

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1336 of 2015**

- Kiran Agrawal W/o Dindayal Agrawal, Aged About 60 Years
Address C/o- Shri Shiv Brothers, Power House Road Korba, P.S.
And Tahsil- Korba, Civil And Revenue District- Korba, Distt.
Korba, Chhattisgarh Non Applicant No.2 - Owner

---Appellant**Versus**

1. Minor Raju Kumar Ajgale S/o Sonuram Ajgale, Aged About 14 Years Through Natural Guardian Father Sonuram Ajgale, R/o Village Jiarnagar, Near Railway Crossing Dist. Bilaspur, Chhattisgarh, At Present R/o Motisagarpara, Korba, Tah.- Korba, Distt. Korba, Chhattisgarh
2. Pinaki Dubey S/o Balmukund Dubey, Aged About 24 Years R/o Fertilizer Basti Darri, Tah. Katghora, Distt. Korba, Chhattisgarh
3. The New India Insurance Company Ltd., Through- Branch Manager, Branch Office- Sada Complex, T.P.Nagar Korba, Tahsil Korba, Distt. Korba, Chhattisgarh.

---- Respondents

For Appellant
For Respondent No.3

Shri Sanjay Agrawal, Advocate.
Shri Qamrul Aziz, Advocate.

MAC No. 1302 of 2015

- Raju Kumar Ajgale S/o Sonuram Ajgale, Aged About 18 Years R/o Jairam Nagar, Near Railway Crossing District Bilaspur, Present Address Motisagar Para Korba Police Station Korba Tehsil And District Korba Chhattisgarh.

----Appellant**Versus**

1. Pinaki Dubey S/o Balmukund Dubey, Aged About 24 Years R/o Sakin Fertilizer Basti Darri Tehsil Katghora, District Korba Chhattisgarh.
2. Kiran Agrawal R/o K / R Shri Shiv Brothers Power House Road Korba, Tehsil And District Korba Chhattisgarh

3. The New India Insurance Company Limited Branch Office Sada Complex, T. P. Nagar Korba Tehsil And District Korba Chhattisgarh.

--- Respondents

For Appellant
For Respondent No.3

Shri Akhilesh Kumar, Advocate.
Shri Qamrul Aziz, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

19.03.2019

1. As both these appeal arise out of the award dated 10.08.2015 passed by the Motor Accident Claims Tribunal, Korba, District Korba, C.G. in Claim Case No. 305/2011, they are being disposed of by this common judgment.
2. As per averments in the claim petition on 07.10.2011 injured/claimant Raju Kumar was travelling in Auto bearing no. CG12-Y-0806 and was going from Darri to Korba. However, on the way non-applicant no.1 by driving vehicle bearing no. CG12-ZJ-0164 in a rash and negligent manner dashed the said auto, as a result of which the Auto over turned and Raju Kumar suffered grievous injuries on leg, chest, head and others parts of the body. At the time of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3 due to injuries suffered by the claimant, he has become permanently disabled.
3. On claim petition being filed under Section 166 of the Motor Vehicle Act by claimant/injured through his father, the Tribunal considering the evidence led by the parties vide award dated 10.08.2015 granted compensation of Rs.2,84,000/- with interest @

8 % per annum from the date of claim petition till its realization, fastened liability on non-applicant nos. 1 & 2/Driver and Owner while exonerating non-applicant no.3 Insurance Company on the ground of breach of policy conditions.

4. **MAC No. 1336 of 2015-** This appeal has been filed by non-applicant no.2 Owner of the offending vehicle challenging the liability fastened upon the owner and exoneration of the Insurance Company as the quantum of compensation. Along with this appeal appellant has filed an application I.A. No.1 of 2015 under Order 41 Rule 27 of CPC for taking on record the driving licence of non-applicant no.1 as additional evidence. The aforesaid application is duly supported by affidavit of the appellant.
5. **MAC No.1302 of 2015-** This appeal has been filed by the injured/claimant seeking enhancement of compensation awarded by the Tribunal on the grounds mentioned in the appeal.
6. Considering the facts and circumstances of the case, this Court feels it proper to first consider the application under Order 41 Rule 27 filed in MAC No. 1336 of 2015 by the Owner.
7. Learned counsel for the appellant/owner submits that before the Tribunal non-applicant no.1/driver remained exparte and, therefore, his licence could not be produced before the Tribunal. However, the licence of non-applicant no.1 has been filed along with the above application which clearly shows that the non-applicant no.1 was having a valid and effective licence to drive

the offending vehicle.

8. Learned counsel for the respondent/Insurance Company submits that no such driving licence was produced before the Tribunal despite opportunities being granted in this regard by the Tribunal to the owner. He submits that the driving licence produced before this Court is required to be verified by the Insurance Company and the Insurance Company is required to adduce evidence in rebuttal. Therefore, he prays for remand of the matter to the Tribunal for deciding the issue of liability afresh in the given facts and circumstances of the case.
9. On due consideration, the application I.A. No.1 of 15 under Order 41 Rule 27 of CPC is allowed and the document of driving licence is taken on record.
10. Learned counsel for the appellant/owner has no objection if the matter is remitted to the Tribunal for deciding the issue of liability afresh in accordance with law, after giving due opportunity of hearing to the parties.
11. Learned counsel for the appellant/claimant also submits that the claimant is also required to adduce certain evidence to prove the factum of 100% functional disability due to 60% permanent disability caused in his right leg. Therefore, he too has no objection to remand of the matter to the Tribunal. However, he submits that the Tribunal may be directed to reassess the quantum of compensation apart from the issue of liability after affording proper opportunity of hearing and of adducing evidence

to the parties.

12. In view of above, both the appeals are allowed in part. The impugned award is hereby set aside. The matter is remanded to the concerned Tribunal with a direction to decide the claim case afresh on the issue of quantum as well as liability, after affording due opportunity of hearing to the parties, as expeditiously as possible, preferably within a period of 3 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on **15.04.2019**.

13. Needless to mention the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.

14. Record of the Tribunal be sent back forthwith.

15. With the aforesaid observations, the appeal stands disposed of. It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal shall decide the claim petitions on its own merits in accordance with law.

Sd/-
Gautam Chourdiya
Judge