

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1221 of 2011**

Kushal Singh, S/o. Late Arjun Singh Vaidh, Aged about 45 years, R/o
Sonabahal Tahsil Kondagaon, District Bastar Chhattisgarh

---- Appellant**Versus**

1. K.C. Ganveer, S/o. Premlal, Aged about 46 years, R/o. Dharampura, Jagdalpur, District Bastar, Chhattisgarh
2. IFCO Tokyo General Insurance Company Limited, Lalganga Shopping Mall, G.E. Road, Raipur, Chhattisgarh
3. National Insurance Company Limited, Branch Jagdalpur, Through Branch Manager, National Insurance Company Limited, Branch Jagdalpur, District Bastar, Chhattisgarh

----Respondents

For Appellant	:	Mr. Anurag Singh, Advocate
For Respondent No.2	:	Mr. P. Acharya, Advocate under instructions of Mr. Amrito Das, Advocate
For Respondent No.3	:	Mr. Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****19/01/2018**

1. Present is an appeal by the Claimant under Section 173 of the Motor Vehicles Act assailing the award dated 04.10.2011, passed by the 2nd Additional Motor Accident Claims Tribunal, Kondagaon, District Bastar, Chhattisgarh, in Claim Case No. 38/2011.
2. Vide the said impugned award, the Tribunal in an injury case has awarded a compensation of Rs.33,500/- with interest @ 6% per annum from the date of application.
3. The counsel for the appellant submits that the amount of compensation awarded is too meagre an amount and the same deserves to be enhanced. According to the counsel for the appellant, the finding of contributory negligence by the Tribunal is also erroneous as the Claimant has now been able to produce before this

Court the duplicate license that he had at the time of accident. He submits that at the relevant point of time he could not produce the same because he had lost and subsequently vide an application under Order 41 Rule 27 the appellant has brought on record way back in the year 2012 a duplicate license, which shows that on the date of accident i.e. on 30.03.2007, he had a valid license issued on 31.07.1992 and valid up to 09.01.2007 and thus the finding of the contributory negligence only on the ground of non-having a valid license would not sustain any further.

4. Apart from this, the counsel for the appellant submits that the appellant in the instant case has also not been awarded any compensation towards the disability that he has suffered from. According to him, he had got examined the Dr. L.L. Thakur (AW/4), who had deposed before the Tribunal that the Claimant was suffering from 40% of permanent disability. The disability certificate was issued by the District Medical Board, Jagdalpur Exhibit P/6, however no compensation under this head has been awarded and thus prayed for the award to be suitably modified.
5. The counsel for the Insurance Company however opposing the appeal submits that it is a case where the appellant in the instant case has failed to establish the fact that he had a valid license at the time of accident before the Court below and therefore the Tribunal has rightly drawn the inference against the appellant and has awarded contributory negligence of 50% against the present appellant. Thus, the finding of contributory negligence does not warrant any interference and the appeal deserves to be rejected.

6. Having heard the contentions put forth on either side and on perusal of the record what is admitted is the date of accident, vehicle involved and the resultant injury caused to the appellant. The vehicle duly insured with the respondent no.2 is also not in dispute. Coming to the issue of contributory negligence except for the fact of there being no driving license, there does not seem to be any other ground available for attributing contributory negligence.
7. So far as the license is concerned, the Claimant under Order 41 Rule 27 has produced before this Court a driving license though a duplicate one, almost 5 years back i.e. in the year 2012. The copy of the same was also served upon the respondent No.2, who till date could have easily inquired in respect of the authenticity of the said license. Having not done so, it has to be presumed that the license which was brought on record vide an application under Order 41 rule 27 to be genuine and legal.
8. Accordingly, the finding of contributory negligence on account of non-production of a license is set-aside and it is held that the Claimant shall be entitled for the entire compensation quantified. So far as the enhancement of compensation is concerned. Undisputedly the Claimant received fracture injury on the lower part of the left limb and the Dr. L.L. Thakur has also proved the disability to the extent of 45%.
9. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***“Rajkumar vs. Ajay Kumar and Another” (2011) 1 SCC 343***, this Court assesses the total disability of the Claimant at 15% and the Claimant would be entitled for compensation for the 15% of disability that he suffered from.

10. This Court assesses the monthly income of the deceased at Rs.3000/- considering the fact that he was a Forest Guard and since he was a Forest Guard he would also be entitled for 30% under future prospects. 30% of Rs.3000/- comes to Rs.900/-, which would bring the monthly income at Rs.3900/- and yearly income at Rs.46,800/-. If we take 15% towards the disability, the amount would come to Rs.7020/- which would be the loss of earning capacity per year caused to the Claimant. The said amount when multiplied applying the multiplier of 14, the amount would come to Rs.98,280/-. Thus, the Claimant shall be entitled for the compensation towards the loss of earning capacity of Rs.98,280/-. The said amount of Rs.98,280/- shall be in addition to the amount of compensation awarded by the Tribunal of Rs.66,969.32, which is rounded off at Rs.66,970/-. Thus, making the total compensation payable becomes Rs.1,65,250/- instead of Rs.66,969.32 as quantified by the Tribunal.
11. It is made clear that the Claimant shall be entitled for the entire amount and there shall be no deduction under contributory negligence.
12. The appeal stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge