

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 162 of 2018**

- Ravishankar S/o Bhushan Lal Soni Aged About 30 Years Caste - Sonar, R/o Village Old College Road, Near Mahadev Ghat, Champa, P.S. And Tahsil - Champa, District Janjgir Champa (Chhattisgarh), District : Janjgir-Champa, Chhattisgarh

**---- Appellant/claimant****Versus**

1. Naresh Kumar S/o Foolchand Aged About 31 Years Present Address Sharda Chowk, Janjgir, P.S. Janjgir, District Janjgir Champa (Chhattisgarh) Driver Of Vehicle No.Cg-12y0917, District : Janjgir-Champa, Chhattisgarh
2. Neelkamal Rai S/o N.C. Rai Aged About 31 Years Caste - Rai, Link Road, New Janjgir, Distt. Janjgir Champa (Chhattisgarh) Owner Of Vehicle No.Cg-12y0917, District : Janjgir-Champa, Chhattisgarh
3. Branch Manager, National Insurance Co.Ltd. Branch Office 13 Meenu Complex, Main Road, Kosabadi, Korba, Distt. Korba (Chhattisgarh) Insurer, District : Korba, Chhattisgarh

**---- Respondents**


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For Appellant  
For Respondent No.3

Shri H.P. Agrawal, Advocate.  
Shri G.V.K. Rao, Advocate.

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**Hon'ble Shri Justice Gautam Chourdiya****Order On Board****26/11/2018**

1. This is claimant's appeal seeking enhancement of compensation awarded by the Additional Motor Accidents Claims Tribunal, Janjgir, District Janjgir Champa, C.G. (for short 'the Tribunal') in Claim Case No. 71 of 2017 vide award dated 30.10.2017.
2. As against the compensation of Rs.25,80,000/- claimed by the appellant/claimant by filing claim application under Section 166 of

the Motor Vehicles Act, 1988 (for short 'the Act') for the grievous injuries sustained by him in the road accident on 25.10.2011, the Tribunal awarded a total sum of Rs.2,81,714/- along with interest @ 9% per annum from the date of application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led by the parties, held that the accident had occurred due to rash and negligent driving of offending Bolero bearing registration No. C.G.15/12Y/0917 by its driver i.e., respondent No.1 herein: appellant/claimant sustained grievous multiple injuries on his right leg, right wrist of hand and other parts of the body and on that accident the mother of appellant namely Savitri Bai has also received grievous injury. The appellant was immediately shifted for preliminary treatment at BDM Government Hospital Champa thereafter the appellant and his mother Savitri Bai were referred to CIMS Hospital, Bilaspur for treatment where the mother of the appellant died during treatment and the wrist of right hand of the appellant was operated by Dr. Y.M. Gupta and he also operated right thigh and inserted steel rod into the wrist as well as thigh. As such, appellant suffered 30% permanent disability. Respondent No.3/ National Insurance Insurance Company was held liable for payment of compensation as it could not establish any violation of policy conditions and the Tribunal assessed and awarded the aforesaid sum as compensation.
4. Learned counsel for the appellant, would submit that the appellant was a Goldsmith, was earning Rs.10,000/- per month but learned Tribunal wrongly considered his income as per

minimum wages. He submits that as per Doctor certificate Ex.A-17 the claimant suffered 30% permanent disability, on account of which his Goldsmith work as well as movement was restricted. Therefore, the appellant prays for enhancement of the compensation suitably. Further, the Tribunal has not granted any amount towards future prospect.

5. Counsel for the respondents opposed the arguments advanced by the appellant's counsel and stated that as per Doctor certificate permanent disability was not in respect of the whole body but it was in respect of a particular limb. Further, he submits that the Tribunal was also justified in assessing the income of the appellant as no evidence was adduced by the appellant in respect of his income. Thus, the amount awarded is strictly in accordance with law and needs no interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.
7. So far as, the income of the injured is concerned, though he has pleaded that he being Goldsmith was earning Rs.10,000/- per month, however, no oral or documentary evidence has been adduced in support thereof. Thus, the Tribunal was justified in taking the income of the injured on notional basis as Rs.4,500/- per month. However, the Tribunal has committed an error in not considering the permanent disability. Considering the pleading of the claimant, the disability certificate Ex.P-17 which shows that the claimant suffered 30% disability, the nature of job of the claimant in the facts and circumstances of the case it can be held that on account of the injuries the claimant suffered 15%

loss of earning capacity. Further, the Tribunal was also not justified in ignoring the future prospect of the claimant which should have been 40% in the present case as the injured was below 40 years of age. Therefore, in view of the decisions of the Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121**, & **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680**, the compensation is reassessed as under:-

| S.No  | Head                            | Calculation                                             |
|-------|---------------------------------|---------------------------------------------------------|
| 1     | Notional Income of the claimant | Rs. 4500/- i.e. Rs.54,000/- per annum.                  |
| 2.    | Future prospect 40%             | Rs. 21,600/-<br><br>Rs.54,000 + Rs.21,600 = Rs.75,600/- |
| 3.    | Loss of earning capacity @ 15%  | Rs.11,340/-                                             |
| 4.    | Multiplier of 17 applied        | Rs. 1,92,780/-                                          |
| 5.    | For pain and suffering          | Rs. 20,000/-                                            |
| 6.    | For medical expenses            | Rs.97,714/-                                             |
| 7.    | For special diet                | Rs.10,000/-                                             |
| 8.    | For attendant                   | Rs.5,000/-                                              |
| 9.    | For travelling                  | Rs. 5,000/-                                             |
| Total |                                 | Rs.3,30,494/-                                           |

8. In the result, the appeal is allowed in part. Since, the Tribunal has

already awarded Rs.2,81,714/-, after deducting the same the claimant is held entitled for an additional compensation of Rs.48,780/-. The amount awarded by the Tribunal as well as the enhanced amount shall carry interest at the rate of 9% from the date of application till its realization.

8. No order as to costs.

Sd/-  
Gautam Chourdiya  
Judge

Akhilesh