

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 204 of 2014**

1. Salik @ Rana Dhruv S/o Shri Lalsingh Dhruv, aged about 31 years, R/o Bhagwat Chowk, Jalampur, Dhamtari, Tahsil and District Dhamtari, C.G.

---- Appellant/Claimant**Versus**

1. Rajesh Mahilang S/o Baisakhu Mahilang, aged about 41 years, R/o Village Chhote Urla, Abhanpur, P.S. Abhanpur, District Raipur C.G.
2. Jalaluddin Rizvi S/o Jamaluddin Rizvi, R/o Nayapara Rajim, Tahsil and District Raipur C.G.
3. Insurance Company, through Branch Manager, Shri Ram General Insurance Company Limited, Plot No. 48 1st Floor, Zone-2 Maharana Pratap Nagar Bhopal, M.P.
4. Bharat Kumar S/o Late Babulal Harkhani, R/o Abhanpur, Police Station and Tashil Abhanpur, District Raipur C.G.

---- Respondents

For Appellants	: Shri Shikhar Bakhtiyar, Advocate.
For Respondent No.3	: Shri Sangeet Kumar Kushwaha, Advocate on behalf of Shri S.S. Rajput, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****26.11.2018**

1. This appeal preferred by the appellant/injured claimant under Section 173 of the Motor Vehicle Act, against the award dated 27.08.2013 passed by Additional Motor Accident Claims Tribunal (FTC) Dhamtari, District Dhamtari

C.G., in claim case No. 80/2013, awarded a total compensation of Rs. 2,27,250/- with interest at the rate of 6% percent per annum from the date of application till its realization, fastening the liability on non-applicants jointly and severally.

2. As per claim petition on 27.03.2010, Annup Sahu, Ramanand and the appellant Salik @ Rana Dhruv were travelling in vehicle TATA Magic bearing no. CG04/JC/1805 and were going to Dhamtari. The said vehicle was being driven by the appellant/claimant. However, on the way at around 9:15 pm, non applicant No.1 Rajesh Mahilang by driving the vehicle Truck bearing no. CG04/JB/0703 in a rash and negligent manner dashed the vehicle of the appellant, as result of which Anup Sahu and Ramanand suffered grievous injuries and died whereas the appellant Salik @ Rana Dhruv sustained grievous injuries in his legs, vest, thigh, shoulder, head and both hands. Report was lodged against non applicant No.1 for the offence under Section 279 & 338 of IPC.
3. The appellant/claimant filed a claim petition under Section 166 of the Motor Vehicle Act stating that at the time of accident he was 32 years of age, earning Rs. 7,500/- as a Driver and due to injuries sustained by him, he is completely disabled to do his work. With the aforesaid averments, the appellant/claimant prayed for grant of compensation to the

tune of Rs. 22,50,000/- from the non-applicants with interest.

4. Learned Tribunal considering the evidence led by both the parties assessed total compensation of Rs. 3,03,000/- and holding the appellant/claimant negligent to the extent of 25%, awarded Rs. 2,27,250/- with interest as mentioned above.
5. Learned counsel for the appellant submits that the Tribunal has committed an error in assessing the income of the appellant at Rs.4,500/- whereas he was earning Rs.7,500/- per month as a Driver. Further, the Tribunal has wrongly deducted 25% from the total compensation towards contributory negligence of the appellant without there being any cogent and trustworthy evidence in this regard. Hence, the compensation awarded by the Tribunal deserves to be enhanced suitably.
6. On the other learned counsel for the respondent No.3 supports the award impugned. He submits that no counter appeal has been preferred by the Insurance Company.
7. I have heard learned counsel appearing for the parties and perused the record of the Tribunal as well as award impugned.
8. As regards the income of the appellant/claimant though he has pleaded that he was earning Rs.7,500/- per month as a Driver, however, no documentary or oral evidence has been

adduced in support thereof. In these circumstances, the Tribunal was justified in taking the income of the appellant on notional basis as Rs. 4,500/-, considering the price index at the relevant time.

9. So far as the contributory negligence of the appellant is concerned, considering the manner in which the accident occurred, the fact that no evidence has been adduced by the Insurance Company on the point of contributory negligence, the evidence of claimant AW-1 that the accident occurred due to negligence of non-applicant No.1 and non-rebuttal of the same in his cross-examination, and the fact that FIR was registered against non-applicant No.1 (Ex.P-2), this Court is of the opinion that the Tribunal was not justified in holding the appellant/claimant negligent without there being any cogent and reliable evidence on record. Being so, the finding recorded by the Tribunal on the point of contributory negligence of the appellant deserves to be set aside and is hereby set aside.

10. As for the amount awarded by the Tribunal under other heads i.e. towards medical expenses, pain and suffering, loss of earning during treatment, for nutritional diet and conveyance, from the pleadings of the parties, the evidence adduced by them and the findings recorded by the Tribunal in this regard, this Court is of the opinion that the amount awarded by the Tribunal under aforesaid heads, is

just and proper and needs no interference by this Court.

11. On the basis of aforesaid discussions, the appellant/claimant is held entitled for the entire amount of compensation of Rs. 3,03,000/- as assessed by the Tribunal.
12. In the result, the appeal is allowed in part and the appellant/claimant is held entitled for a total compensation of Rs.3,03,000/- with interest at the rate of 6% per annum from the date of application till its realization. The award impugned stands modified to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh