**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 242 of 2017**

Branch Manager National Insurance Company Limited Office 13, Meenu Complex Kosabadi Korba, District Korba, Chhattisgarh, Through Authorised Signatory For National Insurance Company Limited Divisional Office B-1 Taha Complex Ring Road Priyadarshani Nagar Bilaspur, Chhattisgarh.

**---- Appellant**

**Versus**

1. Koushlendra Kenvat S/o Govind Kenvat, Aged About 22 Years R/o Village Dodki Tehsil Sakti District Janjgir-Champa, Chhattisgarh.
2. Ramesh Kumar Sahu S/o Dhani Ram Sahu, Aged About 22 Years R/o Village Kurda P.S. Champa Tehsil & District Janjgir-Champa, Chhattisgarh ................(Driver/ N.A.No.1)
3. Sanjiv Kumar Tiwari S/o Ram Krishna Tiwari, R/o Village Kurda P.S. Champa Tehsil & District Janjgir-Champa, Chhattisgarh ................ (Owner/ N.A.No.2)

**---- Respondents**

**&**

**MAC No. 1329 of 2016**

Koushlendra Kenwat S/o Govind Kenwat, Aged About 22 Years R/o Village- Dodaki, Tahsil- Sakti, District- Janjgir-Champa Chhattisgarh.

**---- Appellant**

**Versus**

1. Ramesh Kumar Sahu S/o Dhaniram Sahu, Aged About 22 Years R/o Village- Kurda, P. S. Champa, Tahsil And District- Janjgir-Champa Chhattisgarh. ..... (Driver)
2. Sanjeev Kumar Tiwari, S/o Ramkrishna Tiwari, R/o Village- Kurda, P. S. Champa, Tahsil And District- Janjgir-Champa Chhattisgarh, ..... (Owner)
3. National Insurance Company Limited, Through- The Branch Manager, National Insurance Company Limited, Office- 13, Meenu Complex, Kosabadi, Korba, Tahsil and District- Korba Chhattisgarh, ..... (Insurer)

**---- Respondents**

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| For Insurance company | : | Shri BN Nande, Advocate |
| For Claimant | : | Shri Praveen Dhurandhar, Advocate. |
| For Owner &Driver | : | Shri Ghanshyam Patel, Advocate. |

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

**Order On Board**

**01/08/2017**

1. These are two appeals arising out of the same award i.e. award dated 30.07.2016 passed by the Ist Additional Motor Accident Claims Tribunal, Sakti, in Claim Case No.58 of 2015. Since common facts & issues are involved, both the appeals are heard together and are being disposed of by this common order.
2. The facts of the instant case is that claimant met with an accident on 30.05.2015 when he was hit by a Pick up Van bearing Registration No.CG-10-C-5592 while he was going on his motorcycle as a result of which he sustained multiple injuries all over his body. The claimant filed a claim application under section 166 of Motor Vehicles Act claiming compensation for the injuries sustained by him. The Tribunal considering facts and circumstances of the case and also taking note of the evidence which has been brought on record passed an award of compensation of Rs.7,68,303/- to the claimant along with interest at the rate of 6% per annum from the date of application. The liability has been fastened upon the Insurance Company which insured the offending vehicle to make the compensation.
3. The appeal has been preferred by the Insurance Company as well as by the injured claimant. The Insurance Company has questioned the liability as well as the quantum part of the compensation awarded. Likewise, the counsel for the claimant have sought for enhancement

of the compensation suitably.

4. So far as the liability part is concerned, the contention of the insurance company is that the driver of the offending vehicle at the relevant point of time did not have proper endorsement so far as driving the light commercial vehicle. That, the driver was having licence to drive only light motor vehicle at the relevant point of time.
5. This contention of insurance company is no longer res integra in the light of the recent decision of the larger Bench of Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd., decided on 03.07.2017 in Civil Appeal No.5826/2011.
6. So far as challenge to the quantum part is concerned, from the record it clearly reflects that there was an application filed by the insurance company before the Tribunal under Section 170 of the Motor Vehicles Act, but the same was not pressed or decided in favour of the insurance company. In the absence of proper permission given, this court does not find it proper permitting the insurance company to question the quantum awarded by the Tribunal. The same analogy would also be applicable so far as ground of contributory negligence which has been raised by the insurance company is concerned.
7. In view of the same, the appeal filed by the insurance company being devoid of merit is liable to be and is hereby dismissed.
8. So far as appeal (MAC No.1329 of 2016) filed by the claimant is concerned, counsel for the claimant submits that it is a case where the claimant had received grievous injuries and he was in a state of coma for about 12 days. Thereafter, he recovered and further as a

result of injuries sustained, his right hand got completely paralyzed. Dr.Anil Kumar Jagat, AW-3, was also examined and who has certified that the claimant has received the permanent disability to the extent of 40 percent. Counsel for the claimant submits that for the disability that the claimant has sustained, the Tribunal has awarded only a lump sum amount of Rs.1,50,000/- which is too meager an amount considering the nature of injuries sustained by the claimant.

9. It is also submitted that the claimant who is a student aged about 22 years and having sustained permanent disability to the extent of 40 percent and his right hand permanently paralyzed would have an adverse impact on his career, his future prospects and marriage prospects as well. Thus, looking to the loss of amenities that he would suffer all through his life, an amount of Rs.1,50,000/- awarded by the Tribunal is on lower side. The same requires enhancement.

10. Counsel for the insurance company however opposes the appeal of the claimant and submit that considering the nature of injuries and where the disability certificate also is issued only for five years, there is all possibility that he may recover from the disablement, and therefore, the lump sum compensation awarded by the Tribunal is fair and reasonable and does not call for interference. Further, the disability certificate was not properly proved and treating doctor was also not examined.

11. Having heard the rival contentions put forth on either side and on perusal of records, indisputably the accident and resultant injuries sustained by the claimant is not in dispute. The right hand of the

claimant got paralyzed is also not in dispute. Given the situation, one can visualize the mental trauma and the adverse impact on the life of the claimant himself who is just around 22 years of age on his right hand getting completely paralyzed. The entire life is ahead of the claimant whose right hand has become immobile and that it would affect his future prospects. He would not be able to obtain employment which would require physical work using both his hands. Likewise, he would also have an adverse impact on his marriage prospects etc.

12. Given the situation, this court is of the opinion that lump sum amount of compensation of Rs.1,50,000/- awarded by the Tribunal is on the lower side and the same requires enhancement. Accordingly, this court quantifies the compensation under this head to be Rs.3,00,000/- instead of Rs.1,50,000/- as awarded by the Tribunal. Rest of the amount awarded shall remain intact. The enhanced amount of compensation shall also carry the interest at the same rate as awarded by the Tribunal.

13. The Appellant-Insurance Company is granted two months time to deposit the enhanced amount of compensation before the concerned Tribunal.

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

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