HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 44 of 2024

The New India Assurance Company Limited Through Its Divisional Manager, Divisional - Office, 1st Floor, L I C Investment Building Place Jeewan Bima Marg Pandari Raipur, District - Raipur, Chhattisgarh

……………….(Non - Applicant No. 3)

--- Appellant

Versus

1 - Bhanu Mandavi, S/o Basnant Lal Mandavi, aged about 20 years, R/o Village - Chhindpal, P.S. - Badgaon, Tahsil - Pakhanjur, District - North Bastar Kanker, Chhattisgarh.

……………….(Applicant No. 1)

2 - Amar Nath Gota, S/o Maniram Gota, aged about 38 years, R/o Village Kanhargaon, Tahsil Bhanupratappur, District - North Bastar Kanker, Chhattisgarh

……………….(Driver) (Non - Applicant No. 1)

3 - Jayesh Kumar Bothra, S/o Parasamal Bothra, R/o Village - Sambhalpur, Tahsil Bhanupratappur, District - North Bastar Kanker, Chhattisgarh.

……………….(Non-Applicant No. 2)

--- Respondents

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M.A.(C) No. 1723 of 2023

Bhanu Mandavi S/o Basant Lal Mandavi Aged About 20 Years R/o Village Chindpal, Thana Badgaon, Tahsil Pakhanjore, Distt. Uttar Bater Kanker (C.G.)

--- Appellant

Versus

1 - Amarnath Gota, S/o Maniram Gota, aged about 38 years, R/o Village Chindpal, Thana Badgaon, Tahsil Pakhanjore, Distt. Uttar Baster Kanker (C.G.)

2 - Jayesh Kumar Bothra, S/o Parasmal Bothra, R/o Village Sambalpur, Tahsil Bhanupratappur Distt. Uttar Baster Kanker (C.G.)

3 - The New India Insurance Company Ltd. Through Its Branch Manager, First Floor, L.I.C. Investment Building Falesh, Jeevan Beema Marg, Pandhari, Raipur Distt. Raipur (C.G.)

--- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondent No.1	:	Smt. Bhavika Kotecha, Advocate.

Hon'ble Shri Justice Sachin Singh Rajput

24.03.2026

1. Both the appeals are arising out of the same award, they are being heard and decided by this common order.

2. These two appeals have assailed the legality, validity and the correctness of the award dated 18.08.2023 passed in Claim case No. 11/2022 by the Additional Motor Accident Claims Tribunal, Bhanupratappur, District – North Bastar – Kanker (C.G.).

3. MAC No. 44/2024 has been filed by the appellant/Insurance Company for exoneration for payment of compensation whereas MAC No. 1723/2023 has filed by the claimants for enhancement of compensation.

4. Parties are herein after referred to claimant, driver, owner and insurance Company.

5. Fact of these case :- An application under section 166(1) of Motor Vehicles Act, 1988 read with amended Act of 1994 (for short 'Act of 1988) has been filed by the claimant in an accident that occurred on 28.06.2019 at about 11:30PM (night) by rash and negligent driving of the offending vehicle 'truck' bearing registration No. C.G-08/B/2847.

6. As per pleadings of the claim application, the claimant seated in a pickup vehicle bearing registration No. C.G-19/H/1078 was coming towards Korar. When he reached near Imli turn at Village – Bhanbeda, the driver of the offending vehicle by rash and negligent driving dashed to the pickup vehicle of the claimant resulting into severe injuries on the person of the claimant. He was taken to C.H.C. Hospital Bhanupratappur Doctor there with primarily treatment referred him to Government Komaldev Hospital, Kanker from where he was shifted to Narayana Hospital, Raipur where he remained in treatment from 29.06.2019 to 03.07.2019. As result of the injuries sustained by him, his right hand was amputated. At the time of accident he was working as agriculturist and driver, earning Rs.15,000/- per month. Thus a compensation of Rs.21,00.000/- was claimed.

7. The driver and owner of the offending vehicle filed their written statement and denied the averments of the claim application. It was pleaded that the driver of the offending vehicle had valid and effective driving license and it was been driven with all necessary documents. Thus, prayed for exoneration from payment of compensation.

8. The Insurance Company in its written statement denied the averments of the claim application and it was pleaded that the driver of the offending vehicle was not holding valid and effective driving license. Insurance Company is not liable to pay compensation as the offending vehicle was not holding valid fitness and permit. As the accident occurred between two vehicles, thus, owner and insurance company of the pick vehicle is necessary parties. Thus prayed for dismissal of the claim application.

9. The learned Tribunal framed as many as five issues.

10. On assessment of the material and evidence available on record, awarded compensation of Rs. 13,22,215/- in favour of the claimant and the driver, owner and Insurance Company were held responsible for the payment of compensation.

11. Learned counsel for the appellant/Insurance Company in MAC No.44/2024 submits that the finding recorded by the learned Claims Tribunal holding the Insurance Company liable to pay compensation is bad in law. As the offending vehicle was light without any valid permit and there was no authorization for plying the offending vehicle in the State of Chhattisgarh. He submits that the amount of compensation is on the higher side. Its a head on collision between two vehicles, therefore its a case of contributory negligence. Tribunal ought to have deducted 50% compensation amount from the awarded amount of compensation.

12. Learned counsel appearing for the claimants refuted the submission of the learned counsel for the Insurance Company. It is submitted that amount of compensation awarded by the Tribunal is on the lower side which requires suitable enhancement.

13. The learned Claims Tribunal on assessment of evidence available on record has rightly fastened the liability upon the Insurance Company. Thus it is submitted that the appeal of the insurance company may be dismissed and compensation awarded may be enhanced.

14. Heard the learned counsel for the parties, considered their rival submissions and also perused the record.

15. First this Court would deal with the submission of the learned counsel for the Insurance Company as he submits that there is head on collision between two vehicles, thus its a case of contributory negligence and the amount of compensation requires reduction. As per the pleadings of the claim application, the claimants was driving the pick-up vehicle and near the Imli turning near Village – Bhanbeda, the offending vehicle driven rashly and negligently by its driver dashed to the vehicle of the claimant resulting into severe injuries and ultimately amputation of his right hand.

16. In order to prove the negligence on the part of offending vehicle, claimant examined himself as AW-1 who deposed that his vehicle was dashed by the driver of the offending vehicle driving it in rash and negligent manner. In the cross-examination he denied the suggestion that he dashed to the offending vehicle by driving it rashly and negligently and also denied that there is head on collision between two vehicles. He has exhibited the papers of the criminal case agaisnt the driver of the offending vehicle such as final report, FIR , seizure memo, M.L.C. etc. The driver of the offending vehicle was not examined to throw some light as to whether he was not driving the offending vehicle rashly and negligently and it was only the claimant responsible for the accident. The Insurance Company barring the exception made in the written statement failed to examine any witness in respect of contributory negligence on the part of the claimant. From the criminal papers exhibited and statement of claimant it is evident that the driver of the offending vehicle was responsible in causing the accident. The proceeding in the motor vehicle act are summary in nature, and Court and Tribunal are required to assess the negligence on the basis of preponderance of probabilities. Thus in the opinion of this Court, the claimants was able to prove the negligence on the part of driver of the offending vehicle. In this contest, I am guided by the judgment of Hon'ble Supreme Court in case of **Bimla Devi & ors. v. Himachal Road Transport Corporation & ors., AIR 2009 Supreme Court 2819**. Thus in absence of any evidence contrary, being insurance company failed to prove the contributory negligence on part of claimant. Thus contention of the learned counsel for the appellant is rejected.

17. The next submission of learned counsel for the insurance company is that the offending vehicle was driven without valid and effective permit and though there was a national however, there was national permit, however, there was no authorization in the permit to ply the vehicle in the State of Chhattisgarh. In respect of violation of terms and condition of violation of insurance policy, issue No. 3 has been framed by the learned Tribunal. The burden to prove this issue is upon the insurance company. Insurance Company has examined Rajeev Kumar (NAW-1). In his statement before the learned Claims Tribunal he stated that the offending vehicle was insured with it from 18.07.2018 to 27.07.2019. He deposed that on the date of accident there was no permit authorization of the offending vehicle , thus, insurance company is not liable to pay the compensation. He has exhibited the national permit as Ex.D-2 and authorization letter as Ex.D-3. Another witness namely Alok Kumar Ogre (NAW-2) also deposed in the same line. Learned Tribunal was deciding issue No.3 as observe that both the witnesses admitted that national permit for transportation of goods was issued from 28.11.2015 to 27.11.2020. It has been further observed that the NAW-1 - Rajeev Kumar has admitted in his cross-examination that in the exhibit D-1 there is no mention of the fact to keep the authorization letter along-with the permit. It has also been observed that NAW-2 - Alok Kumar Ogre also admit that along-with national permit authorization letter for six years is require to be kept is not mentioned in the national permit Ex.D-2. Thus, the learned tribunal found that for grating the compensation under the insurance policy Ex.D-1 authorization letter along-with national permit is not necessary and held that as no specific mention is made in the Ex.D-1 with regard to keeping the authorization letter along-with the permit, the insurance company cannot be absolved from its liability and found that there is no violation of insurance company and held that there is valid and effective permit and fitness. The issue of authorization letter came for consideration before the Hon'ble Supreme Court in case of **Binod Kumar Singh Vs. National Insurance Company Limited (2025) 10 SCC 173** in which it is held that the insurance company could not have refuted claim on such a frivolous ground. It has been observed in paragraph – 7 as under :-

> "7.This Court has carefully gone through the permit which is on record and the National Permit is certainly valid up to 13-10-2017. The authorisation fee was required to be paid only when the truck was moving out of the State of Bihar as it was registered in the State of Bihar and the truck caught fire on account of short-circuit on 8-6-2014 in the State of Bihar itself and, therefore, the respondent Company could not have repudiated the claim on such a frivolous ground. The permit in question was issued by the competent authority in Bihar and, therefore, there was no requirement of paying authorisation fee when the truck was being used in the State of Bihar and as per the terms and conditions of the National Pernit, authorisation fee was required to be paid only when the ruck was moving out of the State of Bihar."

18. In the case in hand also the offending vehicle is registered in the State of Chhattisgarh, the accident had occurred in the State of Chhattisgarh and admittedly the national permit was issued from RTO, Raipur (C.G.) as Ex.D-2. In light of discussion herein above and placing reliance on **Binod Kumar Singh (supra),** the finding of the learned Claims Tribunal in respect of violation and terms of the insurance policy is based upon the proper appreciation of the evidence. Thus, this contention of learned counsel for the insurance company cannot be accepted thus repelled.

19. Now the issue for awarding just compensation requires determination by this Court. Learned Claims Tribunal found the age of claimant to 28 years; his income to

Rs.6000/- per month; his functional disability to 70%. The first point for determination is the income of the claimant. As per pleading, the claimant was an agriculturist and driver. He pleaded his monthly income to Rs.15,000/- per month. Barring oral statement no other cogent evidence is available on record in respect to his income. He was found to be aged about 28 years. Taking into consideration the age of claimant; his profession, date of accident; his place of residence; minimum wages prevailing, this Court can safely take his monthly notional income as Rs.9000/- per month. Learned Claims Tribunal placing reliance on judgment of Hon'ble Supreme Court in case **Rajkumar Vs. Ajay Kumar & Anr., (2011) 1 SCC 343** assessed the functional disability of the claimant to 70%. The finding so recorded appears to be based upon due appreciation of evidence. In view of the above this Court reassess the compensation as below:-

S.No.	Head	Calculation
1.	Monthly Income of the deceased	Rs.9,000/-
2.	Yearly Income of the deceased	Rs.1,08,000/-
3.	Future prospect 40% (Rs.108000 X 40%)	Rs.43,200/-
4.	Total annual Income (Rs.1,08,000 +43,200)	Rs.1,51,200/-
5.	Loss of earning capacity to 70%	Rs.1,05,840/-
6.	Loss of future earning by applying multiplier of 17 (Rs.1,05,840 x 17)	Rs.17,99,280/-
7.	For treatment	Rs.80,695/- (as awarded)
8.	Special diet + transportation + attendant	Rs. 25,000/-
9.	For physical & mental agony	Rs.50,000/-
	Total compensation	Rs. 19,54,975/- (19,55,000/- round figure)

20. Learned Tribunal has awarded Rs.13,22,215/- thus after deducting the same, the claimant is held entitled to enhanced compensation of Rs.06,32,785/-

(Rs.19,55,000/- - Rs.13,22,215/-) with 6% interest from date of this appeal i.e. 19.12.2023. The insurance Company shall deposit the amount within a period of 60 days from the date of receipt of copy of this order.

21. After deposit is made 75% amount shall be invested in the name of claimant as fixed deposit for 02 years in any nationalized bank. Rest of the amount shall be disbursed to him through account payee cheque / bank transaction.

22. As a result, the appeal filed by Insurance Company is dismissed and appeal filed by the Claimant is allowed in part.

Sd/-
(Sachin Singh Rajput)
Judge

Ashish