

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No.617 of 2005**

Ramdhan S/o Amoli Ram Caste Halba aged about 30 years Resident of village Karhibhadar Present R/o Chipra Tehsil Balod District Durg Chhattisgarh

---- Appellant**Versus**

1. Dev Kumar S/o Bhuwali Caste Nishad aged about 30 years Resident of Chadaini Bhata Rajhara Police Station Rajhara Tehsil Balod District Durg Chhattisgarh
2. Suresh Kumar Tiwari S/o Ram Kumar Tiwari aged about 33 years Resident of Baldeobagh Tehsil and District Rajnandgaon Chhattisgarh
3. The National Insurance Company Limited through Divisional Office Divisional Manager Gil Complex Station Road Tehsil and District Durg Chhattisgarh

---- Respondents

For Appellant	:	Shri Tarun Dansena, Advocate.
For Respondents No.1 & 2	:	Shri Parag Kotecha, Advocate.
For Respondent No.3	:	Shri Qamarul Azia, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****05/08/2016**

1. This appeal by the claimant for enhancement of compensation is directed against the award dated 29.1.2005 passed by the Learned Additional Motor Accident Claims Tribunal, Balod, District Durg in Claim Case No.28 of 2001 whereby he awarded compensation of Rs.32,550/- to the claimant.
2. The undisputed facts are that the claimant suffered injuries in a motor vehicle accident. This fact is born out not only from the evidence but also from the FIR. This accident took place on 28.1.2001. The claimant suffered

injury on the head. He was riding a bicycle which was hit by the offending vehicle and he fell down and sustained injuries. X-Ray of the skull was conducted at Bhilai Scan and Research (Pvt.) Ltd. and it was found that a fracture in his left frontal bone. There was a thin hairline fracture in the posterio superiorly from just above the mastoid air cell. In the temporo parietal region, there were two fractures in the skull. C.T. Scan was also conducted and this also discloses similar fracture of the head and also sub-dural heamotoma in the frontal region. The claimant also produced a disability certificate (Exhibit-P/5). According to which the disability of the claimant has been assessed at 35%.

3. It is well settled law that in a case of injuries compensation is awarded under two heads; pecuniary damages and non-pecuniary damages. Under the head of pecuniary damages, the expenses of treatment, attendants, special diet, transportation, hospitalization will be covered. Under the head of pecuniary losses, the claimant will also be entitled to the amount of income which he has actually lost due to his being unable to attend his work and in case, the injury has caused a permanent disability, then the future loss of income shall also have to be considered. Under the head of non-pecuniary damages, normally damages will be awarded under the head of pain and suffering and in cases of permanent disability also for loss of amenities of life and future discomfort in life. In cases where the claimant is a young unmarried person and the injuries affect his marital prospects, damages for loss of marital prospects can also be awarded.

4. Applying the aforesaid principles, I now proceed to assess the compensation. As far as attendant charges are concerned, the claimant was admitted in hospital on 28.1.2001 and was fully discharged on 8.2.2001. Therefore, he remained in hospital for approximately 19 days. This Court

cant take judicial notice of the fact that in hospitals in India attendants are required and if the family members are attendants, some compensation has to be awarded. Even in the year 2001, the expenses of one attendant including his meal etc. was Rs.150/- per day and therefore, the cost of the two attendants works out to Rs.300/- per day and for 19 days, it works out to Rs.570/- which is rounded off to **Rs.600/-**.

5. As far as the assessment of medical expenses is concerned, the claimant has only been awarded Rs.2,550/- for medical expenses. This Court can take judicial notice of the fact that people who belong to lower strata of society do not retain the medical bills and other documents and they do not normally keep a record to their day to day expenses of treatment. A lot of money is spent for which receipts are not kept. They do not know about the reimbursement of the amount. Keeping in view the nature of the injuries and length of the treatment and the fact that C.T. Scan etc. was performed, I assess the medical expenses at **Rs.7,500/-**.

6. As far as the assessment of income of the injured is concerned, it was alleged that claimant was running a small dhaba at that time. In the year 2003 also, dhaba owners would earn Rs.150/- to 200/- per day, therefore, I assess his income as Rs.5,000/- per month. He could not work for at least a month and therefore, his loss of income is assessed at **Rs.5,000/-**.

7. As far as his future loss of income is concerned, the disability certificate shows the disability of 35%. On careful perusal of the disability certificate, I find that the claimant is suffering with headache, deafness and dumbness in the limbs. In my view, the loss of earning is not equal to loss of disability. The claimant runs the dhaba and it is not relevant that he could not run the dhaba because of these injuries, however, his working capacity has definitely come down. Therefore, I assess the loss of future income in this

case at 20%. The income of the claimant was assessed at Rs.4,500/- per month and 20% of that amount works out to Rs.900/- per month or Rs.10,800/- per annum. The claimant was aged about 32 years as per medical report and therefore, the relevant multiplier as per **Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and another, (2009) 6 SCC 121**, would be 16 and the compensation on this count works out to **Rs.1,72,800/-**.

8. As far as pain and suffering is concerned, the claimant has been awarded lumpsum amount of Rs.30,000/- but no specific amount has been awarded for pain and suffering. Keeping in view the fact that claimant suffered head injuries and C.T. Scan has also been conducted, he is awarded **Rs.20,000/-** for pain and suffering.

9. The claimant has not been awarded any amount whatsoever for future discomfort and loss of amenities of life. Though I have assess the loss of earning capacity due to disability, one cannot lose sight of the fact that due to this injury, the claimant has become slightly deaf and is also getting headache. It may also happen that these problems increase over in time. The claimant cannot live his normal life. Therefore, he is awarded **Rs.30,000/-** under this head.

Therefore, the total compensation works out to Rs. (600 + 7,500 + 5,000- + 1,72,800 + 20,000 + 30,000) = Rs.2,35,900/- (rupees two lakh thirty five thousand nine hundred).

10. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.32,550/- to Rs.2,35,900/-, i.e. by Rs.2,03,350/- On the amount of compensation so awarded, the claimant shall also be entitled to the interest @ 9% per annum from the date of filing of the claim petition till

payment/deposit of the awarded amount.

11. According to the Insurance Company, it has been exonerated on the ground that the driver did not have a valid driving license. In **(2015) 7 SCC 62, S. Iyyapan v. United India Insurance Company Limited & Another**, the Apex Court has held that even if the person does not have a valid driving license, the Insurance Company is bound to satisfy the award under Section 149(2) of the Motor Vehicles Act. But it can have a right to recover the same from the owner of the vehicle. Therefore, the Insurance Company is held liable to satisfy the award but it can recover the amount paid by it from the owner of the vehicle. For this purpose, it will not file any other civil suit but can initiate certificate proceedings within the meaning of Section 174 of the Motor Vehicles Act for issuance of certificate for recovery of the award from the owner of the vehicle.

12. The appeal is disposed of in the aforesaid terms.

**Sd/-
(Deepak Gupta)
Chief Justice**