

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.387 of 2008**

Sangram Singh Bhuwal S/o Baldau Singh Bhuwal, aged about 32 years, R/o 58-59, Sector-3, Geetanjali Nagar, Raipur, Tehsil & District Raipur (C.G.).

Through Next friend (father) Baldau Singh Bhuwal S/o Late Shri Sundar Singh Bhuwal, aged about 63 years, R/o Sector – 3, Geetanjali Nagar, Raipur, Tehsil & District Raipur (C.G.).

---Appellants

Versus

1. Rucy Sahu S/o Raju Sahu, aged about 21 years, R/o Near Shiv Mandir, Shyam Nagar, Camp – 2, Police Station – Chawani, District – Durg (C.G.).
2. Sanjay Kumar Nayak S/o Ramnarayan Nayak, aged about 30 years, R/o Near Ashok Kirana Stores, Shastri Nagar, Bhilai, District Durg (C.G.).
Other Address – Through Shobha General Stores, Uttar Gangotri, Supela, Bhilai, District Durg (C.G.).
3. The Oriental Insurance Company Limited, Through Divisional Manager, Divisional Office No. - 2, The Oriental Insurance Company Limited, Chawla Complex, Devendra Nagar Road, Raipur, Tehsil & District – Raipur (C.G.).

---Respondents

For the appellant	:	Shri Shivendu Pandya, Advocate.
For respondent No.3/ Insurance Company	:	Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

31/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act assailing the award dated 16/11/2007 passed by the 11th Additional Motor Accidents Claims Tribunal (F.T.C.), Raipur (C.G.) in Motor Accident Claim Case No.88/2006.
2. Vide the said impugned award, the Tribunal in an injury Case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.1,43,000/- with interest @ 9% per annum from the date of application.
3. The counsel for the appellant referring to the records produced before the Court submits, that it is a case where the Tribunal has erred in as much as not appreciating the fact, that the claimant in the instant case has suffered 100% loss of earning capacity as also disability of 100% because of the impact of the injuries that he sustained. He got his mental balance disturbed and apart from it,

he has also received certain permanent disability with which he is not able to move freely and that he has also lost his memory and thus the compensation awarded by the Tribunal is on the lower side and same deserves to be suitably modified. He further submits, that three of the doctors are examined before the Tribunal namely Dr.A.A.Saifi–AW/2, Dr.Rajan Tiwari–AW/5 and Dr.S.Dhagamwar–AW/4 all of whom have given specific details of the treatment and the condition of the claimant.

4. The gravity of the injury is also established from the fact, that the claimant application as well as the present appeal itself has been filed through the next friend i.e. the father of the claimant which itself shows, that the claimant was not in a position to act suitably for conducting his case properly. Further, the gravity also stands established from the fact, that the claimant himself could not be produced as a witness before the Court below because of his mental and physical condition and that his wife and other relatives have been examined on his behalf.

5. All these facts are not in dispute in the present case. The counsel for the Insurance Company opposes the award only on the ground, that the doctors have not established the permanent disability and it has not been properly assessed or proved before the Tribunal.

6. Having heard the rival contentions put forth on either side and on perusal of record undisputed is the date of the accident, the claimant suffering from injuries from the said accident and the vehicle involved in the accident. Likewise it is also not in dispute so far as the vehicle being duly insured with the respondent No.3/Insurance Company. All that this Court is to see is whether the compensation awarded by the Tribunal is just and reasonable or not?

7. The claimant in the instant case have pleaded, that he was a lawyer by profession and in addition he also had agricultural land from which he derived income. The Tribunal has assessed his income at Rs.3,000/- per month though the claimant have claimed the income to be assessed around Rs.8,000/- per month.

8. True it is that there is no sufficient evidence to show the income of the injured, but the contention that he was a lawyer is not in dispute and that he had agricultural land also is not in dispute.

9. The accident is of the year 2005. The minimum income of even an unskilled labour during the said period would be around Rs.150/- per day i.e. Rs.4,500/- per month.

10. Thus, this court assesses the income of the injured at Rs.4,500/- per month for quantifying the compensation. The said amount shall also get added by 50% towards future prospects which would make the monthly income of the injured at Rs.6,750/- making it Rs.81,000/- yearly. If the said amount is multiplied by applying multiplier of 16 considering the age of the injured, the amount would come to Rs.12,96,000/-. It is ordered accordingly, that the claimant shall be entitled for the compensation of Rs.12,96,000/- towards loss of earning capacity and the compensation under the other heads shall remain intact as awarded by the Tribunal. Thus, the total amount of compensation payable to the claimant would become Rs.14,39,000/-.

11. Considering the fact, that the appeal was pending before this Court for almost 10 years, the interest payable on the said enhanced amount shall be 6% from the date of application.

12. The appeal stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit