

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 322 of 2014**

1. Ashok Sharma S/o Shri Madhav Prasad Sharma, aged about 48 years, R/o Alley (Gali) in front of Patwari Prashikshan Kendra, Chingrajpara, Sarkanda, Police Station- Sarkanda, Distt.- Bilaspur (C.G.).

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

1. Parmeshwar Patel S/o Shri S. K. Patel, aged about- 31 years, R/o Ashok Nagar, Shishu Mandir Road, Sarkanda, Distt.- Bilaspur (C.G.). (Driver of Swift car No. C.G.- 04- H./4830).
2. Virendra Dewangan S/o Shri Hanuman Prasad Dewangan, aged about- 31 years, R/o Railway Crossing Tatibandh, Raipur Tahsil & Distt.- Raipur (C.G.), Present Address: Science College, Sarkanda, Police Station- Sarkanda, Distt.- Bilaspur (C.G.). (Owner of Swift Car No. C.G.-04-H/4830).
3. The Branch Manager, New India Insurance Company Limited Branch Office- Rama Trade Center, In front of Rajiv Plaza, Bus Stand Bilaspur, Distt.- Bilaspur (C.G.) (Insurer of Swift Car No. C.G.-04-H/4830).

---- Respondents

For Appellant	: Mr. Rishi Rahul Soni, Advocate
For Respondent No. 3	: Mr. Sudhir Agrawal, Advocate

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****06.12. 2018**

(1) This appeal has been filed by the claimant/injured against the award 20.12.2013 passed by Third Additional Member of First Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case

No.37 of 2013 awarding total compensation of Rs.3,89,329/- along with interest @ 6% per annum from the date of filing of claim petition till its actual payment, fastening liability upon the respondents i.e. driver, owner & Insurance Company jointly and severely.

(2) As per claim petition, on 26.11.2011 appellant/claimant was coming on his motorcycle bearing registration No. CG-10-E-7483 and when he reached the Lingiyadeeh market, the respondent No. 1 – Parmeshwar Patel, while driving Swift Car bearing registration No. C.G.-04-H-4830 rashly and negligently, dashed the claimant, as a result of which he sustained multiple injuries and his right leg was amputated.

(3) Claimant filed an application under Section 166 of the Motor Vehicle Act claiming compensation to the tune of Rs. 14,75,000/- for the injuries sustained by him in the motor accident occurred on 26.11.2011.

(4) The Claims Tribunal, on a close scrutiny of the evidence led by the parties, held : the accident had occurred due to rash and negligent driving of Swift Car bearing registration No. C.G.-04-H-4830 by its driver respondent No. 1- Parmeshwar Patel, claimant sustained multiple injuries in the said accident resulting into permanent disability to the extent of 40%; and assessed and awarded aforesaid sum as compensation to the claimant; and as there is no breach of policy condition, the Claims Tribunal fastened liability upon respondent No. 1 to 3 jointly and severally to pay compensation to the claimant.

(5) Learned counsel for both the parties submitted that there is no counter appeal filed by the respondent in this case.

(6) Learned counsel for the appellant submitted that at the time of

accident, claimant/ injured was working as a plumber and he was earning Rs. 5,000/- per month but the Claims Tribunal has assessed the income of the claimant/injured only as Rs. 3,000/- per month for the purpose of computation of compensation, therefore, it needs to be enhanced. He submits that in view of the judgment of the Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, no future prospect has been awarded to the claimant. He also submits that the claimant/injured sustained permanent disability to the extent of 80% and his right leg was amputated whereas the Claims Tribunal has assessed the loss of earning capacity to the extent of only 40% permanent, which deserves to be enhanced suitably.

(7) Per contra, learned counsel for the respondent No. 3/Insurance Company would support impugned award.

(8) I have heard learned counsel appearing for the parties and perused the material available on record including award impugned.

(9) It is undisputed fact that the liability to pay compensation upon the respondent Nos. 1 to 3 jointly and severally and no counter appeal has been filed by the Insurance Company. According to the Disability Certificate (Ex. P/87) issued by Dr. Vijay Kumar Mishra (AW3), the claimant has sustained permanent disability to the extent of 80% and due to which claimant's right leg was amputated and it has also been proved by factual and cogent evidence. Furthermore, the claimant/injured was working as plumber and due to the injuries suffered by him, claimant definitely affected his working capacity, therefore, looking to the injuries and his nature of work, 60% permanent functional disability should be considered for the purpose of computation of compensation. Further, the Claims Tribunal has assessed the income of the claimant as Rs. 3,000/- per month but as

the accident occurred in the month of November, 2011 and at that relevant time as per minimum wages the income of the claimant should have been considered as Rs. 4,000/- per month. As far as future prospect is concerned, at the time of accident claimant was aged about 50 years, therefore, in view of the judgment of the Supreme Court in the matter of Pranay Sethi (Supra), 25% future prospect would be applicable. Thus, the claimant is held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.4000/- per month.	Rs. 48,000/- per annum
02.	25 % towards future prospect	Rs. 48,000/- + 12,000/- = Rs. 60,000/- per annum.
03.	Loss of earning @ 60%.	Rs. 36,000/-
04.	Multiplier of 13 to be applied	Rs. 4,68,000/-
05.	Towards pain & suffering	Rs. 20,000/-
06.	Towards conveyance and special diet	Rs. 5,000/- (as awarded by the Tribunal)
07.	Towards attendant	Rs. 6,000/- (as awarded by the Tribunal)
08.	Loss of earning for three months (due to temporary disability)	Rs. 12,000/-
09.	For loss in anticipation of life	Rs. 25,000/- (as awarded by the Tribunal)
10.	For artificial leg and future treatment	Rs. 30,000/- (as awarded by the Tribunal)

11.	Towards Medical expenses	Rs. 1,22,129/-
12.	Towards other heads	Rs. 80,000/-(awarded by the Tribunal)
13.	Total compensation	Rs. 7,68,129

Since the Tribunal has already awarded Rs.3,89,329/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.3,78,800/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal is allowed in part with modification in the impugned award to the extent indicated hereinabove.

Sd/-
(Gautam Chourdiya)
Judge