

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 42 of 2018**

Manmoto Dhali S/o Manoranjan Dhali, aged about 41 years, R/o P. V.-
116 Pankhjur, District - Kanker, ChhattisgarhOwner

---- Appellant**Versus**

1. Narayan Majumdar S/o Kokhan Majumdar, aged about 29 years,
Occupation- Driver, R/o P. V.-116, Pankhjur, District- Kanker,
ChhattisgarhDriver
2. The National Insurance Company Ltd. through Regional Manager-
Regional Office, Address Kachahiari Chowk, Jail Road Raipur, District
and Tehsil Raipur, ChhattisgarhInsurer
3. Manvanand Hazara S/o Jagat Kishore Hazara, aged about 21 years,
Business- sealing cloth by means of peddle, appellant is mental retired,
therefore his father namely Jagat Kishore Hazara S/o Late Jogesh
Hazara, aged about 51 years, appears before Tribunal as a amicus curi,
R/o 27, Block, Mana Camp, P.S. Mana Camp Raipur,
ChhattisgarhClaimant

---- Respondents**Misc. Appeal (C) No. 44 of 2018**

Manmoto Dhali S/o Manoranjan Dhali, aged about 41 years, R/o P. V.-
116 Pankhjur, District - Kanker, ChhattisgarhOwner

---- Appellant**Versus**

1. The National Insurance Company Ltd. through Regional Manager
Regional Office, address Kahari Chowk, Jail Road Raipur, District and
Tehsil Raipur Chhattisgarh.Insurer
2. Narayan Majumdar S/o Kokhan Majumdar, aged about 29 years,
Occupation Driver, R/o P.V.-116, Pankhjur, District Kanker
Chhattisgarh.Driver
3. Smt. Shikha Mandal Wd/o Late Navkumar @ Nigam Mandal, aged
about 33 years, R/o Village Teepu Dhaba, Mana Camp, P. S. Mana
Camp, Raipur Chhattisgarh.

4. Ku. Abhijeet Mandal S/o Late Navkumar @ Nigam Mandal, aged about 11 years, minor through grandmother respondent No.8, Smt. Manju Mandal, R/o Village Teepu Dhaba, Mana Camp, P. S. Mana Camp, Raipur Chhattisgarh.
5. Vishwajeet Mandal S/o Late Navkumar @ Nigam Mandal aged about 9 years, minor through grandmother respondent No.8, Smt. Manju Mandal, R/o Village Teepu Dhaba, Mana Camp, P. S. Mana Camp, Raipur Chhattisgarh.
6. Navjeet Mandal S/o Late Navkumar @ Nigam Mandal, aged about 15 years, R/o Village Teepu Dhaba, Mana Camp, P. S. Mana Camp, Raipur Chhattisgarh.
7. Devjeet Mandal S/o Late Navkumar @ Nigam Mandal, aged about 15 years, R/o Village Teepu Dhaba, Mana Camp, P. S. Mana Camp, Raipur Chhattisgarh.
8. Smt. Manju Mandal W/o Naryan Mandal, aged about 55 years, R/o Village Teepu Dhaba, Mana Camp, P. S. Mana Camp, Raipur Chhattisgarh.
9. Narayan Mandal S/o Late Satish Mandal, aged about 59 years, R/o Village Teepu Dhaba, Mana Camp, P.S. Mana Camp, Raipur Chhattisgarh.....Claimants

---- Respondents

Misc. Appeal (C) No. 105 of 2018

Manmoto Dhali S/o Manoranjan Dhali, aged about 41 years, R/o P. V.-116 Pankhjur, District - Kanker, ChhattisgarhOwner

---- Appellant

Versus

1. Narayan Majumdar S/o Kokhan Majumdar, aged about 29 years, Occupation- Driver, R/o P.V.-116, Pankhjur, District- Kanker, ChhattisgarhDriver
2. The National Insurance Company Ltd. through Regional Manager-Regional Office, Address Kachahiari Chowk, Jail Road Raipur, District and Tehsil Raipur, ChhattisgarhInsurer
3. Jagat Kishore @ Khokhan Hazara, aged about 51 years, S/o late Jogesh Hazara, Occupation Carpenter, R/o P.V. 41, Pursotam Nagar,

Pankhanjurj, present address – 21 Block, Mana Camp, PS Mana Camp, Raipur (CG) (Claimant)

---- Respondents

For Appellant	:	Shri B. P. Banjare, Advocate
For Insurance Company	:	Shri Raj Awasthi, Advocate

Misc. Appeal (C) No. 1685 of 2017

1. Navjeet Mandal S/o Navkumar @ Nigam Mandal, aged about 15 years, minor through grandmother Appellant No.3, Smt. Manju Mandal, R/o Village Teepu Dhaba, Mana Camp, P.S. Mana Camp, Raipur, Chhattisgarh
2. Devjeet Mandal S/o Navkumar @ Nigam Mandal, aged about 15 years, minor through grandmother Appellant No.3, Smt. Manju Mandal, R/o Village Teepu Dhaba, Mana Camp, P.S. Mana Camp, Raipur, Chhattisgarh
3. Smt. Manju Mandal W/o Narayan Mandal, aged about 55 years, R/o Village Teepu Dhaba, Mana Camp, P.S. Mana Camp, Raipur, Chhattisgarh
4. Narayan Mandal S/o Late Satish Mandal, aged about 59 years, R/o Village Teepu Dhaba, Mana Camp, P.S. Mana Camp, Raipur, ChhattisgarhClaimants

---- Appellants

Versus

1. Narayan Majumdar S/o Kokhan Majumdar, aged about 29 years, Occupation Driver, R/o P.V.116, Pankhjur, District Kanker, ChhattisgarhDriver
2. Manmoti Dhali S/o Manoranjan Dhali, R/o P.V.116, Pankhjur, District Kanker, ChhattisgarhOwner
3. The National Insurance Company Limited, through Regional Manager Regional Office, Address Kahari Chowk, Jail Road Raipur, District and Tehsil Raipur, ChhattisgarhInsurer
4. Smt. Shikha Mandal W/o Late Navkumar @ Nigam Mandal, aged about 33 years, R/o Village Teepu Dhaba, Mana Camp, P.S. Mana Camp, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

5. Ku. Abhijeet Mandal D/o Late Navkumar @ Nigam Mandal, aged about 11 years, minor through natural guardian mother Smt. Shikha Mandal, R/o Village Teepu Dhaba, Mana Camp, P.S. Mana Camp, District Raipur, Chhattisgarh
6. Vishavjeet Mandal S/o Late Navkumar @ Nigam Mandal, aged about 9 years, minor through natural guardian mother Smt. Shikha Mandal, R/o Village Teepu Dhaba, Mana Camp, P.S. Mana Camp, District Raipur, ChhattisgarhClaimants

---- Respondents

and

Misc. Appeal (C) No. 1680 of 2017

Manvanand Hazara S/o Jagat Kishore Hazara, aged about 21 years, Business- sealing cloth by means of peddle, appellant is mental retired, therefore his father namely Jagat Kishore Hazara S/o Late Jogesh Hazara, aged about 51 years, appears before Tribunal as a amicus curi, R/o 27, Block, Mana Camp, P.S. Mana Camp Raipur, ChhattisgarhClaimant

---- Appellant

Versus

1. Narayan Majumdar S/o Kokhan Majumdar, aged about 29 years, Occupation Driver, R/o P.V.-116, Pankhjur, District Kanker Chhattisgarh.....Driver
2. Manmoto Dhali S/o Manoranjan Dhali, R/o P. V. - 116, Pankhjur, District Kanker Chhattisgarh.....Owner,
3. The National Insurance Company Limited. through Regional Manager Regional Office, Address - Kahari Chowk., Jail Road Raipur, District and Tehsil Raipur, Chhattisgarh.Insurer

---- Respondents

For Appellants	:	Shri Akhilesh Mishra, Advocate
For Insurance Company	:	Shri Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

19/01/2018

These are five appeals arising out of the same award dated 22.07.2017 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur (CG). MAC 42/18 and MAC 1680/17 arise out of Motor Accident Claim Case No. 48/2013. MAC 105/18 arises out of Motor Accident Claim Case No.47/13 and MAC 44/18 & MAC 1685/17 arise out of Motor Accident Claim Case No. 46/13. Vide the impugned award, the Tribunal, in Claim Case No.46/13 in respect of death of Navkumar has awarded a compensation of Rs.9,73,000/-, in Claim Case No. 48/13 in respect of injuries sustained by Manvanand Hazara has awarded Rs.3,46,795/- and in Claim Case No.47/13 in respect of injuries sustained by Jagat Kishore has awarded Rs.13,154/- with interest at the rate of 7.5% per annum from the date of application in all the three claim cases.

2. The brief facts relevant for adjudication of all these appeals are that deceased Navkumar @ Nigam Mandal and injured persons Manvanand Hazara and Jagat Kishore while travelling in a Bolero Jeep bearing registration No. CG 19 T 0513 owned by Manmoto Dhali and driven by Narayan Majumdar met with an accident on 20.11.2012. As a result of the accident, Navkumar succumbed to the injuries in the hospital during treatment and Manvanand Hazara and Jagat Kishore sustained grievous injuries. The vehicle involved in the accident was duly insured with National Insurance Company Limited and the policy was a package policy which otherwise means a comprehensive policy covering the risk of all those persons travelling in the vehicle. The said policy was duly marked before the Tribunal as Ex. D-6.

3. MAC No. 1685/17 is an appeal by the legal representatives of deceased Navkumar and MAC No. 1680/2017 is an appeal by injured Manvanand Hazara seeking for enhancement of compensation. MAC Nos. 42/18, 44/18 & 105/18 are the appeals filed by the owner challenging the

finding of the Tribunal to the extent of exonerating the Insurance Company of its liability.

4. So far as the appeals by the owner in respect of exoneration of Insurance Company are concerned, counsel for the appellant submits that the issue involved in the instant case stands squarely covered by the recent larger Bench decision of the Hon'ble Supreme Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **AIR 2017 SC 3668**. He submits that the vehicle involved in the accident was a Bolero Jeep which was being driven by Narayan Majumdar and that the driver, at the relevant point of time, had a valid driving licence to drive a light motor vehicle (LMV). He submits that the vehicle involved in the accident i.e. Bolero Jeep would fall within the category of light motor vehicle except for the fact that it is a transport vehicle used for commercial purpose. He further submits that the finding of the Tribunal was that there was no proper endorsement made in the licence permitting him to drive a transport vehicle as the endorsement earlier made stood expired in the year 2007 and it was renewed only in the year 2013. Thus, in the light of the judgment in Mukund Dewangan (supra) prayed for exoneration of the owner and for shifting the liability of payment of compensation upon the Insurance Company.

5. The undisputed facts in the present case are that the accident occurred on 20.11.2012. The vehicle involved in the accident was a Bolero Jeep, owner of which being Manmoto Dhali and the same was insured with the National Insurance Company. Undisputedly, on the date of accident, though there was no renewal of the entry so far as the transport vehicle is concerned, the driver however had a valid licence for driving a Motorcycle/LMV which was valid till September, 2022.

6. In the given facts and circumstances, this Court is of the opinion that the issue involved in the instant case stands squarely covered by the

judgment of the Hon'ble Supreme Court in the case of Mukund Dewangan (supra). Thus, the three appeals filed by the owner i.e. MAC Nos. 42/18, 44/18 & 105/18 stand allowed and the liability of payment of compensation stands shifted upon the Insurance Company jointly and severally along with the owner and driver. It shall be the responsibility of the Insurance Company to pay the entire amount of compensation to the claimants.

7. So far as the appeal filed by the legal representatives of deceased Navkumar i.e. MAC No. 1685/17 is concerned, counsel for the claimants submits that the income assessed by the Tribunal is unreasonable low and the same deserves enhancement. He submits that the claimants would also be entitled for compensation under future prospects which in the instant case has not been awarded and prayed for the award to be suitably enhanced.

8. Counsel for the Insurance Company, so far as the enhancement is concerned, submits that the award is just and reasonable as it is based upon the evidence which has come on record. Thus, prayed for rejection of the appeal of the claimants.

9. Considering the fact that the accident took place in November, 2012, this Court assesses the income of the deceased at Rs.6,000/- per month instead of Rs.5,000/- to make the annual income at Rs.72,000/-. The claimants would also be entitled for 40% of the income towards future prospects which would make the yearly income at Rs.1,00,800/-. Considering the total number of claimants, the deductions towards personal expenses would be $\frac{1}{5}^{\text{th}}$ which would bring the amount to Rs.80,640/-. If the said amount is multiplied applying the multiplier of 16 as has been done by the Tribunal, the amount comes to Rs.12,90,240/-. In addition, the claimants shall also be entitled for a lump sum compensation of Rs.1,25,000/- under the conventional head to make the total compensation payable to the claimants

at Rs.14,15,240/- instead of Rs.9,73,000/-. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

10. So far as the appeal filed by injured Manvanand Hazara i.e. MAC No.1680/17 is concerned, counsel for the appellant submits that the amount of compensation awarded is unreasonably low considering the total nature of injuries sustained by the injured. Counsel for the injured drew the attention of this Court in respect of the injuries sustained by the injured and submitted that the doctor Rupesh Verma AW-2 was also examined. Thus, prayed for suitable enhancement of compensation.

11. Counsel for the Insurance Company, however, opposing the appeal submits that the award does not call for any interference as the same is based on the evidence which has come on record and prayed for rejection of the appeal.

12. Considering the nature of injuries sustained by the injured, there cannot be any doubt that the same were grievous in nature and that initially the injured was not in a position to even speak and move but subsequently, the evidence shows that there is gradual improvement in his physical condition. Moreover, the injured has not been able to produce disability certificate before the Tribunal to prove permanent disability part, if any. Undisputedly, the nature of injury sustained was grievous for which the injured must have undergone much pain and suffering and mental agony during the period of treatment. Considering the entire facts and circumstances of the case, this Court is of the opinion that ends of justice would meet if the injured is granted an additional lump sum compensation of Rs.53,205/- in addition to what has already been awarded by the Tribunal to make the total compensation payable to the injured at Rs.4,00,000/- in stead of Rs.3,46,795/-. It is ordered

accordingly. The enhanced amount shall also carry interest at the same rate as fixed by the Tribunal.

13. Consequently, all the five appeals stand allowed.

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