

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 862 of 2014

- Umakant Kosma S/o Ghanaram Kosma Aged About 33 Years R/o Village Salhe Chowki Kachche District- North Bastar Kanker C.G., Presently- R/o Bhanupratappur, P.S. Bhanupratappur, Distt. North Bastar Kanker C.G.

---- Appellant

Versus

1. Jitendra Kumar Anchal S/o Jageshwar Anchala Aged About 23 Years R/o Salhe, P.S. Dondi, Distt. Balod C.G. (driver of the vehicle)
2. Pushkar Ram Bhaisara S/o Sobharam Bhaisara Aged About 30 Years R/o Janjalipara, Koror, P.S. Koror, Distt. Kanker C.G. (owner of the vehicle)
3. The I.C.I.C.I. Lombard General Insu.Co.Ltd. Branch Office- Lal Ganga Shopping Mall, Third Floor, G.E. Road, Raipur, Distt. Raipur C.G. (insurer)
4. The National Insu.Co.Ltd. Branch Office- Near R.M.S. Office, Jagdalpur, Distt. Bastar C.G. (insurer of claimant motor cycle)

---- Respondent

For Appellant	:	Shri AL Singroul, Advocate.
For Respondent No.1	:	Shri Parag Kotecha, Advocate.
For Respondent No.2	:	None though served.
For Respondent No.3	:	Shri Tarkeshwar Nande, Advocate.
For Respondent No.4	:	Shri Anil Gulati, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

01/08/2017

This appeal arises out of the award dated 8.5.2014 passed by Motor Accident Claims Tribunal, South Bastar, Kanker in Claim Case

No.35/2013 whereby in an injury case awarding compensation of Rs.22,500/-in favour of the claimant.

02. Brief facts of the case are that on 30.9.2012 when the appellant and his wife were going on motorcycle bearing registration No. CG 19B/7530 which was being ridden by the appellant, the same was dashed by offending vehicle motorcycle as a result of which the appellant and his wife suffered injuries. At the time of accident the offending vehicle was being ridden by respondent No.1.

03. A claim case was filed by the claimant claiming compensation of Rs.2,98,190/- under various head, inter alia, pleading that the offending vehicle was being ridden by respondent No.1 in a rash and negligent manner resulting in the accident and injuries to him.

04. The vehicle of the appellant was duly insured with respondent No.4 National Insurance Company whereas the offending vehicle was duly insured with respondent No.3 ICICI Lombard General Insurance Company. The respondents have contested the case on general grounds. It was pleaded by insurance company of the offending vehicle i.e. respondent No.3 that rider of the offending vehicle was not having licence and as such, liability cannot be fastened upon it.

It is relevant to note that though the appellant had pleaded suffering of various injuries on his body but treating doctor has not been examined nor the author of the disability certificate (Ex.P/48) has been examined.

05. The Tribunal by the impugned award has assessed the total compensation as Rs.45,000/- but awarded Rs.22,500/- in favour of the

claimant holding that he himself was equally negligent while riding the vehicle and as rider of the offending vehicle was not having driving licence, no liability can be fastened upon it and it is only respondents No. 1 & 2 who have to satisfy the award to the extent of 50%.

06. Counsel for the appellant submits that additional premium of Rs.50/- was paid by the appellant covering the risk of personal accident to the extent of Rs.1 lakh and therefore, liability of the insurance company i.e. respondent No.4 to the extent of 50% ought to have been fastened. He further submits that compensation awarded is too much on the lower side and deserves to be enhanced suitably.

07. Considering the facts and circumstances of the case, in particular the fact that additional premium of Rs.50/- was paid by the appellant covering his risk also, the award impugned is hereby modified to the extent that out of the total awarded amount i.e. Rs.45,000/-, 50% of the same i.e. Rs.22,500/- would be paid by respondent No.4 National Insurance Company and remaining by respondents No. 1 & 2. Further considering the fact that the appellant has suffered fracture and that treating doctor has not been examined, taking the overall view of the case, we are of the opinion that the appellant can be awarded additional compensation of Rs.20,000/-. It is awarded accordingly.

Thus, the appellant is held entitled for a total compensation of Rs.65,000/- with interest @ 9% per annum from the date of application till realization. It is made clear that 50% of the aforesaid compensation shall be paid by respondents No. 1 & 2 and remaining 50% by respondent No.4 National Insurance Company. The amount, if any,

already paid by respondents No. 1 & 2 shall be adjusted accordingly.

08. The appeal is thus disposed of with modification in the impugned award to the above extent.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge