

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 8-2-2018****Pronounced on 13-2-2018****MAC No. 368 of 2012**

Ram Krishna Vishwakarma son of Ram Vishal Vishwakarma, aged about 18 years, R/o. Village Jaraud, Police Station Bhatapara Gramin, distt. Raipur (CG)

---- Appellant**Versus**

1. Shiv Kumar son of Gajadhar Verma, aged about 30 years, R/o. Village Rawan, Police Station : Suhela, Distt. Raipur (CG)
2. Navin son of Rajendra Khandelwal, aged about 45 years, R/o. Mahoba Bazar, Tatiband, Raipur Police Station and Tahsil, Raipur
3. The Branch Manager, The New India Insurance Co. New India Insurance Company, Division Office, Office No. 1, Raipur , Dist. Raipur C.G.

---- Respondents

For appellant	:	Ms. Nand Kumari Kashyap, Advocate
For respondent No. 1&2	:	Mr. J.A. Lohani, Advocate
For respondent No. 3	:	Mr. Vimlesh Bajpai, Advocate under the instruction of Mr. Anand Gupta, Adv.

MAC No. 451 of 2012

1. Naveen Khandelwal, aged 32 years, S/o. Shri Rajendra Khandelwal, R/o. H. No. 07, Harshit Tower, near Panchdham Mandir, Hirapur Road, Tatibandh, Raipur (CG)
2. Shiv Kumar Verma, S/o Shri Gajadhar Verma, aged 30 years R/o Village Ravan, P.S. Suhela, Dist. Raipur C.G.

---- Appellants**Versus**

1. Ram Krishna Vishvakarma aged 19 years son of Shri Ramvishal Vishwakarma, R/o. Village Jarod, P.S. Bhatapara, Gramin Distt. Raipur (CG).
2. The New India Insurance Co. Ltd. Through The Branch Manager, Divisional Office D.O. No. 01, Raipur, Dist. Raipur C.G.

---- Respondents

For appellants	:	Mr. J.A. Lohani, Adv.
For respondents No. 1	:	Ms. Nand Kumari Kashyap, Advocate
For respondent No. 2	:	Mr. Vimlesh Bajpai, Adv. under the instruction of Mr. Anand Gupta, Adv.

Hon'ble Mr. Sharad Kumar Gupta, Judge

C.A.V. ORDER

1. As these two MAC arise out of the same accident and same award dated 14-2-2012 passed by the Additional Motor Accident Claims Tribunal, Bhatapara (CG) [hereinafter referred to as 'the Tribunal'] in Claim Case No. 14/2010, they are being disposed of by this common order.

(In this order parties shall be referred as per their status before the Tribunal.)

2. This is admitted by the non-applicant No. 1 Shivkumar that he was driver of the offending vehicle bearing registration No. CG 04 HA 0895, the applicant No. 2 Navin Khandelwal is its owner and it was insured by non-applicant No. 3 – the New India Insurance Company; police No. is 450300/31/09/01/00002504.

3. The non-applicant No. 3 has not clearly and specifically denied that the offending vehicle was allegedly insured with it at the time of accident thus, under the provisions of Order 8 Rule 5(1) of the CPC, this Court finds that the non-applicant No. 3 has admitted that the vehicle was insured with it at the time of accident.

4. Non-applicant No. 2 has not filed reply, on 10-11-2010 he expressed that he did not want to file reply.

5. In brief, applicant's case is that on 17-1-2010 he was returning back to his village Jaraud on a bicycle along with one Panchram Yadu. The offending vehicle driven in a rash and negligent manner dashed his bicycle as a result of which he sustained injuries on his right cheek near Temple, right thigh and

below right knee.

6. In brief, case of non-applicant No. 1 is that the applicant sustained injury due to falling by his own negligence.

7. In brief, case of the non-applicant No. 3 is that at the time of accident, the non-applicant No. 1 did not have valid and effective driving licence, he himself had committed contributory negligence.

8. The Tribunal passed the impugned award directing that the non-applicants No. 1 and 2 shall pay jointly and severally Rs. 90,000/- to the applicant along with interest at the rate of 6% per annum. The Tribunal exonerated the non-applicant No. 3 from the liability to pay the compensation on the ground that non-applicant No. 1 did not have a valid and effective driving licence at the time of the accident.

9. Being aggrieved the appellant/applicant has preferred MAC No. 368/2012 for enhancement of the awarded amount.

10. The appellants/non-applicants No. 1 and 2/driver and owner have preferred MAC No. 451/2012 challenging the impugned award on the ground that at the time of accident, non-applicant No. 1 had valid and effective driving licence, the applicant is also equally liable for the cause of accident by causing contributory negligence, the non-applicant No. 3 has been wrongly exonerated from its liability to pay the compensation to the applicant.

11. There is no such evidence on record of the Tribunal on the strength of which it could be said that the applicant himself committed contributory negligence as a result of which the

accident occurred. Thus, this Court finds that the applicant had not committed any contributory negligence resulting the accident.

12. There is no such evidence on record of the Tribunal on the strength of which it could be said that at the time of the accident, the non-applicant No. 1 had valid and effective driving licence. Thus, this Court finds that at the time of the accident, the non-applicant No. 1 did not have valid and effective driving licence.

13. There is no such evidence on the record of the Tribunal on the strength of which it could be said that the non-applicant No. 2 had no knowledge that the non-applicant No. 1 did not possess the effective and valid driving licence. Thus, this Court finds that the non-applicant No. 2 knowingly that the non-applicant No. 1 had no valid and effective driving licence permitted him to drive the vehicle.

14. There is no such evidence on record of the Tribunal on the strength of which it could be said that the non-applicant No. 3 is liable to pay the compensation to the claimant. Thus this Court finds that non-applicant No. 3 is not fastened with any liability to pay the compensation to applicant.

15. P.W. 3 Dr. H.N. Saheta says in para 1 and 5 of his statement that on 17-1-2010 he examined the applicant and found that there were fractures in right femur bone and right tibia and fibula bones. The applicant remained hospitalized till 2nd February, 2010. He has inserted a rod in right tibia, right fibula and right femur bone by operation.

16. In MLC paper Ex. P-4, it has been mentioned that there was fracture in right femur bone, right tibia and fibula bones of

the applicant.

17. In discharge certificate Ex. P-14, it has been mentioned that the applicant was admitted on 17-1-2010 and discharged on 2-2-2010, his right femur bone and right tibia and fibula bones were fractured.

18. AW 1 Ramkrishna Vishwakarma in para 7 of his statement states that he was working in Shankar Dal Mill, Bhatapara and used to earn Rs. 4,500/- per month. AW 2 Roshan Verma in para 4 of his statement states that before the accident, the applicant was working in Shankar Dal Mill, Bhatapara and used to earn Rs. 4,500/- per month.

19. As per alleged Bill Ex. P-15, bill of Rs. 26,100/- was given to the applicant. As per Ex. P-9, the bicycle of the applicant was damaged.

20. In **Rajkumar v. Ajay Kumar** [(2011) 1 SCC 343], the Apex Court laid down the heads for which compensation is to be awarded for personal injuries, as follows:

"6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment.

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury, cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

21. In the case in hand, the Tribunal had not awarded the compensation in different heads as mentioned above though it could have done so. Instead of doing so the Tribunal has awarded a lump sum amount of Rs. 90,000/-. Looking to the anove mentioned facts and circumstances of the case and the injuries sustained by the applicant, medical bill, damaged bicycle, nurshing food for applicant, miscellaneous expenditure, loss of earning, pain and sufferance, this Court finds that lump sum amount is not exorbitant. Considering all the facts, this Court is also not inclined to give compensation to the claimant head wise.

22. Consequently, this Court finds that both the appeals being devoid of substance deserve to be and are hereby dismissed.

Sd/-
(Sharad Kumar Gupta)
Judge