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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 296 of 2015**

- Akhil Gupta, S/o. Sri B. P. Gupta, R/o Santoshi Chowk, Hatripara, Kawardha, Present Address- Ajad Chowk, Kasaridih, Durg, Civil & Revenue District-Durg (C.G.)

  Driver of Scorpio No. MP 18T 1152.

**---- Appellant**

**Versus**

**1.** Smt. Nandkumari Sahu W/o. Late Dey Kumar, aged about 48 years,

2. Hemant Kumar, S/o. Late Dey Kumar, aged about 30 years,

3. Tarachand Sahu, S/o. Late Dey Kumar, aged about 28 years

   All R/o. Bhalukonha, Police Station Arjunda, Civil & Revenue District-Balod (C.G.).

4. Chotelal Khunte, S/o. P.P. Khunte, R/o Kundri Road, Balpurwa, Shahdol (MP)

   Owner of Scorpio No. MP18T 1152

5. I.C.I.C.I. Lombard General Insurance Company Ltd. Through Claim Manager, Devendra Nagar, Commercial Complex, Raipur (C.G.).

**---- Respondents**

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For Appellant : Shri Ajay Chandra, Advocate
For Respondent No. 1 to 3 : Shri P. R. Patankar, Advocate
For Respondent No. : Shri Saurabh Sharma

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**And**

**MAC No. 314 of 2015**

- Akhil Gupta, S/o. Sri B. P. Gupta, R/o Santoshi Chowk, Hatripara, Kawardha, Present Address- Ajad Chowk, Kasaridih, Durg, Civil & Revenue District-Durg (C.G.)

Driver of Scorpio No. MP 18T 1152.

**---- Appellant**

**Versus**

**1.** Mahendra Kumar, S/o Girdhari Lal Thakur, aged about 20 years, R/o Bhalukonha, Police Station Arjunda Tahsil Gunderdehi, Civil & Revenue District- Durg (C.G.)

2 Chotelal Khunte, S/o. P. P. Khunte, R/o. Kundri Road, Balpurwa, Shahdol (MP) presently at Mahima Vihar HIG-10, Gaurav Path, Ring Road No. 2. Bilaspur (C.G.).

3. I.C.I.C.I. Lombard General Insurance Company Ltd. Through Claim Manager, Devendra Nagar, Commercial Complex, Raipur (C.G.).

**---- Respondents**

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For Appellant : Shri Ajay Chandra, Advocate
For Respondent No. 1 to 3 : Shri P. R. Patankar, Advocate
For Respondent No... : Shri Saurabh Sharma

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**And**

**MAC No. 1359 of 2014**

- Mahendra Kumar S/o Girdhari Lal S/o Girdhari Lal Thakur, aged about 20 years, R/o Balukonha, P.S.- Arjunda, Tahsil-Gunderdehi, District-Durg-(C.G.).

**Versus**

1. Akhil Gupta S/o B.P. Gupta, R/o Santoshi chowk, Hatripara, Kawardha, Presently residing at Ajad Chowk, Kasaridih, Durg, (C.G.)................................................................... Driver,

2. Chhotelal Khunte S/o P. P. Khunte, R/o Kundri Road, Balpurva, Shahdol, (M.P.)....................................................... Owner

3. I.C.I.C.I. Mombard General Insurance Company Ltd. Through-Claim Manager, Devendra Nagar, Commercial Complex, Raipur.

**-------Respondents**

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For Appellant : Shri P. R. Patankar, Advocate
For Respondents : Shri Ajay Chandra, Advocate

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And

**MAC No. 1182 of 2014**

1. Smt. Nandkumari Sahu W/o Late Dey Kumar, aged about 48 years,

2. Hemant Kumar S/o Dey Kumar, aged about 30 years,

3. Tarachand Sahu S/o Late Dey Kumar, Aged about 28 years

All R/o Bhalukonha, P.S.- Arjunda, District- balod- (C.G.).

**Versus**

1. Akhil Gupta S/o B.P. Gupta, R/o Santoshi chowk, Hatripara, Kawardha, Present Address- Ajad Chowk Kasaridih, Durg. .................................................................. Driver,

2. Chhotelal Khunte S/o P. P. Khunte, R/o Kundri Road, Balpurva, Shahdol, (M.P.).......................................................Owner

3. I.C.I.C.I. Mombard General Insurance Company Ltd. Through-Claim Manager, Devendra Nagar, Commercial Complex, Raipur.

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For Appellant : Shri P. R. Patankar, Advocate
For Respondents : Shri Amrito Das, Advocate & Shri Ajay Chandra, Advocate

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**Hon'ble Shri Justice Gautam Chourdiya**
**Judgment on Board**

**14.11.2018**

**1.** Heard on I.A. No 01, applications for condonation of delay in filing the MAC No. 296/2015 & MAC No. 314/2015.

2. For the reasons mentioned in the applications which are supported

by affidavit, the same are allowed and delay in filing the appeals are hereby condoned.

3. As all these above appeals arise out of the common award dated 03.07.2014 passed by First Additional Motor Accident Claims Tribunal, Durg in claim Case No. 50/2013 and 53/2013 they are being disposed of by this common judgment.

4. For the sake of convenience, the parties shall referred hereinafter be referred to as per their description before the Tribunal.

5. Undisputed facts in this case are that on the date of accident, the offending Vehicle Scorpio bearing registration No. MP18T/1152 was being driven by non-applicant no. 1, owned by non-applicant No. 2 and insured with non-applicant No. 3 I.C.I.C.I. Lombard/ Insurance Company.

6. As per averments made in the claim petitions, on the date of accident i.e. 18.10.2011 at around 11.00 a.m. deceased Dey Kumar alongwith injured Mahendra Kumar was going on his motorcycle bearing registration No. C.G.07LJ/2607 to Rajnandgaon, however, on the way non-applicant No. 1 by driving the offending vehicle in a rash and negligent manner dashed the said motorcycle as a result of which both Dey Kumar and Mahendra Kumar suffered grievous injuries.

7. Injured Day Kumar filed a claim petition under Section 166 of the Motor Vehicle Act seeking compensation against the injuries suffered by him in the said accident to the tune of Rs. 16,55,000/- alongwith the interest @ 12% from the date of application till its reliazation. Likewise injured- Mahendra Kumar filed a claim petition under Section 166 of the

Act claiming compensation of Rs. 4,20,000/- with interest @ 12% from the date of application till its reliazation for the injuries suffered by him in the said accident. The claim petition filed by Day Kumar was registered as claim case No. 53/2013 whereas in claim case in respect of injured Mahendra Kumar was registered as claim case No. 50/2013. However due to pendency of the claim of said cases, injured Day Kumar died and therefore, his legal representatives being his widow and sons prosecuted the claim case before the Tribunal.

8. Learned Tribunal considering the evidence of the parties granted compensation of Rs. 48,960/- in favour of injured claimant Mahendra Kumar whereas Rs. 6,30,000/- in favour of the claimants/dependents of deceased Dey Kumar, fastening the liability of payment of compensation upon the driver and owner of the offending vehicle/non-applicant No. 1 & 2, alongwith interest @ of 6% per annum from the date of application till its reliazation. The Tribunal exonerated Insurance Company on the ground of breach of policy conditions as the driver of the offending vehicle was having licence to drive light goods vehicle whereas the offending vehicle was light passenger carrying vehicle.

**MAC No. 296/2015 and MAC No. 314/2015**

9. The aforesaid appeals have been filed by the driver of the offending vehicle/non-applicant No. 1 challenging the finding of the Tribunal exonerating the Insurance Company on the ground of breach of policy conditions.

10. Learned counsel for the appellant submits that though the driver was having licence to drive light goods vehicle and the offending vehicle

was light passenger carrying vehicle, however, as the unladen weight of the offending vehicle was 1850 k.g., in view of the Hon'ble Supreme Court Judgment in "***Mukund Dewangan Vs. Oriental Insurance Company Limited"*** reported in **(2017) 14 SCC 663**, there is no need of any endorsement in the licence of the driver for driving such vehicle and as such there was no breach of policy condition,

11. On the other hand, learned counsel for the respondent supported the award impugned and submits that there is no illegality in that award and it does not call for any interference in these appeals.

12. Having heard learned counsel for the respective parties, in the given facts and circumstances of the case it would be advantageous to refer to the principles of law led down in Mukund Dewangan (Supra). In the cited case also the issue involved was as to whether a driver having a licence to drive light motor vehicle is competent to drive transport vehicle in absence of any endorsement to this effect in his licence and it was held as under:-

> "Held, the effect of amendment of Form 4 by insertion of "transport vehicle" related only to categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same – There was no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect – Further held, even otherwise the Form could not control the substantive provisions carved out in Ss. 10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment – Interpretation of Statutes – Basic Rules – Harmonious Construction – Subordinate/Delegated Legislation/Rules Under the Act – Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)"

13. In view of the aforesaid decision, the fact that the unladen weight of the offending vehicle was less than 7500 kg, there was no requirement of any endorsement in the licence of the driver. Being so, the Tribunal was not justified in exonerating the Insurance Company of its liability to pay compensation on the ground of breach of policy conditions and fastening the same on the driver and owner of the offending vehicle.

**MAC No. 1359/2014 and MAC No. 1182/2014**

14. The aforesaid appeals have been filed by the claimants for enhancement of compensation awarded by the Tribunal.

15. Learned counsel for the appellants submits that the Tribunal has awarded compensation on much lower side without giving proper consideration to the pleadings, documents and the evidence adduced by the claimants. The amount awarded by the Tribunal towards the conventional heads is also liable to be enhanced suitably considering the nature and extent of injuries suffered by the injured claimants Mahendra Kumar and the age of the deceased- Dey Kumar.

16. On the other hand, learned counsel for the respondent supported the award impugned in so far as it relates to quantum of compensation.

17. Considering the pleadings of the respective parties, the document filed by them, the oral evidence adduced by the parties, this Court is of the opinion that the amount awarded by the Tribunal in both the claim cases excluding the amount awarded towards pain and suffering, is just and proper and need no enhancement by this Court. Considering the

nature and gravity of the injury suffered by injured claimant Mahendra Kumar, the amount of Rs. 5,000/- towards pain & suffering awarded by Tribunal is enhanced to the Rs. 25,000/-. Likewise, the amount of Rs. 10,000/- awarded by the Tribunal towards pain and suffering in favour of the claimants for the injuries suffered by Dey Kumar is enhanced to Rs. 25,000/-.

18. In the result-

- MAC No. 296/2015 and MAC No. 314/2015 filed by the driver are allowed. The Insurance Company/non-applicant No. 3 is held liable jointly and severally alongwith driver and owner/non applicant No. 1 & 2 to pay the amount of compensation to the claimants.
- MAC No. 1359/2014 is allowed in part and the amount awarded by the Tribunal of Rs. 5,000/- towards pain and suffering is enhanced to Rs. 25,000/-.
- MAC No. 182/2014 is allowed in part and amount awarded by the Tribunal of Rs. 5,000/- towards pain and suffering is enhanced to Rs. 25,000/-.

19. Thus, the Insurance Company shall pay the total enhanced amount of Rs. 40,000/- to the claimants and the enhanced amount of compensation shall carry interest as awarded by the Tribunal.

20. The impugned award stands modified to the above extent only.

Sd/-
(Gautam Chourdiya)
Judge

Amita