

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 630 OF 2012

Kishorchandra Raolo, S/o Late Govind Raolo, aged about 36 years, R/o Secto 4, Bhilai, District Durg (C.G.)

... Appellant

Versus

1. Smt. Jaypal Kaur, W/o Guruvinder Singh @ Rana, R/o near Garder Bridge, Dallirajhara, District Durg (C.G.)
2. The National Insurance Co. Ltd., Gurunanak Chowk, Jagdalpur, District Bastar (C.G.)
3. The Bajaj Alliance General Insurance Co. Ltd., through Vandana Auto, Vandana House, G.E. Road, Raipur (C.G.)
4. Surendra Kumar Raolo, S/o Late Govind Raolo, R/o Bhilai, Sector 4, Striate No. 5, Q. No.7(A), District Durg (C.G.)

... Respondents

For Appellant	:	Mr. A.L. Singroul, Advocate.
For Respondent No.2	:	Mr. B.N. Nande, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/08/2017

1. The present is an appeal under Section 173(2) of the Motor Vehicle Act, 1988, preferred by the Appellant-Claimant assailing the award dated 29.11.2011 passed by the First Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur, in Claim Case No. 115 of 2011.
2. Vide the impugned award, the Tribunal in an injury case sustained by the Appellant-Claimant awarded a compensation of Rs. 4,02,484/- with interest at the rate of 6% thereon from the date of filing of claim application, fastening the liability upon the Respondents to pay the same to the Appellant-Claimant. It is this award which is under challenge in the present case so far as quantum of compensation is concerned.
3. Learned Counsel for the Appellant-Claimant submits that the income of the Appellant-Claimant which has been assessed by the Tribunal is on the lower side. The Appellant-Claimant had specifically submitted before the Tribunal that he was at the relevant point of time working in a private

finance company and was earning around Rs. 5000/- a month but the Tribunal has taken the monthly income of Rs.3000/- as notional income. He further submits that so far as the grant of compensation under the head of future prospect is concerned the same is by now well settled right from the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Another** [2009 (6) SCC 121] as also in the case of **Rajesh and Others v. Rajbir Singh and Others** [2013 (9) SCC 54] and hence the Tribunal has erred in not granting compensation under the head of future prospects. He also submits that there is a specific pleading by the Appellant-Claimant which has also been supported by the evidence of Doctor that the Appellant-Claimant has suffered physical disability of 85% inasmuch as because of the fracture on his spinal cord both of his legs have got paralyzed and this fact has been proved by the Doctors before the Tribunal, but the Tribunal has assessed the disability at 60% which should had been 85%. He thus prayed for suitable enhancement of the amount of compensation awarded by the Tribunal.

4. Learned Counsel for the Respondent-Insurance Company however opposes the appeal and submits that the impugned award seems to be fair and reasonable and the same is based on the evidence which have come on record, therefore the impugned award does not warrant interference and the appeal is liable to be rejected.

5. Having considered the rival contention put forth on either side and on perusal of the record, factual matrix of the case so far as the accident, the resultant injury sustained by the Appellant-Claimant and the accident arising out by the offending vehicle i.e. Truck No. CG07-ZC/2845, is not in dispute or under challenge. The offending vehicle being insured with Respondent No.2-Insurance Company is also not in dispute. The only

issue which needs consideration is, whether the amount of compensation awarded by the Tribunal is just and reasonable or not.

6. Considering the date of accident i.e. 8.11.2002, it is anybody's guess that during that period even a daily wager or an unskilled labourer would have got a wage of somewhere around Rs.150-200/- a day i.e. Rs. 4500-6000/- a month. The Appellant-Claimant claims to have earned Rs.5000/- a month at the relevant point of time. This Court does not have any hesitation in accepting the said contention of the Appellant-Claimant and thus even if the entire amount is not taken as monthly salary, it can safely be assessed that the monthly income of the Appellant-Claimant would be around Rs.4500/- at the relevant point of time, which we accordingly quantify for the purpose of calculating the compensation.

7. It is also pertinent to take note of the fact that Dr. A.D. Urgaonkar (AW-2), who had examined the Appellant-Claimant, had given the certificate (Exhibit P-52) whereby he had certified the Claimant to be suffered from disability to the extent of 85% and he has also made a statement before the Tribunal that as a result of accident, the Claimant has suffered of paraplegia, which is a sort of paralysis, on both his legs. In view of the said statement of the Doctor (AW-2), this Court is of the opinion that the compensation payable to the Appellant-Claimant ought to had been calculated accepting his disability to be 85% instead of 60% what has been assessed by the Tribunal.

8. Further, this Court also has no hesitation in accepting the contention of the Appellant-Claimant for the purpose of quantifying the compensation under the head of future prospects.

9. Thus, for the aforesaid reasons, accepting the monthly income of the Appellant-Claimant as Rs.4500/- i.e. Rs. 54000/- per annum, if we add 50% i.e. Rs.27000/- on the said amount, the yearly income would come to

Rs.81,000/- which after applying the multiplier of 18 looking to the age of the Appellant-Claimant would be Rs. 14,58,000/- of which 85% towards disability would make it Rs.12,39,000/-. It is accordingly ordered that the Appellant-Claimant shall be entitled for an amount of Rs. 12,39,000/- as compensation under the head of loss of income and for the disability sustained.

10. The appeal stands accordingly allowed. The impugned award is modified to the extent that the Appellant-Claimant is entitled to get a compensation of Rs. 12,39,000/- instead of Rs. 4,02,484/- as awarded by the Tribunal. The enhanced amount shall also carry the interest at the same rate as has been assessed by the Tribunal. Rest of the directions and conditions enumerated in the impugned award shall remain intact.

Sd/-
(P. Sam Koshy)
Judge