

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 992 of 2010**

Sheikh Sikander S/o Shri Sheikh Haider Khan R/o Annapurna Para  
Kanker, District North Bastar Kanker (CG)

**---- Appellant****Versus**

1. Rupendra Jain S/o Fulchand Jain, R/o village Kanapod, Tahsil  
Charama, District North Bastar Kanker (CG) (Driver and owner of  
alleged vehicle bearing registration no. CG 19 T 0274)
2. The Oriental Insurance Company Limited, Branch Office, Adarsh Bal  
Vidya Mandir, Main Road Dhamtari, Tahsil and District Dhamtari (C.G.)

**---- Respondents**


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| For Appellant       | : | Shri Pravin Dhurandhar under instruction of<br>Shri Anil Gulati, Advocate |
| For Respondent No.2 | : | Shri Sudhir Agrawal, Advocate                                             |

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**Hon'ble Shri Justice P. Sam Koshy****Order On Board****24/11/2017**

Present is a claimant's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 23.07.2010 passed by the Motor Accident Claims Tribunal, North Bastar Kanker (CG) in Claim Case No. 156/2008. Vide the impugned award the Tribunal in an injury case under Section 166 of MV Act has awarded a compensation of Rs.98,500/- with interest at the rate of 6% per annum from the date of application.

2. Contention of the counsel for the appellant-claimant is that the claimant in the instant case has not been awarded sufficient compensation commensurate to the injuries that he had sustained. Referring to the records counsel for the appellant submits that it is a case where the injured received three major fractures; one is on the right thigh bone, second is on the right

tibia bone and third fracture is on left radial bone. The three fractures have been proved by Dr. Iqbal Parvez AW-4 who has also deposed that the claimant has been suffering from permanent disability of 30%. According to the counsel for the appellant, the Tribunal should have taken into consideration the fact that the claimant by virtue of the accident has not been able to work properly as has been stated by the doctor. Likewise, he is also not in a position to do the nature of work that he was doing prior to the accident that of photo framing. Thus, prayed for the compensation amount to be suitably enhanced.

**3.** Counsel for the Insurance Company on the contrary submits that they have also filed a cross objection assailing the said award where the compensation has been excessively granted by the Tribunal and there is no definite medical opinion proved so far as the disability part is concerned. In addition, the licence of the driver of the offending vehicle was doubtful as it appears to be a fake licence. According to the counsel for Insurance Company, the driver of the offending vehicle in the instant case has adduced two driving licence, one of which he has himself admitted to have expired and subsequently he has brought another licence to substantiate the fact that he had a valid licence. Contention of the counsel for the Insurance Company is that the driver was not entitled for holding two licence at the same time which is impermissible under the law. Therefore, one of the licences or both does not appear to be genuine. He further submits that the offending vehicle i.e. Commander Jeep was not having a valid permit for which the statement of the concerned RTO was also adduced. Thus, prayed for rejection of the appeal.

**4.** Having heard the contentions put forth on either side and on perusal of the record undisputed is the fact that the Insurance Company has not led any evidence for proving the licence of the driver to be either fake or fraudulent.

Though there are two licences but the fact that the licence has not been proved to be fake or ineffective and therefore, the contention of the counsel for the Insurance Company cannot be accepted.

**5.** So far as the quantum part is concerned, undisputedly, there are three fractures which the claimant had sustained. Two fractures are on right thigh bone and tibia bone and third fracture is on the left radial bone. As a result of the said three fractures and the treatment which the claimant undergone for healing up the same, he must have undergone a great amount of pain and suffering and mental agony. The claimant would have been 100% dependent upon somebody for assisting him for his day today activities. Though the doctor has opined him to be suffering from 30% disability, this Court is of the opinion that ends of justice would meet if the claimant is awarded an additional compensation of Rs.25,000/- in addition to Rs.98,500/- which has already been awarded by the Tribunal to make the total compensation payable to the claimant at Rs.1,23,500/-. It is ordered accordingly. The enhanced amount of compensation shall also carry interest at the same rate as has been fixed by the Tribunal.

**6.** So far as the cross objection filed by the Insurance Company is concerned, the issue of licence which has been raised by the Insurance Company stands negated as no evidence in this regard has been adduced by them. So far as the vehicle not having a valid permission is concerned, AW-1 the witness from RTO who has been examined has stated that the vehicle did have a permit to be operated in the entire district of Kanker. The contention of the counsel for the Insurance Company is that the accident took place beyond the territory of district Kanker and therefore, the permit would not be valid. The contention of the counsel for the Insurance Company is not sustainable for the reason that the Insurance Company has not led any

evidence to substantiate this contention and that admittedly during the relevant period of time, the vehicle had a valid permit issued from a competent authority i.e. RTO. Given the said facts and circumstances of the case, the cross objection filed by the Insurance Company stands rejected.

7. As a consequence, the appeal filed by the appellant stands allowed and the cross objection filed by the Insurance Company stands rejected.

**Sd/-  
(P. Sam Koshy)  
JUDGE**