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HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1310 of 2009**

Ku. Shweta Tiwari D/o Sharadchand Tiwari, aged about 13 years, R/o near Shiv Mandir, Devendra Nagar, PS Sarkanda, Bilaspur, Teh. And Distt. Bilaspur (CG) minor through natural guardian father Sharadchand Tiwari, S/o late Ramadhar R/o near Shiv Mandir, Devendra Nagar, PS Sarkanda, Bilaspur (CG).

---- Appellant**Versus**

1. Israra Khan S/o Faranjan Khan R/o village Kundi, Post Ketat, PS Rehla, District Palamu (Jharkhand) at present residing at Janta Transport Company, Telibandha, Raipur (CG).
2. Sukhvinder Singh Dhariya S/o not known R/o Janta Transport Company, Telibandha, Raipur (CG).
3. The New India Insurance Co. Ltd. Branch Office, 2nd Floor, RDL Building Raipur (CG).

---- Respondents**MAC No. 1373 of 2009**

The New India Assurance Co. Ltd. through Divisional Manager, The New India Assurance Co. Ltd. Bilaspur, 2nd Floor, Rama Trade Centre, opposite Rajiv Plaza, Bus Stand Bilaspur (CG).

---- Appellants**Versus**

1. Ku. Shweta Tiwari D/o Sharadchand Tiwari, aged about 13 years, R/o near Shiv Mandir, Devendra Nagar, PS Sarkanda, Bilaspur, Teh. And Distt. Bilaspur (CG) minor through natural guardian father Sharadchand Tiwari, S/o late Ramadhar R/o near Shiv Mandir, Devendra Nagar, PS Sarkanda, Bilaspur (CG).
2. Israra Khan S/o Faranjan Khan R/o village Kundi, Post Ketat, PS Rehla, District Palamu (Jharkhand) at present residing at Janta Transport Company, Telibandha, Raipur (CG).
3. Sukhvinder Singh Dhariya S/o not known R/o Janta Transport Company, Telibandha, Raipur (CG).

---- Respondents

For Appellant/Claimants :	Shri Vikas Pandey, under instructions of Shri AL Singroul, Advocate.
For Insurance Company :	Shri Sourabh Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment on Board**

03.11.2017

1. By this common judgment both the appeals are being disposed of as common facts & issues are involved and arise out of the same accident.
2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 06.08.2009 passed by the 1st Additional Motor Accident Claims Tribunal, Bilaspur (in short, the Tribunal) in Claim Case No.86/2008. Vide the said impugned award, the Tribunal in a proceeding under Section 166 of the MV Act has awarded a compensation of Rs.65,000/- along with interest @ 7.5 percent per annum from the date of application.
3. MAC No. 1310 of 2009 has been filed by the claimants seeking for enhancement of compensation whereas, MAC No.1373 of 2009 has been filed by the insurance company challenging the order of pay and recovery passed by the Tribunal.
4. The facts of the case are undisputed so far as the accident that took place on 21.01.1998; the vehicle involved in the accident i.e. Truck belonging to the respondent No.2 driven by respondent No.1 and insured by the respondent No.3. The other facts which is not in dispute is the resultant injury sustained by the claimant in the said accident. The claimant, aged about 12-13 years sustained fracture of her right femur bone and also sustained fracture on other parts of her body. Dr. SS Bhatia, AW-3 has assessed the disability of claimant at 15 percent.
5. For convenient sake, we shall take the appeal of the insurance

company first.

6. The ground of challenge in the instant case is that the driver of offending vehicle i.e. respondent No.1 was not having valid licence at the time of accident inasmuch as the vehicle which was involved in the accident was a heavy goods vehicle whereas, the driver had a licence to drive light motor vehicle. Therefore, since the licence was in respect of entirely different class of vehicle, the insurance company should not have been fastened with the liability of payment of compensation and it ought to have been exonerated of its liability. Thus, the direction for pay and recovery is bad in law and the same needs to be set aside.
7. So far as claimants appeal is concerned, the contention is that the injured claimant is highly talented girl and because of injuries and disability which she has sustained, she is not able to perform the work in the manner in which she used to perform prior to the accident. Thus, she would have to suffer all through her life with the disability which cannot be compensated with. Therefore, prayed for enhancement of compensation suitably.
8. Considering the facts and circumstances of the case particularly the admitted factual matrix of the case inasmuch as the date of accident; the resultant injuries sustained by the claimant and the fact that vehicle was duly insured with the respondent No.3 are not in dispute. As far as the facts that the driver of the offending vehicle was not having a valid licence is concerned, true it is that it is an apparent breach of policy condition, but the fact that it is the appeal of the year,

2009 and the accident is almost 10 years old, this court is of the opinion that at this juncture if the award is modified, it would be difficult for the claimant to recover the compensation from the owner. Thus, the finding of the Tribunal of pay and recovery does not call for any interference and it is directed that the insurance company shall first deposit the balance amount at the earliest and may recover the same by initiating appropriate recovery proceeding against the owner as has been ordered by the Tribunal in its impugned award.

9. So far as claim of the claimant is concerned, considering the gravity of injuries sustained by the claimant and also the nature and duration of treatment which she has undergone, this court is of the opinion that ends of justice would meet if a lump sum compensation of Rs.1,00,000/- is awarded to the claimant in addition to what has already been awarded. It is ordered according that the claimant shall now be entitled for a total compensation of Rs. 1,65,000/- instead of Rs.65,000/-.
10. The above enhanced amount shall also carry the same interest as has been awarded by the Tribunal.
11. Resultantly, MAC No.1310 of 2009 filed by the claimant is allowed whereas, MAC No.1373 of 2009 filed by the insurance company is dismissed.

Sd/-
(P. Sam Koshy)
Judge