

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 986 of 2012**

Naresh Shrivastava S/o late Maniram Shrivastava, aged about 45 years, R/o Bashant Vihar, Lingiyadih, Po/Thana Sarkanda, District Bilaspur (CG) PIN - 495001

---- Appellant**Versus**

1. Saleem Khan @ Sonu S/o Aftaab Khan, aged about 22 years, R/o 12 Kholi, near old Post Office Budhwari, Police Station Torwa, District Bilaspur (CG) PIN 495001 (Driver)
2. Om Prakash Jaiswal S/o late Rammurat Jaiswal, R/o Ganesh Nagar, Nawapara, Dhuma Road, Thana Torwa, District Bilaspur (CG) PIN 495001 (Owner)
3. Branch Manager, the Oriental Insurance Co. Ltd. Branch Office, in front of Rajeev Plaza, near bus stand, Bilaspur, District Bilaspur (CG) PIN 495001

---- Respondents

For Appellant	:	Shri Samir Singh, Advocate
For Respondent No.3	:	Shri Deepak Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****08/03/2018**

Present is a claimant's appeal under Section 173 of Motor Vehicles Act seeking enhancement of compensation. The challenge is to the award dated 12.07.2012 passed by the 1st Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No. 40/2011. Vide the impugned award, in an injury case under Section 166 of the MV Act, the Tribunal has awarded compensation of Rs.2,74,000/- with interest @ 6% per annum from the date of application.

2. Counsel for the appellant submits that the only ground of enhancement available in the instant case is that the income assessed by the Tribunal is on the lower side as the date of accident is September, 2010 when the income of the claimant was much more than what has been assessed by the Tribunal. He submits that the claimant, prior to the accident, was working as a barber and he is not able to carry out his profession any further because of the injury suffered. As a result of the accident, both of his femur bones were fractured which had to be operated upon and he was under treatment for a considerable period. He further submits that the doctor has assessed his disability at 50% whereas the disability is more than 50% as assessed by the doctor and the Tribunal. Thus, prayed for the compensation to be suitably enhanced.

3. Counsel for the Insurance Company, however, opposing the appeal submits that the finding of the Tribunal does not warrant any interference. Moreover, the claimant would not be entitled for any additional compensation for the reason that there was evidence before the Tribunal that the claimant was drunk and he was under the influence of alcohol when the accident occurred. Therefore, there appears to be negligence on the part of the claimant also while crossing the road. He further submits that the disability certificate has also not been obtained from the District Medical Board so as to ascertain the disability part. Thus, prayed for the appeal to be rejected.

4. Having heard the contentions put forth on either side and on perusal of the record what clearly reflects is that the accident took place in September, 2010. The claimant was a barber by profession. It is anybody's guess that a barber in 2010 must have been easily earning Rs.200/- a day. Since there was no evidence in this regard led by the claimant, this Court feels it proper to assess the income of the claimant at least Rs.150/- a day which would make the monthly income at Rs.4,500/-. Accepting Rs.4,500/- as monthly income, the yearly income would be Rs.54,000/- in stead of Rs.36,000/- as assessed

by the Tribunal. The claimant would also be entitled for future prospects to be taken into consideration while quantifying the compensation. Considering the age of the claimant, 25% of his income would be added towards future prospects which brings his yearly income to Rs.67,500/-. Considering the disability of 50% that has been assessed by the Tribunal, the yearly income would come to Rs.37,750/-. If the said amount is multiplied applying the multiplier of 13, the amount comes to Rs. 4,38,750/- which would be the amount of compensation payable towards loss of earning capacity. In addition, the claimant would be entitled for compensation of Rs.40,000/- as awarded by the Tribunal towards the medical expenses incurred, future treatment and also towards pain and suffering & special diet to make the total compensation payable to the claimant at Rs.4,78,750/- in stead of Rs.2,74,000/- as assessed by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

5. The appeal thus stands allowed.

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