4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from Rs. 4500/- to Rs. 3000/- per month. We, therefore, accept his statement that his monthly earning was Rs. 4500/-.

13. Thus, the total amount which is awarded under the head of 'loss of future income' including the 50% increment in the future, works out to be Rs.17,90,100/-  $[65,00/- \times 85/100 + 50/-100 \times 85/100 \times 6,500/-) \times 12 \times 18]$ .

14. Hence, the appellant/claimant is entitled to the compensation under the following heads:

|                                |           |
|--------------------------------|-----------|
| Towards cost of artificial leg | Rs 50,000 |
|--------------------------------|-----------|

|                                             |                    |
|---------------------------------------------|--------------------|
| <i>Towards pain and suffering</i>           | <i>Rs 75,000</i>   |
| <i>Towards loss of marriage prospects</i>   | <i>Rs 50,000</i>   |
| <i>Towards loss of amenities</i>            | <i>Rs 75,000</i>   |
| <i>Towards medical and incidental costs</i> | <i>Rs 1,00,000</i> |
| <i>Towards cost of litigation</i>           | <i>Rs 25,000"</i>  |

**10.** With regards to the submission of the learned counsel for the appellants that the interest given to the claimant are excessive, the learned counsel for the respondents has taken reliance upon the decision of the Hon'ble Supreme Court in the case of **Puttama and Others vs. K.L. Narayana Reddy and Another** reported in **(2013) 15 SCC 45**. The relevant paragraphs are reproduced herein below:-

*"59. Section 171 of the 1988 Act deals with the award of interest where any claim is allowed, it reads as follows:*

*"171. Award of interest where any claim is allowed. - Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."*

*Under the said provision no rate of interest has been fixed and its duty is bestowed upon the Tribunal to fix the rate of interest.*

*61. This Court in **Kaushnuma Begum v. New India Assurance Co. Ltd.** noticed that the nationalized banks are granting interest @9% on fixed deposit for one year and held as follows:*

*"24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that 'in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in*

*economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs. 50,000 paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date."*

63. In ***Supe Dei v. National Insurance Co. Ltd.*** this Court held that the proper interest would be 9% per annum.

66. In the appeal which was filed by the claimants before the High Court, the High Court instead of deciding the just compensation allowed a meagre enhancement of compensation. In doing so, the High Court introduced the concept of split multiplier and departed from the multiplier system generally used in the light of the decision in *Sarla Verma* case without disclosing any reason. The High Court has also not considered the question of prospect of future increase in salary of the deceased though it noticed that the deceased would have continued in pensionable services for more than 10 years. When the age of the deceased was 48 years at the time of death it wrongly applied multiplier of 10 and not 13 as per decision in *Sarla Verma*. Thus, we fail to appreciate as to why the High Court chose to apply split multiplier and applied multiplier of 10. We, thus, find that the judgment of the High Court is perverse and contrary to the evidence on record and is fit to be set aside for not having considered the future prospects of the deceased and also for adopting split multiplier method against the law laid down by this Court. In view of our aforesaid finding, we hold that the judgment of the High Court deserves to be set aside. We, accordingly, set aside the impugned judgment and hold that the claimants are entitled for total compensation of Rs. 23,43,688. They shall also get interest on the enhanced compensation at the rate of 12% per annum from the date of filing of the complaint petition. Respondent 2 Insurance Company is directed to pay the enhanced/addition compensation and interest to the claimants within a period of three months by getting prepared a demand draft in their name."

In view of the above decision, the interest of 9% granted to the claimant is reasonable, just and not excessive.

**11.** The learned counsel for the respondent submits that the

appellant/respondent is liable to pay the awarded compensation. In this regard, the learned counsel for the respondent/claimant has taken reliance on the decision of the Hon'ble Supreme Court in the case of **Samundra Devi and Others vs. Narendra Kaur and Others** reported in **(2008) 9 SCC 100**. The relevant paragraphs are reproduced herein below:-

*"15. A contract of insurance as is well known is a contract of indemnity. In a case of accident, the primary liability under law for payment of compensation is that of the driver. The owner of the vehicle also becomes vicariously liable therefor. In a case involving a third- party to the contract of insurance in terms of Section 147 of the Motor Vehicles Act, 1988 providing for a compulsory insurance, the insurer becomes statutorily liable to indemnify the owner. Indisputably, the insurance company would be liable to indemnify the insured in respect of loss suffered by a third party or in respect of damages of property. In a case, therefore, where the liability is fastened upon the insurer, the insurer would be bound to indemnify the insured unless the exceptions contained in Section 149 of the Act are attracted.*

*16. It has not been disputed before us that in certain situations while opining that the insurance company would not be liable to reimburse the insured, a direction upon the insurance company to pay the amount of compensation to a third party and recover the same from the owner of the vehicle is permissible. Such a direction has been issued by the High Court. The said directions are not under challenge.*

*18. Indisputably, in relation to a third party, the grounds upon which the insurer can deny its liability are contained sub-section (2) of Section 149 of the Act. Ordinarily and subject to just exceptions, the insurance company would have no right to question the quantum of compensation in absence of any leave having been granted in its favour in terms of Section 170 of the Act. The High Court, with respect, failed to consider this aspect of the matter. Appellants preferred appeals before it on limited grounds. Their contentions could have been rejected or accepted. The High Court, however, could not have considered the contention raised on behalf of the respondent No.3 which was not available to them in law. It was legally impermissible for the respondent No.3 to question a finding of fact arrived at by the Tribunal, taking umbrage under Order 41 Order Rule 33 of the Code of Civil Procedure or otherwise. It could not have been permitted to do so. It is well settled that what cannot be permitted to be done directly, cannot be permitted*

*to be done indirectly. Indisputably, no leave was obtained in terms of Section 170 of the Act. The quantum of compensation awarded by the learned Tribunal was accepted by the owner. Only in some exceptional cases and that too when the liability to pay the amount of compensation is fastened upon the insurance company and insured, it can be heard on issues relating to the quantum of compensation and not otherwise."*

**12.** In view of the above decision, the learned counsel for the respondent/ Claimant submits that no defense is available for the appellants/ respondents under Section 149(2)(a) of the Motor Vehicles Act and they cannot file the present appeal, hence, pray for dismissal of the instant petition.

**13.** The learned counsel for the respondent further submits that the ground taken by the appellants in the present appeal is outside the purview of Section 149 of Motor Vehicles Act. In this regard he has taken reliance on the decision of the Hon'ble Supreme Court in the case **National Insurance Co. Ltd., Chandigarh vs. Nicoletta Rohtagi and Others** reported in **(2002) 7 SCC 456**.

The relevant paragraphs are reproduced herein below:-

*"15.It is relevant to note that the Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149 cannot be taken as a defence by the insurer. If the Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to insurer in the statute which is neither found in the Act nor was intended to be included.*

*25.We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory*

*liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.*

*27. This matter may be examined from another angle. The right of appeal is not an inherent right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds, the grounds of challenge cannot be enlarged on the premise that the insured or the persons against whom a claim has been made has not filed any appeal. [Section 149 \(2\) of 1988 Act](#) limits the insurer's appeal on those enumerated grounds and the appeal being a product of the statute, it is not open to an insurer to take any other plea other than those provided in [Section 149\(2\) of 1988 Act](#). The view taken in [United India Insurance Co. Ltd. v. Bhushan Sachdeva &Ors.](#), (supra) that a right to contest would also include the right to file an appeal is contrary to well established law that creation of a right to appeal is an act which requires legislative authority and no court or tribunal can confer such right, it being one of limitation or extension of jurisdiction. Further, the view taken in [United India Insurance](#) (supra) that since the Insurance companies are nationalized and are dealing with public money/fund and to deny them the right of appeal when there is a collusion between the claimants and the insured would mean draining out or abuse of public fund is contrary to the object and intention of the Parliament behind enacting Chapter XI of 1988 Act. The main object of enacting Chapter XI of 1988 Act was to protect the interest of the victims of motor vehicle accidents and it is for that reason the Insurance of all motor vehicles has been made statutorily compulsory. Compulsory Insurance of motor vehicle was not to promote the business interest of insurer engaged in the business of insurance. Provisions embodied either in 1939 or 1988 Act have been purposely enacted to protect the interest of travelling public or those using road from the risk attendant upon the user of motor vehicles on the roads. If law would have provided for compensation to dependants of victims of motor vehicle accident, that would not have been sufficient unless there is a guarantee that compensation awarded to an injured or dependant of the victims of motor accident shall be recoverable from person held liable for the consequences of the accident. [In Skandia Insurance Co. Ltd v. Kokilaben Chandravadan &Ors.](#) [1987] 2 SCC 654, it was observed thus:*

*"In other words, the legislature has insisted and make it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the*

*injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the light of the aforesaid perspective.”*

**14.** The learned counsel for the respondent further submits that minimum, a third party should be insured as per the policy of the insurance and in the instant case, the respondent is the third party. In this regard the learned counsel for the respondent has taken reliance on the decision of the Hon'ble Supreme Court in the case of **S. Iyyapan vs. United India Insurance Company Limited and Another** reported in **(2013) 7 SCC 62**. The relevant paragraphs are reproduced herein below:-

*"16.The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.*

*17.Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted license, and (iii) person driving the vehicle was disqualified to hold and obtain a driving license. Hence, in our considered*

*opinion, the insurer cannot disown its liability on the ground that although the driver was holding a license to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving license. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."*

**15.** The learned counsel for the respondent also submits that the claimants had produced and exhibited the Disability Certificate before the Tribunal and the same was not controverted nor raised any objection by the learned counsel for the appellants/defence at the time of trial. Besides that all the cash memos of the expenditure incurred during the treatment received by the respondents has been produced and exhibited before the learned Tribunal and the appellants was given ample opportunity to cross-examine, but they could not controvert any of the document produced by the respondents/claimants. In this regards the respondent has taken reliance on the decision of the Hon'ble High Court of Kerala in the case of **D. Venu and Others vs. Senen Fernandes and Others** reported in **1995 (2) TAC 309**. The learned counsel for the respondent also cited the decision of the Hon'ble High Court of Kerala in the case of **Managing Director, North East Karnataka Road Transport Corp. Vs. T. Prabhakar and Others** reported in **2004 (1) TAC 590** and the relevant paragraphs are reproduced herein below:-

*"5.Heard the learned Counsel appearing for the petitioner for a considerable length of time. Perused the impugned order passed by the Tribunal carefully and reassessed the matter with the assistance of the learned Counsel appearing for the petitioner. I have also re-evaluated the entire material available on record. The records disclose, the wound*

*certificates issued by the doctor have been marked with the consent of the learned Counsel appearing for both parties before the Tribunal. The Tribunal considered the wound certificates issued by the doctor and proceeded to award the compensation to the respondents-claimants.*

*7.The learned Counsel for the petitioner has submitted that the doctor who has issued the wound certificates has not been examined. Hence, compensation awarded by the Tribunal is not sustainable. In my considered view, non-examination of the doctor is not fatal to the case of claimants. It is permissible under law to produce the wound certificates by the claimants issued by the medical officer. It is true that under the provisions of the Indian Evidence Act, the wound certificate which is a public document, can be tendered in evidence by the claimant and I need to deprecate any such short cuts raised by learned Counsel for petitioner on a hyper technical ground and non-examination of the medical officer will not vitiate the claim for compensation by the claimants on the basis of the wound certificates. In my considered view, the said stand taken by the learned Counsel for the petitioner is unsustainable in law, in view of host of judgments rendered by the Apex Court as well as this court on this point of law."*

**16.** It is submitted that an opportunity was afforded to the learned counsel for the appellants/respondents but having not failed during the trial, the same cannot be agitated before this Court in the appeal. The learned counsel for the respondent further submits that the appellants has taken a reliance on the decision of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) wherein it talks about the death of the claimant but the present case is different as it is the case of injury, therefore, prays for dismissal of the appeal.

**17.** However, the learned counsel for the respondent fairly submitted that there is an excess of award passed with regards to "loss of amenities".

**18.** I have heard the arguments advanced by both the learned counsel for the parties. I have also perused the records. The

learned Tribunal while holding the monthly income of the claimant at Rs.5000/ pm has also held for 40% disability and passed following award:

|            |                                             |                      |
|------------|---------------------------------------------|----------------------|
| <i>I</i>   | <i>Towards cost of future earning</i>       | <i>Rs 1 3,44,000</i> |
| <i>II</i>  | <i>Towards medical and incidental costs</i> | <i>Rs 2,69,620</i>   |
| <i>III</i> | <i>Towards pain, shock and suffering</i>    | <i>Rs 50,000</i>     |
| <i>IV</i>  | <i>Incidental expenses during treatment</i> | <i>Rs 50,000</i>     |
| <i>V</i>   | <i>Towards loss of amenities</i>            | <i>Rs 50,000</i>     |

**19.** After marshalling the evidence on record and considering the decision of the Apex Court and other High Courts referred to in the forgoing paragraph, I am of the opinion that the award made by the learned Tribunal is reasonable, and there is no infirmity in the awards made in excess of the claims and entitlement. The appellants could not satisfy this court warranting any interference with the said awards. Accordingly, the appeal regarding the award under Sl.I, II, III and IV is dismissed. However, as the learned counsel for the respondents/claimants has fairly submitted that the award passed with regards to "loss of amenities" is in fact on the higher side, and he has no objection if the same is granted at a reasonable amount as the court may deems fit and proper, I have come to a conclusion that the amounts awarded for loss of amenities should be restricted and rest at Rs.15,000/-. According, the award amount is worked out as under:

According, the award amount is worked out as under:

|            |                                             |                        |
|------------|---------------------------------------------|------------------------|
| <i>I</i>   | <i>Towards cost of future earning</i>       | <i>Rs.1 3,44,000/-</i> |
| <i>II</i>  | <i>Towards medical and incidental costs</i> | <i>Rs.2,69,620/-</i>   |
| <i>III</i> | <i>Towards pain, shock and suffering</i>    | <i>Rs.50,000/-</i>     |
| <i>IV</i>  | <i>Incidental expenses during treatment</i> | <i>Rs.50,000/</i>      |
| <i>V</i>   | <i>Towards loss of amenities</i>            | <i>Rs.15,000</i>       |
|            | <i>Total</i>                                | <i>Rs.17,28,620/-</i>  |

*TOTAL : Rs.17,28,620/- (Rupees Seventeen lacs Twenty Eight Thousand six hundred twenty) only. Minus interim award of Rs.25,000/-= Rs.17,03,620/-(Rupees Seventeen lacs Three Thousand six hundred twenty) only"*

**20.** It is made clear that this Court is not inclined to interfere with regards to the other heads not covered and awarded by the Tribunal.

**21.** The appeal is partly allowed. The appellant shall pay the awarded calculated as above with interest at 9% per annum from the date of the application until realization.

**22.** With the aforesaid modification, this MAC Appeal No.16/2020 stands disposed of.

**23.** Send back the records immediately.

Sd/-  
**JUDGE**

**Comparing Assistant**