**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 597 of 2015**

- The Oriental Insurance Company Limited, Through its Divisional Manager, Divisional Office – Madina Building, Kutchari Chowak, Jail Road, Raipur (C.G.)

**----Appellant**

**Versus**

1. Gopal Yadav, S/o Late Ghasiya Ram Yadav, Aged about 22 years, Resident of Village – Kayabandh, Police Station Mandir Hasod, District– Raipur (CG.).

2. Rajkumar Singh, S/o Late Manharan Singh Thakur, Resident of – Village Ruhi Jamgaon, Police Station – Kumhari, District – Durg (CG.).

**---- Respondents**

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|---|---|
| For Appellant | : Smt. Chitra Shrivastava, Advocate |
| For Respondent No.1 | : Shri Shikhar Sharma, Advocate. |
| For Respondent No.2 | : Shri Raj Kumar Pali, Advocate. |

**MAC No. 604 of 2015**

- The Oriental Insurance Company Limited, Through its Divisional Manager, Divisional Office – Madina Building, Kutchari Chowak, Jail Road, Raipur (C.G.).

**----Appellant**

**Versus**

1. Omin Yadav, S/o Late Ghasiya Ram Yadav, Aged about 19 years, Resident of Village – Kayabandh, Police Station Mandir Hasod, District – Raipur (CG.).

2. Rajkumar Singh, S/o Late Manharan Singh Thakur, Resident of – Village Ruhi Jamgaon, Police Station – Kumhari, District – Durg (CG.).

**---- Respondents**

| | |
|---|---|
| For Appellant | : Smt. Chitra Shrivastava, Advocate |
| For Respondent No.1 | : Shri Shikhar Sharma, Advocate. |
| For Respondent No.2 | : Shri Raj Kumar Pali, Advocate. |

**MAC No. 1507 of 2015**

- Gopal Yadav, aged about 22 years, son of Ghasiya Ram Yadav, R/o. Village Kayabandha, P.S. Mandir Hasaud, District Raipur (CG.)

**----Appellant**

**Versus**

1. Rajkumar Singh, S/o Late Manharan Singh Thakur, Resident of – Village Ruhi Jamgaon, Police Station – Kumhari, District – Durg (CG.). (Driver).

2. The Oriental Insurance Company Limited, Through : Divisional Manager, Divisional Office, Madina Building, Katchari Chowk, Jail Road, District Raipur (CG.), (Insurer).

**---- Respondents**

| | |
|---|---|
| For Appellant | : Shri Shikhar Sharma, Advocate. |
| For Respondent No.1 | : Shri Raj Kumar Pali, Advocate. |
| For Respondent No.2 | : Smt. Chitra Shrivastava, Advocate. |

**Hon'ble Shri Justice Gautam Chourdiya**

**Judgment on board**

**09/04/2019**

1. M.A. (C) Nos. 597 of 2015 & 604 of 2015 filed the appellant/Oriental Insurance Company Limited *whereas* M.A. (C) No. 1507 of 2015 filed by claimant seeking enhancement of compensation awarded by the Tribunal, under Section 173 of the Motor Vehicles Act, 1988 (henceforth "Act, 1988") arise out of the same accident & award dated 12.03.2015 passed by 7th Additional Motor Accident Claims Tribunal, Raipur in Claim Case Nos. 45/2013, 44/2013 & 45/2013, respectively therefore, they are heard together and are being disposed of by this common judgment.

[For the sake of convenience, M.A. (C) No. 1507 / 2015 would take as a lead case]

(2) As per averments made in the claim petition, when on 05.02.2012 claimant – Gopal Yadav (in MAC No. 1507/2015) was going to Jamgaon in

his motorcycle alongwith his sister – Omin Yadav, who was sitting in the motorcycle as pillion rider, respondent No. 1- Rajkumar Singh Thakur, while driving the offending vehicle Motorcycle bearing registration No. CG.04/K/4992 rashly & negligently, dashed the motorcycle of appellant/claimant, as a result thereof, appellant sustained multiple injuries including fracture in his right leg. At the time of accident, the offending vehicle was owned & driven by non-applicant No. 1 and insured with the non-applicant No. 2/ The Oriental Insurance Company Limited.

(3) On claim petition being filed by the claimant / injured under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs. 20,50,000/- under various heads, the Tribunal, after considering the evidence led by both the parties, awarded a total compensation of Rs. 2,30,000/- along with interest @ 6% per annum from the date of filing of claim petition till its actual payment, fastening liability upon the Insurance Company to pay compensation to the claimants as it could not establish the violation of policy conditions. However, in a Claim Case No. 44/2013 (Omin Yadav Vs. Rajkumar Singh & another), the Tribunal, after considering the evidence led by both the parties, awarded a total compensation of Rs. 1,53,500/- along with interest @ 6% per annum from the date of filing of claim petition till its actual payment, also against the Insurance Company.

**M.A. (C) No. 597/2015 & M.A. (C) No. 604 of 2015**

(4) Learned counsel appearing for the appellant - Oriental Insurance Company Limited would submit that at the time of accident, non-applicant No. 1 – Rajkumar Singh Thakur did not have valid and effective driving license to drive the offending vehicle (Motorcycle) bearing registration No.

C.G.04/K/4992, therefore, charge sheet was filed against the non-applicant No. 1/driver-cum-owner under Sections 279,337 & 338 of the Indian Penal Code *and* Section 3 / 181 of the Act, 1988 alleging that non-applicant No. 1 did not have valid & effective driving license at the time of accident. Even otherwise, the non-applicant No. 1 (driver) did not produce any driving licence before the Claims Tribunal to prove the aforesaid fact situation and, therefore, the Claims Tribunal has erred in fastening liability upon the Insurance Company and, therefore, the same may be liable to be set aside.

(5) Also heard on cross objection under Order 41 Rule 22 of the Code of Civil Procedure along with application (I.A. No. 5) for condonation of delay of 69 days in filing the cross- objection filed by the Omin Yadav.

(6) On due consideration, application (I.A. No. 5) is allowed. Delay of 69 days in filing the cross-objection is allowed.

**M.A. (C) No. 1507 of 2015 & cross objection filed by claimant – Omin Yadav in M.A. (C) No. 604 of 2015.**

(7) Learned counsel appearing for the claimants (Gopal Yadav & Omin Yadav) would submit that due to injuries sustained by the claimants, their working capacity is adversely affected and the submission to this effect has not been challenged by the Insurance Company; the Insurance Company has challenged the award only to the extent of its liability for payment of compensation to the claimants. He further submits that the Claims Tribunal has erred in assessing the income of both the claimants as Rs.3,000/ per month as they are skilled labourer and at the time of accident i.e. in the year 2012, minimum wages prevailing at the relevant time as Rs.5,000/- ought to have been considered. He also submits that the amount awarded under the

heads such as pain & suffering & attendant etc. appear to be on lower side, which deserve to the enhanced suitably.

(8) At this stage, learned counsel appearing for the Insurance Company would submit that amount awarded by the Claims Tribunal for the injuries sustained by the claimant is just and proper, which does not call for any interference.

(9) I have heard learned counsel appearing for the parties and perused the impugned award.

(10) So far as contention raised by appellant/The Oriental Insurance Company that the driver of the offending vehicle did not produce any valid and effective driving licence before the Claims Tribunal is concerned, during investigation Charge Sheet has been filed by the concerned police official under Sections 279,337 & 338 of the Indian Penal Code *and* Section 3 / 181 of the Act, 1988 alleging that non-applicant No. 1 did not have valid & effective driving license at the time of accident.

(11) In these cases, the Insurance Company was the main contesting party but no attempt was made by the Insurance Company for producing the driving license or entering the driver or owner into the witness box for seeking the driving license. On behalf of Insurance Company non applicant witness No. 1- S. L. Mehta was examined and he has not stated in para one of his statement that at the time of accident, the driver of the offending vehicle was not having valid & effective driving licence. Thus, no any specific evidence adduced by the Insurance Company regarding the driving license and only on the basis of the charge sheet filed against the driver of

offending vehicle, it cannot be said that at the time of accident, the driver of the offending vehicle was not having valid and effective driving licence. Therefore, I am of the view that the appellant/Oriental Insurance Company has failed to prove any breach of policy on the part of the driving of the offending vehicle, as such, the Claims Tribunal has rightly fastened the liability of payment of compensation upon the Insurance Company.

(12) Consequently, both the appeals (MAC No. 597/2015 & 604/2015) filed by the Oriental Insurance Company, being devoid of merit, are liable to be and are hereby dismissed.

(13) So far as MAC No. 1507/2015 filed by the claimant- Gopal Yadav seeking enhancement of amount under award ***and*** Cross objection filed by claimant – Omin Yadav in MAC No. 604/2015 are concerned, it is undisputed that working of both the claimants are adversely affected for about 10 months due to the severe injuries sustained by them in the motor accident occurred on 05.02.2012. Thus, looking to the minimum wage prevailing at the relevant point of time, it would be appropriate to consider income of the claimant as Rs. 4,500/-, therefore, the claimant (Gopal Yadav) would become entitle to Rs. 4,500 x 10 = Rs. 45,000/- per annum; and amount awarded under the head of special diet, attendant & attendant as Rs. 5,000/- also appears to be on lower side, which is enhanced to Rs. 15,000/-, amount awarded under the head of pain & suffering as Rs. 5,000 also appears to be on lower side; which is enhanced to Rs. 15,000/-. Thus, claimant (Gopal Yadav) is held entitled for compensation in the following manner:

| Sl. No. | Heads | Calculation (in rupees) |
|---|---|---|
| 01. | Loss of income during treatment for 10 months | Rs. 4,500 x 10= Rs. 45,000/- |
| 02. | Towards Medical expenses | Rs.1,90,000/- (as awarded by the Tribunal) |
| 03. | Towards special diet, attendant & conveyance | Rs. 15,000/- |
| 04. | Towards paid & suffering | Rs. 15,000/- |
| 05. | Total Compensation | Rs. 2,65,000/- |

(14) **<u>Cross objection filed by claimant – Omin Yadav in MAC No. 604/2015</u>** : Looking to the minimum wage prevailing at the relevant point of time, it would be appropriate to consider income of the claimant (Omin Yadav) as Rs. 4,500/-, therefore, the claimant (Omin Yadav) would become entitle to Rs. 4,500 x 10 = Rs. 45,000/- per annum; and amount awarded under the head of special diet, attendant & attendant as Rs. 5,000/- also appears to be on lower side, which is enhanced to Rs. 15,000/-, amount awarded under the head of pain & suffering as Rs. 5,000 also appears to be on lower side; which is enhanced to Rs. 15,000/-. Thus, claimant (Omin Yadav) is held entitled for compensation in the following manner:

| Sl. No. | Heads | Calculation (in rupees) |
|---|---|---|
| 01. | Loss of income during treatment for 10 months | Rs. 4,500 x 10 Rs.45,000/- |
| 02. | Towards Medical expenses | Rs.1,13,500/- (as |

| | | |
|---|---|---|
| | | awarded by the Tribunal) |
| 03. | Towards special diet, attendant & conveyance | Rs. 15,000/- |
| 04. | Towards paid & suffering | Rs. 15,000/- |
| 05. | Total Compensation | Rs. 1,88,500/- |

(15) Since the Tribunal has already awarded Rs.2,30,000/- **(In MAC No. 1507/2015**), after deducting the same, the claimant is held entitled for additional compensation of Rs.35,000/- with interest @ 6% per annum from the date of application till realization.

(16) Since the Tribunal has already awarded Rs.1,53,500/- **(In cross-objection fled by the claimant – Omin Yadav MAC No. 604/2015**), after deducting the same, the claimant (Omin Yadav) is also held entitled for additional compensation of Rs.35,000/- with interest @ 6% per annum from the date of application till realization.

(17) In view of the above, appeals filed by the appellant/Insurance Company is liable to be and is hereby dismissed; appeal filed the claimant – Gopal Yadav is allowed in part whereas cross-appeal filed by the claimant – Omin Yadav is allowed in part.

Sd/-
(Gautam Chourdiya)
Judge

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