

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1100 of 2018**

1. Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Office at 2nd Floor, Vss Road near Hotel Vicky above Allahbad Bank, Sambhalpur Odisha.

---- Appellant/Claimant**Versus**

1. Chotulal Banjare, S/o Latel Ram Banjare, aged about 52 years, R/o Village Jhabdi, P.S. and Tehsil Kasdol, District- Balodabazaar C.G.
2. Mithun Bhoi, S/o Bhikha Bhoi, aged about 24 years, R/o Village Chaarmaal Post Redakhol P.S. Chaarmaal, District Sambhalpur Odisha.
3. Pradeep Kumar Agrawal, S/o Ramavtar Agrawal, aged about 46 years, R/o Ward No. 4 Bargadh, P.S. Bhatli Chowk, District- Bargadh Odisha.

---- Respondents

For Appellant :Mr. Utsav Maheshwar, Advocate
 For Respondent No. 1 :Mr. Tanuj Patwardhan, Advocate on behalf
 of Ms. Supriya Upasane, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

14.12.2018

Heard on IA No. 01/2019, application for condonation of delay of 37 days in filing the appeal.

2. For the reason mentioned in the application which is duly supported by the affidavit, the same is allowed and delay in filing the MAC is condoned.
3. This appeal has been filed by the appellant/Bajaj Allianz General Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") against the award dated 28.02.2018 passed by Second Additional Motor Accident Claims Tribunal, Balodabazar in Claim Case

No. H 17/2017 whereby in a injury case, the Tribunal has awarded a total sum of Rs.1,26,990/- along with interest @ 9% p.a. from the date of application till realization in favour of the claimant, fastening liability upon the appellant/Insurance Company to satisfy the award. The Insurance Company mainly challenging on the ground of breach of policy conditions.

4 Brief facts of the case are that on the fateful day i.e. 16.8.2016 when injured- Chotulal Banjare was travelling from Bilaspur to Shivrinarayan on a rented auto bearing registration No. CG 10-Y-8724, near Devri Mani Road, offending vehicle bearing registration No. OR 17-F-3517, driven by – respondent No. 2- Mithun Bhoi rashly and negligently, dashed the said auto, as a result of which, claimant sustained grievous injuries and due to this accident the claimant sustained grievous injuries on his face neck and leg.

5 Learned counsel for the appellant/Insurance Company submits that the learned Tribunal has erred in fastening liability upon the appellant/Insurance Company to pay compensation to the claimant because the offending vehicle was being plied without proper permit and fitness, which is a violation of insurance policy conditions. He further submits that learned Tribunal has further erred in assessing the income of claimant as Rs. 6,000/- per month for the purpose of computation of compensation, which appears to be on higher side.

6 Learned counsel for the respondent No. 1 submits that learned Claims Tribunal is absolutely justified in assessing the income of the claimant as Rs.6,000/- per month looking to the job of the claimant and as per minimum wages at the relevant time, which is not less than Rs. 6,000/- per month. He further submits that Tribunal has not committed any error in fastening the liability upon the appellant/insurance company, as there is no breach of policy conditions.

7 Heard and perused the record alongwith award impugned.

8 There is no any evidence adduced by the insurance Company regarding the breach of policy on the part of the permit of the offending vehicle, and in absence of evidence with regard to validity of permit, it can not be said that there is breach of the policy conditions. Thus, Claims Tribunal has rightly fastened the liability upon the Insurance Company to pay compensation to the claimant, in which I do not find any substance warranting interference in this appeal.

9 So far as income of the claimant as assessed by the Claims Tribunal is concerned, since accident had occurred in the year 2016 and looking to the minimum wages at the relevant time, the Tribunal has rightly considered the income of the claimant as Rs.6,000/-, in which I do not find any illegality warranting interference in the instant appeal.

10 For the reasons mentioned hereinabove, the appeal being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita