

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 545 of 2014

1. Shyamsundar Gautam S/o Itwar Singh Gautam, aged about 35 years, R/o Village & Post Sipat, Police Station & Tahsil Sipat, District (Revenue & Civil) Bilaspur, CG

---- Appellant/Claimant

Versus

1. Faneshwar Nath Patle S/o Guharam Patle, R/o Village & Post Taraud, Police Station & Tahsil Akaltara, District (Revenue & Civil) Janjgir Champa (CG) **Respondent (Driver)**

2. Parmeshwar Prasad Patle S/o Ramadhar Patle, R/o Village & Post Taraud, Bastipara, House no. 156, Police Station & Tahsil Akaltara, District (Revenue & Civil) Janjgir Champa (CG)

Respondent (Owner)

3. National Insurance Company Limited through Branch Office, Taha Complex, Vyapar Bihar Road, Bilaspur, Tahsil & District (Revenue & Civil) Bilaspur, CG **---- Respondent/Insurer**

For Appellant	-	Shri Anand Kesharwani, Advocate.
For Respondents 1& 2	-	None appeared.
For Respondent No.3	-	Shri Ratan Pusti, Advocate

Hon'ble Shri Justice Pritinker Diwaker and Hon'ble Justice R.P. Sharma

Order on Board

24 /07/2017

This appeal arises out of the award dated 11.10.2013 passed by Additional Motor Accident Claims Tribunal (for short the "Tribunal") Bilaspur in Claim Case No. 69/2012 awarding a compensation of Rs. 2,27,400/- in favour of the appellant/claimant.

2. Facts of the case in brief are that on 8.11.2011 when the appellant/claimant was standing near Janjgir turning to catch the bus, a Tavera car bearing registration No. CG-11-E/0470 driven by respondent No.1 herein in a rash and negligent manner came there and hit him as a result of which he suffered injuries on various parts of his body including fracture of bones of head, spine, nose and right shoulder and for which he remained hospitalized from 8.11.2011 to 24.11.2011 in Apollo hospital. A claim petition was filed by him claiming a compensation of Rs. 18,15,000/- *inter alia* pleading that before the accident he was working as Supervisor with Subhash Trading Balaji Rice Mill and was earning Rs. 10,000/- per month and that on account of the permanent disability suffered by him he has lost his job.

3. Pleadings of the claimant have, however, been denied by the respondent No.1 (driver of the offending vehicle) and respondent No.3 (the insurance company).

4. After considering the pleadings of the respective parties and evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs. 2,27,400/- in favour of the appellant/claimant. Hence this appeal for enhancement.

5. Counsel for the appellant/claimant submits that the finding recorded by the Tribunal in not accepting the gross monthly income of the appellant/claimant which was pleaded in the claim petition as Rs. 10,000/- is wholly in contravention of the settled legal position and therefore liable to be set aside. Likewise, he submits that the amount awarded under other heads is also quite inadequate and deserves to be suitably enhanced. In support of his

contention, he placed reliance on the decisions of the Apex Court in the matter of **Rekha Jain v. National Insurance Co. Ltd (2013) 8 SCC 389; Neeta v. Divisional Manager, MSRTC, Kolhapur, (2015) 3 SCC 590; Nagrajappa v. Divisional Manager, AIR 2011 SC 1785; G. Gananam v. Metropolitan Transport, AIR 2009 SC 1167; Rajesh v. Rajveer and others, 2013 (2) ACCD 969 (SC) and Reshma Kumari v. Madan Mohan and others, 2013 (2) ACCD 977 (SC).**

6. On the other hand, counsel for respondent No.3 (insurance company) supports the award impugned.

7. Heard counsel for the parties and perused the documents on record.

8. In a case where the payment of compensation to a road accident victim who has suffered injuries and resultant disability to perform the work as effectively as he was doing prior to the accident, a judicious approach has to be undertaken by the Courts – neither too conservative nor too liberal as if giving a bounty. However, while making assessment in the cases of like nature some guess-work can also be made a basis therefor - (**Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd - (2011) 10 SCC 756**). The other important factor to be taken note of is that in a case where the victim has suffered accidental injuries, the damages for loss of expectation of life on account of injury has to be awarded keeping in mind that in such cases, his normal longevity gets shortened.

9. From the pleadings of the respective parties and the overall evidence on record it is clear that the accident occurred with the

offending vehicle which was insured with respondent No.3, and was being driven by respondent No. 1 in a rash and negligent manner. The Tribunal has rightly considered the expenditure incurred by the appellant/claimant for his medical treatment on the basis of bills produced by him which comes to Rs. 2,00,000/- and being so this part of the impugned award is hereby maintained. This apart, the Tribunal has awarded Rs. 10,000/- for future treatment and special diet after being discharged from the hospital which according to the opinion of this Court appears to be inadequate and requires to be suitably enhanced to Rs. 30,000/-. Thereafter, the amount of Rs. 3000/- awarded by the Tribunal for transportation also appears to be on the lower side and the same is hereby enhanced to Rs. 10,000/-. Likewise, the Tribunal has awarded Rs. 5000/- for pain and suffering which looking to the facts and circumstances of the case appears to be quite unreasonable and is required to be enhanced to Rs. 55,000/-. We hereby do so. Though the monthly income of Rs. 10,000/- as pleaded by the appellant/claimant has not been accepted by the Tribunal, it has granted Rs. 6,000/- on the ground of his inability to perform his work for a period of two months. This assessment made by the Tribunal for loss of wages does not appear to be proper and therefore it is enhanced to Rs. 12,000/-. Tribunal has however been quite justified in awarding Rs. 100/- per day for attendant and Rs. 100/- per day for special diet for 17 days during which period he remained hospitalized for treatment which comes to Rs. 1700 + 1700 = 3400. This finding is hereby maintained.

10. Thus the total compensation awardable to the appellant/claimant comes to Rs. 3,10,400/- and after deducting the amount already awarded by the tribunal the enhanced sum for

which the appellant/claimant is entitled comes to Rs. 83,000/- along with interest at the rate of 9% per annum from the date of application till realization.

11. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge

Jyotishi