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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1387 of 2016**

Dilip Kumar Chandrakar S/o Rajau Ram Chandrakar, R/o Village Bemcha, Police Station And Tahsil Mahasamund, Civil And Revenue District Mahasamund, Chhattisgarh.....(Owner Of Offending Vehicle Tata Pick-Up No. C.G.06/B6634).

---- Appellant**Versus**

1. Bhushan @ Pushna Yadav @ Poshan Yadav S/o Sagun Yadav, Aged About 25 Years R/o Tumgaon, Police Station Tumgaon, Civil And Revenue District Mahasamund, Chhattisgarh, At Present R/o Through: Deendayal Yadav, Through- Patel Kirana Stores, Sahu Sadan, Santoshi Nagar, Police Station Tikrapara, Tahsil, Civil And Revenue District Raipur, Chhattisgarh(Claimant)
2. Lekhram @ Rekhulal @ Balla, S/o Kheduram Chandrakar, Aged About 48 Years R/o Village Kharora, Police Station And Tahsil Mahasamund, Civil And Revenue District Mahasamund, Chhattisgarh(Driver Of Offending Vehicle Tata Pick-Up No. C.G.06/ B 6634)
3. Branch Manager, Reliance General Insurance Company Limited, In Front Of Jaistambh Chowk, Raipur, Tahsil, Civil And Revenue District Raipur, Chhattisgarh(Insurer Of Offending Vehicle Tata Pick-Up No. C.G.06/ B6634).

---- Respondents**MAC No. 1324 of 2016**

Dilip Kumar Chandrakar S/o Rajau Ram Chandrakar, R/o Village Bemcha, Police Station And Tahsil Mahasamund, Civil And Revenue District Mahasamund, Chhattisgarh(Owner Of Offending Vehicle Tata Pick-Up No. C.G.06/ B6634).

---- Appellant**Versus**

1. Rakesh Pushpakar S/o Ishwar Pushpakar, Aged About 25 Years R/o Village- Tumgaon, Police Station- Tumgaon, Civil And Revenue District- Mahasamund Chhattisgarh, At Present R/o Through- Dinu Sonkar, Shiv Nagar, Near Sudhir Daily Needs, Mathpuraina, Police Station Tikrapara, Tahsil, Civil And Revenue District- Raipur Chhattisgarh..... (Claimant)
2. Lekhram @ Rekhulal @ Balla, S/o Kheduram Chandrakar, Aged About 48 Years R/o Kharora, Police Station And Tahsil- Mahasamund, Civil And Revenue District- Mahasamund (Chhattisgarh)..... (Driver Of Offending Vehicle Tata Pick Up No. C.G. 06/b/6634)
3. Branch Manager, Reliance General Insurance Company Limited, Ravi Bhawan, In Front Of Jaistambh Chowk, Raipur, Tahsil, Civil And Revenue District- Raipur Chhattisgarh, (Insurer Of Offending Vehicle Tata Pick Up No. C. G. 06-B/6634)

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MAC No. 1400 of 2016

Dilip Kumar Chandrakar S/o Rajau Ram Chandrakar, R/o Village Bemcha, Police Station And Tahsil Mahasamund, Civil And Revenue District Mahasamund, Chhattisgarh(Owner Of Offending Vehicle Tata Pick-Up No. C.G.06/ B6634).

---- Appellant**Versus**

1. Nitin Singh Thakur S/o Siddhu Singh Thakur, Aged About 22 Years R/o Bijli Colony, Tumgaon, Police Station Tumgaon, Civil And Revenue District Mahasamund, Chhattisgarh, At Present R/o Through: Pritam Singh Thakur, Near Parmeshwari Mandir, Naveen Prathmik Shala, Mathpara (Gabhrapara), Raipur, Police Station Tikrapara, Tahsil, Civil And Revenue District Raipur, Chhattisgarh(Claimant).
2. Lekhram @ Rekhulal @ Balla, S/o Kheduram Chandrakar, Aged About 48 Years R/o Village Kharora, Police Station And Tahsil Mahasamund, Civil And Revenue District Mahasamund, Chhattisgarh(Driver Of Offending Vehicle Tata Pick-Up No. C.G.06/ B 6634).
3. Branch Manager, Reliance General Insurance Company Limited, Ravi Bhawan, In Front Of Jaistambh Chowk, Raipur, Tahsil, Civil And Revenue District Raipur, Chhattisgarh(Insurer Of Offending Vehicle Tata Pick-Up No.C.G. 06/ B/ 6634).

---- Respondents

For Appellant	:	Shri Punit Ruparel, Advocate.
For respondent No.3	:	Shri Sourabh Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****20/07/2017**

1. These three appeals arise out of the three different awards passed on the same day arising out of the same accident. For the purpose of narrating the facts of the case, MAC No.1387 of 2016 is taken as the lead case.
2. These are owners appeal under Section 173 of the Motor Vehicles Act assailing the award dated 27.02.2016 passed by the 5th Additional Motor Accident Claims Tribunal, Raipur (for short, the

Tribunal).

3. Brief facts of the case is that injured in three cases where travelling on a motorcycle bearing registration No.CG-04-DF0226 while going from Mahasamund to Tumgaon en-route they were dashed by a Tata Pickup bearing registration No.CG-06-B-6634 belonging to the present appellant. A criminal case was registered against the driver of said Tata Pickup being criminal case No.194/2010 before the Judicial Magistrate First Class, Mahasamund. The driver of the said vehicle was charged under section 177/185 of the Motor vehicles act and was also for the offence under sections 279 and 338 of I.P.C. The said criminal case was resulted in conviction of the driver and he was sentenced to undergo RI for 6 months with fine of Rs.500/-. The said order of conviction was subjected to appeal before the First Additional Sessions Judge, Mahasamund, vide criminal appeal No.62/2011. The appeal of the driver also stood rejected affirming the conviction.
4. The said order of conviction of driver and the order in appeal were subjected to challenge before the High Court in Criminal Revision No.514/2012. The said revision also stood rejected vide order dated 06/09/2012 thereby affirming the conviction. The only modification which the High Court did was to reduce the sentence part to the period already undergone. However, the High Court in very categorical terms affirmed the conviction part.
5. The claimants meanwhile preferred claim petitions before the claims Tribunal, Raipur vide claim case No.47/2013, 49/2013 and 46/2013

respectively.

6. The Tribunal taking into consideration the pleadings and the evidence which have come on record finally vide its award dated 27/02/2016 have allowed the claim applications and have granted compensation of Rs.2,95,816/-, 3,63,385/- & 4,10,813 respectively.
7. Considering the fact that driver of the offending vehicle was convicted for the offence under section 177/185 of the Motor Vehicle Act, the Tribunal taking into account the evidence which have come on record, exonerated the Insurance Company and fastened the liability of payment upon the owner and driver of the offending vehicle. It is these award which is under challenge in these appeals.
8. The sole ground of appeal which has been raised by the appellant is that there is no medical evidence which has been produced during the course of claim proceeding to establish that the driver was in a drunken condition so as to discharge the Insurance Company of its liability. Counsel for the appellant referred to the observations made so far as the evidence of the claimants in the respective cases and submits that the evidence so far as the drunken driving is concerned, is not reflected from the evidence of claimants or in the affidavit which they have filed before the Tribunal as an examination in chief and thus, prayed for the amount awarded to be modified to the extent of the liability may be fastened upon the Insurance Company.
9. The Learned Counsel appearing for the Insurance Company however opposing the appeals submits that the finding of the Tribunal does not warrant any interference for the reason that the finding is well

fortified from the judgments of criminal courts wherein the driver of the offending vehicle has been convicted for drunken driving and thus prayed for rejection of the appeals.

10. Having considered the rival contentions put-forth on either side and on perusal of records, during the course of arguments the learned counsel for the appellant produced before this court the judgment of High Court passed in Criminal Revision No.514/2012 which stood decided on 06/09/2012. The judgment of the revisional court itself reflects that the driver of the offending vehicle stood convicted for the offence in drunken driving. Since there is a categorical finding of three courts so far as the conduct of the driver of the offending vehicle of drunken driving, nothing further remains to be proved by leading another set of evidence by the claimants to establish the fact of drunken driving. The objection of the appellant that the issue of drunken driven has not been establish before the Tribunal is therefore unsustainable.

11. Considering the total facts and circumstances of the case and also taking into account the conviction of the driver in the criminal case for offence of drunken driving, this court does not find any strong case made out by the appellant calling for any interference with the impugned award. Thus the appeals being devoid of merit stand rejected.

Sd/-
(P. Sam Koshy)
Judge

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