NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1167 of 2013

- IFFCO Tokio General Insurance Co. Limited, 3rd Floor, Shop No. 345-347 Ganga Shopping, G.E. Road, Raipur, Tahsil and District Raipur C.G.

------Appellant/ Non-applicant 4.

VERSUS

1. Rajendra Kumar Verma, S/o Late Shri Arjun Verma aged about 42 years, resident of Village Tulsi, Post and P.S. Nevra, District Raipur, Chhattisgarh **------Claimant**
2. Lakhanlal Nirmalkar, son of Duklaha Nirmalkar, resident of Village and Post Chhatod, P.S. Nevra, District Raipur Chhattisgarh **--------Driver**
3. Rakesh Sharma, son of K.L. Sharma, resident of Village and Post Baikunth, P.S. Nevra, District Raipur Chhattisgarh **-----Registered Owner**
4. Narayan Kumar Punjabi, son of Shri Kishanlal Punjabi, resident of Ward No. 10, Tilda, P.S. Nevra, District Raipur C.G. **-------Owner in possession**

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

For Appellant	:	Mr. Abhyuday Singh, Advocate.
For Respondent No. 1	:	Mr. Amiyakant Tiwari, Advocate.
For Respondent No. 2	:	Mr. Shivendu Pandya, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

Per Parth Prateem Sahu, J.

03/07/2020

1. Challenge in this appeal is to the award dated 27-08-2013 passed in Claim Case No. 80/2011 by 7th Additional Motor Accident Claim Tribunal, Raipur, whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs. 3,24,682/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are, that on 30-06-2010 when Respondent 1-Claimant was traveling on his bicycle, at about 8:15 p.m., and reahced near electricity office, one Centro Car bearing Registration No. MP 19E 1250 (referred to as "offending Car") driven by Respondent 2/ Non-applicant 1, dashed the bicycle of the Respondent 1-Claimant. In the said accident, Respondent 1 suffered grievous injuries over his person including right hand, head. He was taken to Balaji Hospital, Raipur for treatment, where he took treatment as in in-patient from 01-07-2010 to 06-08-2010. During the course of

treatment, Respondent 1/Claimant undergone operation. The accident was reported to concerned police station, based on which, crime bearing number 150/10 was registered against Respondent 2/Non-applicant 1 driver of the offending Car and after completion of investigation, charge-sheet was filed against him. Respondent 1/Claimant filed claim application under Section 166 of the Motor Vehicles Act, 1988 before the learned Claims Tribunal, claiming compensation of Rs. 18,40,000/- mentioning therein, that on account of accidental injuries suffered by him, he became permanent disabled.

3. Respondent 2 and 4/ Non-applicant 1 and 3 submitted reply to the claim application and denied all the pleadings made in the claim application and further pleaded, that on the date of accident, offending Car was insured with Appellant/ Non-applicant 4-Insurance Company and the liability, if any, of payment of amount of compensation would be upon Insurance Company.

4. Respondent 3/ Non-applicant 2 submitted reply to the claim application pleading therein that the offending Car was sold out by him to Respondent 4/ Non-applicant 3 prior to the date of accident. Respondent 4/ Non-applicant 3 was now owner and in possession of offending Car and further on the date of accident, offending Car was insured with Appellant/Non-applicant 4, the liability, if any, would be upon Insurance Company to satisfy the amount of compensation.

5. Appellant/ Non-applicant 4-Insurance Company also submitted reply to the claim application and denied the issuance of insurance policy itself. It was further pleaded that the accident was on account of self negligence of the Respondent 1/ Claimant, the accident was on account of contributory negligence on the part of the claimant as well, the driver of the offending Car was not possessing valid and effective driving licence, thereby, there was breach of conditions of insurance policy and Insurance Company is not liable for payment of amount of compensation.

6. The Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties, held that Respondent 1/ Claimant suffered motor accidental injuries on account of rash and negligent driving of the offending Car

by Respondent 2/ Non-applicant 1, offending Car was sold out by Respondent 3 to Respondent 4 on 22-03-2010, permanent disability was not found to be proved, contributory negligence was also not found to be proved. Claims Tribunal further held that Respondent 2/ Non-applicant 1 was not possessing valid and effective driving licence and the offending Car was being plied in breach of condition of insurance policy. After recording the aforementioned findings, learned Claims Tribunal calculated the amount of compensation as Rs. 3,24,682/- and fastened the liability for payment of amount of compensation on Non-applicant 1,3 and 4 i.e. the Appellant-Insurance Company and Respondent 2 and 4.

7. Learned counsel for the Appellant-Insurance Company submits that the Claims Tribunal erred in fastening liability upon the Insurance Company even after recording a finding that the driver of the offending Car, on the date of accident was not possessing valid and effective driving licence, the Insurance Company has placed on record admissible piece of evidence by examining the clerk of RTO office Raipur, to prove that the licence produced in the name of Respondent 2/ Non-applicant 1 not to be issued from the RTO, Raipur. He further contended that the learned Claims Tribunal erred in awarding the amount of compensation on higher side. He submits that once the licence is held to be proved as fake by the learned Claims Tribunal then in view of Section 3 of the Motor Vehicles Act, and the condition mentioned in the insurance policy with regard to the driver clause, there was breach of conditions of insurance policy and the Insurance Company cannot be held liable to satisfy the amount of compensation in any manner.

8. Learned counsel appearing for Respondent 1/ Claimant submits that the learned Claims Tribunal while considering the liability to satisfy the amount of compensation, has correctly arrived at a finding that the Insurance Company has not discharged his burden to prove that there was wilful breach of conditions of insurance policy on the part of the owner of the offending Car. He submits that in case of fake licence, it is the burden of Insurance Company to bring evidence with regard to proving wilful breach. He further submits, that so far as the quantum of

award is considered, he has filed cross objection in this appeal seeking enhancement of amount of compensation awarded by the Claims Tribunal. He submits that Respondent 1/Claimant has sought an amendment on the ground that the Claims Tribunal erred in not assessing the loss of efficiency in earning capacity of Respondent 1/Claimant to be 100%, learned Claims Tribunal has not conducted proper enquiry and ought to have examined Doctor as witness to pass just and proper award of compensation within the definition under Motor Vehicles Act.

9. Mr. Shivendu Pandya, learned counsel who stated himself to be representing Respondent 2 supports the impugned award.

10. We have heard learned counsel for the respective parties and perused the record.

11. So far as, the ground raised by learned counsel for the Appellant-Insurance Company with regard to fastening of liability upon Insurance Company even after recording a finding by the Claims Tribunal that the licence produced on record on its verification was found to be a fake one. Perusal of record of claim case would show that the original owner i.e. registered owner of the offending Car is Respondent 3/ Non-applicant 2, he has very specifically pleaded in reply to claim application that the offending Car was sold out on 22-03-2010 to Respondent 4/ Non-applicant 3 and also transferred the possession of the offending Car, on the date of accident, he was not owner/ possessor of the offending Car. Respondent 1 and 3 have filed joint reply i.e. the driver and subsequent purchaser, they have denied that Respondent 2/ Non-applicant 1 to be driver and Respondent 4/ Non-applicant 3 to be owner of the offending Car and except that they have only pleaded about the quantum of the amount claimed in the claim application. Respondent 4/ Non-applicant 3 did not enter into the witness box. Respondent 3/ Non-applicant 2 entered the witness box and stated that he was the former owner of the offending Car, he sold it out on 22-03-2010. He has executed the sale letter signed by Respondent 4/ Non-applicant 3, which is placed as Ext. D1 and all the other relevant document regarding this was also handed over to the

subsequent purchaser (Respondent 4), physical possession of the offending Car was also handed over which is evident from Ext. D1. In cross examination, he stated that he was not aware about the substitution of name of purchaser (Respondent 4) in the record of Transport Department, offending Car was neither seized from his possession nor the police enquired with him in a criminal case, this witness was cross examined by learned counsel for Non-applicant 1 and 3/ Respondent 2 and 4. In cross examination, this witness stated that the sale letter was not notarized nor any revenue stamp was affixed on it. As per the evidence of NAW-2/ Respondent 2, the original owner of the offending Car, he has handed over the possession of the car by executing a sale letter in favour of Respondent 4/ Non-applicant 3, meaning thereby Respondent 3/ Non-applicant 2 was not having any knowledge about the engagement of Respondent 2/ Non-applicant 1 driver of the offending Car, neither Respondent 2/ Non-applicant 1 nor Respondent 4/ Non-applicant 3 driver and possessive owner (purchaser) of the offending Car entered into the witness box to support their pleadings.

12. In the case at hand, the Insurance Company after receiving copy of licence to be of Respondent 2/ Non-applicant 1 had made an application for issuance of particulars of licence from the office of RTO, Raipur which was issued *vide* Ext. D3, mentioning therein that the details of licence submitted for verification and issuance of particular was not issued from this office, the clerk of the RTO office was examined as NAW-3-1 to prove that the licence was not issued from their office, he has produced the relevant Register before the Tribunal and on the basis of the evidence placed on record by the Insurance Company i.e. the copy of particular issued by the RTO as well as the examination of clerk of RTO as witness before the Court, the learned Claims Tribunal has held that the licence which was produced on record was a fake licence. This finding was not challenged by any of Non-applicants i.e. the registered owner or the subsequent purchaser and the driver of the offending Car.

13. Now, in the light of the aforementioned material available on record and finding recorded by the learned Claims Tribunal, if the submission of the learned counsel

for the Appellant-Insurance Company is considered, what is emerging is that Respondent 3/ Non-applicant 2, registered owner of the offending Car had sold the offending Car prior to the date of accident and transferred the possession to Respondent 4/ Non-applicant 3 and is not the person who has engaged Respondent 2/ Non-applicant 1 as driver of the offending Car, there is no evidence brought on record by non-applicants that they have looked into the copy of licence, they have taken test of driver of offending Car or they were known that Respondent 2/ Non-applicant 1 was driving the offending Car for last many years and after recording their satisfaction, the possession of offending Car was handed over to him. It was the burden upon the owner of the offending Car to prove that he has taken reasonable care before engaging or handing over the offending Car to the driver who was driving the offending Car on the date of accident. Unless and until this evidence was brought on record by the owner of the offending Car, the burden to prove that there was wilful breach on the part of owner of the offending Car, would not be shouldered upon the Insurance Company. In the instant case, the driver and subsequent purchaser have not entered into the witness box, more so, the pleading of reply stating to have been filed on behalf of Respondent 2 and 4/ Non-applicant 1 and 3 was signed by only Respondent 4/ Non-applicant 3 who is the subsequent purchaser of offending Car, denying Respondent 2/ Non-applicant 1 to be driver and Respondent 4/ Non-applicant 3 to be owner of the offending Car. In these facts and circumstances of the case and evidence available on record, we are of the considered view that the owner has not discharged his burden that the driver in whose possession the offending Car was handed over was holding valid and effective driving licence, after recording satisfaction and for the foregoing reasons, the finding recorded by the Claims Tribunal that there was no breach of condition of insurance policy even after recording a finding that the licence produced on record by Respondent 2/ Non-applicant 1 was fake licence, is not sustainable and is hereby set aside. We held, that in absence of evidence after recording satisfaction that the driver engaged was having valid and effective driving licence, there is breach of condition of insurance policy and the Insurance Company cannot be held liable to satisfy the amount of compensation. In the matter of ***Pepsu Road Transport Corporation v. National Insurance Company*** reported in **(2013) 10 SCC 217**, the Hon'ble Supreme Court has held thus:

> "10. In a claim for compensation, it is certainly open to the insurer under Section 149 (2) (a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter, he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (*National Insurance Co. Ltd. v. Swarn Singh, 2004(3) SCC 297)*. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

14. Now the question arises before this Court as to who will be held liable to satisfy the amount of compensation, where the registered owner sold the offending Car by executing the sale letter signed by the subsequent purchaser and possession of the offending Car was also handed over to him.

15. Definition of 'Owner' is provided under Section 2(30) of the Motor Vehicles Act, which reads as under:

> "**2. (30)** "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-

> purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

16. Under the aforementioned definition for the purpose of Motor Vehicles Act, the owner is the person in whose name the vehicle is registered, registration of vehicle before the competent authority under the Motor Vehicles Act. The issue with regard to sell of vehicle by the registered owner and the liability to satisfy the amount of compensation under the Motor Vehicles Act, whether to be on the registered owner or the subsequent purchaser of the offending vehicle, has been considered by the Hon'ble Supreme Court in the case of ***Navin Kumar v. Vijay Kumar*** reported in **2018 (3) SCC 1** and held thus:

> "13. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier Act of 1939. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. ..."
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> 14. The submission of the petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In *T.V. Jose v. Chacko P.M., (2001) 8 SCC 748,* this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the Registering Authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled."

17. In another case of the Hon'ble Supreme Court in the matter of ***Prakash Chand Daga v. Saveta Sharma*,** reported in **2019 (2) SCC 747** has held thus:

> "9. The law is thus well settled and can be summarised: (SCC pp. 625-26, para 4)
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> > '4. … even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person. … Merely because the vehicle was transferred does not mean that [such registered owner] stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person.' [*P.P. Mohammed v. K. Rajappan, (2008) 17 SCC 624]"*

The aforementioned judgments of the Hon'ble Supreme Court make is clear that a claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. In the case at hand, Respondent 3/ Non-applicant 2 is the registered owner and therefore it is the Respondent 3/ Non-applicant 2 who will be liable to satisfy the amount of compensation.

18. Now we will deal with the cross objection filed by Respondent 1/Claimant for enhancement of award. Respondent 1/ Claimant has taken the ground that the learned Claims Tribunal has not conducted proper enquiry as envisaged under Section 168 of the Motor Vehicles Act read with Rule 226 of Chhattisgarh Motor Vehicles Rules, 1989, and held that the claimant has not suffered any permanent disability, whereas the claimant suffered 100% functional disability and the award of interest only 6% p.a. instead of 9%. Perusal of the record of the claim case would show that the learned Claims Tribunal, on the basis of the pleadings of the respective parties has framed as many as eight issues for consideration including the issue with regard to whether the claimant became permanent disabled. By framing the specific issue, the claimant was aware of the fact that what is required to be proved and how it is to be proved. The learned Claims Tribunal fixed the case for recording of the evidence and given sufficient opportunity to the respective parties to prove the evidence with respect to their pleadings.

Claimant/ Respondent 1 submitted the disability certificate in support of his pleadings issued by Doctor A.A. Saify as Ext. P-210. Production of disability certificate itself shows that the claimant was aware of the fact that he had to prove his case before the Tribunal i.e. he has suffered permanent disability. The claimant also examined the said doctor as witness as AW-2 before the Tribunal. In his evidence, this witness stated that the claimant for the first time visited his clinic on 11-02-2012 and perusal of disability certificate would show that the disability certificate Ext. P-210 was issued on 16-03-2012, in his evidence, this witness has admitted that the treatment of claimant was done in Balaji Hospital, Raipur, in his cross examination, in paragraph 12, he admits, that the medical documents available on record does not show that the claimant suffered any stiffness on lower limb, disability or deformity complained by the claimant. He also admitted, that there was sufficient rotation over the hip and leg bones, there was no loss of strength on muscle of right hip, ankle and foot and all the aforementioned parts of the body are working normally, there was no inconvenience in movement of Respondent 1/ Claimant, walking slow upward and downwards also, even there is no obstruction in standing of the claimant with regard to weight on either of his leg or both legs. He also admitted that he is not a Government Doctor nor a member of Medical Board. Disability certificate is to be issued by the Medical Board consisting of team of doctors and apart from it, the disability certificate issued by the treating doctor can be considered. In view of the aforementioned specific evidence available on record of the witness produced by claimant himself, we do not find any error in finding recorded by the learned Claims Tribunal that the Claimant has not suffered any permanent disability because from reading entire evidence of doctor who issued the disability certificate would show that the claimant is an abled person, there was normal movements in all the parts of the body including the injured part of the body of the claimant. Even if the pleadings regarding suffering permanent disability of the claimant could not be proved then also it is duty of the Claims Tribunal to award just and proper amount of compensation on the basis of nature of injury, nature of treatment period, loss of income during the treatment period, pain and sufferings, attendant charges, traveling and conveyance expenses.

19. Now upon considering the award passed by the learned Claims Tribunal, the Tribunal assessed the income of the claimant as Rs. 3,000/- per month as on 30-06-2010, wherein the claimant has stated that he was working as Mason and marble fitter. The amount expended towards medical treatment has been awarded as Rs. 2,59,682/-, loss of income for a period of 10 months as Rs. 30,000/-, Rs. 5,000/- towards attendant cost, special diet and conveyance Rs. 30,000/-, pains and sufferings.

20. Sofar as, the income assessed by the learned Claims Tribunal is concerned. It appears that the Claims Tribunal has assessed the income on lower side in the facts of the case where it has been specifically pleaded that the claimant is working as Mason i.e. skilled labour. In the facts and circumstances of the case, taking into consideration the date of accident, price index, cost of living and the income has not been proved by placing admissible piece of evidence, the income can be assessed as Rs. 4,000/- on notional basis. We find that the Claims Tribunal had awarded all the medical bills as claimed and proved by the appellant. Looking to the nature of injury and period of treatment taken only up to 15-07-2010 i.e. the last medical prescription available on record, it appears that the learned Tribunal has taken the period for loss of income as 10 months which is for longer period. However, looking to the amount awarded on the head of loss of income during the period of treatment as Rs. 30,000/- by taking income as Rs. 3,000/- per month, we are not inclined to interfere with the amount awarded towards loss of income during period of treatment. Further, in our view, the amount of Rs. 30,000/- awarded to the claimant towards pain and sufferings also do not call for any interference. The learned Claims Tribunal awarded Rs. 5,000/- towards attendant cost, special diet and conveyance which in the facts and circumstances of the case is on lower side. Looking to the period of treatment and nature of injury suffered by the claimant, we award Rs. 15,000/- towards aforesaid heads instead of Rs. 5,000/-. Now, the claimant will be entitled for a total sum of **Rs. 3,34,682/-** i.e. Rs. 2,59,682/- towards medical expenses, Rs.

30,000/- towards loss of income during treatment period, Rs. 30,000/- towards pain and sufferings, Rs. 15,000/- towards attendant cost, special diet and conveyance expenses.

21. The learned counsel for the Respondent 1/ Claimant lastly submitted that as this Court found that there is breach of condition of insurance policy and the liability is of Respondent 3/ Non-applicant 2 registered owner of the offending Car, for satisfying the amount of compensation, a direction be issued to the Appellant-Insurance Company to first pay the amount of compensation and thereafter to recover the same from the owner (Respondent 3) of the vehicle, the ground of exoneration of Insurance Company is only with regard to the fake driving licence of the driver of offending Car, on the date of accident. The fake licence is as good as no licence. The claim is covered under the policy itself as he being a 3rd party. The Hon'ble Supreme Court taking into consideration the provisions of Motor Vehicles Act and considering the Act to be a beneficial piece of legislation, in the case of ***Shamanna v. Oriental Insurance Co. Ltd.*** reported in **(2018) 9 SCC 650** has considered the issue of "pay and recover" in case of no licence and held that if the driver of the offending vehicle does not possess a valid driving licence, the principle of pay and recover can be ordered to direct the insurance company to pay the claimant first, and then recover the same from the owner of the offending vehicle and further held as under:

> "13. Since the reference to the larger Bench in *Parvathneni case (National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785)* has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in *Swarn Singh case (National Insurance Co. Ltd. v. Swarn Singh, (2004) 3 SCC 297)* followed in *Laxmi Narain Dhut (National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700* and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in *Swarn Singh (supra)* and *Laxmi Narain Dhut (supra)* cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the

> vehicle. The impugned judgment (Shamanna v. Laxman, 2016 SCC OnLine Kar 6928) of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored."

22. In view of the aforementioned dictum of the Hon'ble Supreme Court and in the facts and circumstances of the case, we direct the Insurance Company to first deposit the entire amount of compensation and thereafter to recover the same from the registered owner of the offending Car i.e. Respondent 3/ Non-applicant 2. As Respondent 3/ Non-applicant 2 has specifically pleaded that he had already sold his vehicle and handed over the possession of the vehicle, Respondent 3/ non-applicant 2 will be at liberty to draw appropriate proceeding available to him under the law against Respondent 4 for recovery of the amount.

23. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Pawan