

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1319 of 2014**

- Maniram @ Bisahuram (insane) aged about 30 years, Through Smt. Uma Bai W/o Maniram aged about 28 years, (wife, next friend) R/o both are residence at village Madan P.S. and Tashil Pali, District Korba, C.G.

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

1. Pratap Singh S/o Nirsingh aged 28 years, R/o Village Lafa Tahsil Pali District Korba C.G. (Driver of the vehicle)
2. Vijay Pratap Yadav, S/o Sudhram Yadav R/o Village Pulalikala P.S. and Tahsil Pali District Korba, C.G. (Owner of the vehicle)
3. The Divisional Manager, Ifco Tokiyo General Insurance Company Ltd. 45-347, third floor Lal Ganga Shopping Mall G.E. Road Raipur, C.G. (Insurer)

---- Respondents

For Appellant	:	Shri P.K. Tulsyan, Advocate.
For Respondent No.3	:	Shri Amrito Das, Advocate.

MAC No. 1320 of 2014

- Shubham Agrawal, S/o Narendra Agrawal aged about 20 years, R/o Village Pali, P.S and Tahsil Pali District Korba C.G.

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

1. Pratap Singh S/o Nirsingh aged 28 years, R/o Village Lafa Tahsil Pali District Korba C.G. (Driver of the vehicle)
2. Vijay Pratap Yadav, S/o Sudhram Yadav R/o Village Pulalikala P.S. and Tahsil Pali District Korba, C.G. (Owner of the vehicle)
3. The Divisional Manager, Ifco Tokiyo General Insurance Company Ltd. 45-347, third floor Lal Ganga Shopping Mall G.E. Road Raipur, C.G. (Insurer)

---- Respondents

For Appellant	:	Shri P.K. Tulsyan, Advocate.
For Respondent No.3	:	Shri Amrito Das, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04.12.2018

1. As both these appeals filed under Section 173 of the Motor Vehicle's Act, 1988 by the claimants/injured arise out of the common award dated 06.09.2014 passed by the Additional Motor Accident Claims Tribunal, Katgohra, District Korba, C.G. in claim cases no. 69/2011 and 70/2011, they are being disposed of by common judgment.
2. As per averments in the claim petition on 09.03.2010 at about 8:00 pm injured claimant Subham Agrawal was sitting in the motor cycle bearing no. CG 12-N-6643 as a pillion rider which was being ridden by non applicant no.1 Pratap Singh. Non-applicant no.1 Pratap Singh by riding the motorcycle in a rash and negligent manner dashed injured claimant Maniram who was going on foot and thereafter the said motorcycle hit against the pole. In the said accident Subham Agrawal and Maniram both suffered grievous injuries on their head, jaw, hands, legs and chest. Crime was registered against non-applicant no.1 for the offence under Sections 279 and 337 of IPC.
3. On claim petition being filed by injured claimants namely Subham Agrawal and Maniram under Sections 166 of the Motor Vehicles Act which were registered as claim cases no. 69/2011 and

70/2011 respectively, Tribunal considering the pleadings of the respective parties and the evidence adduced by them, by common award awarded a compensation of Rs.2,45,730/- with interest at the 6 percent per annum from the date of application till its realization in favour of injured claimant Subham Agrawal and awarded Rs.5,76,000/- with interest at the rate of 6 percent from the date of application till its realization in favour of injured claimant Maniram, fastening the liability on non-applicant no.3/Insurance Company jointly and severally along with non-applicants no. 1 & 2.

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4. Learned counsel for the appellant/injured Subham AGrawal submits that the Tribunal has awarded a sum of Rs. 2,20,730/- towards medical expenses and Rs.25,000/- towards pain and suffering only. The Tribunal has not awarded any amount towards special diet, attendant, future treatment and other heads, therefore, the amount of compensation is required to be enhanced suitably.

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5. Learned counsel for the appellant Maniram submits that the Tribunal has wrongly considering the income of the claimant as Rs.3000/- per month, whereas the accident occurred on 09.03.2010 and, therefore, considering the minimum wages at the relevant time the income should have been taken as Rs.4000/- per month. Further, the Tribunal has not awarded any amount towards future prospect in view of Hon'ble Supreme

Court decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. Lastly, he submits that the Tribunal has not awarded any amount towards special diet, attendant, future treatment, pain and suffering and other conventional heads. Being so, the amount awarded by the Tribunal deserves to be enhanced suitably.

6. On the other hand counsel appearing for the respondent/Insurance Company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation in favour of the claimants which needs no interference by this Court.
7. No counter appeal has been filed by the respondents.
8. Heard learned counsel for the parties and perused the material available on record.

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9. So far as assessment of the medical expenses by the Tribunal is concerned, the same is not in dispute and it has been recomputed on the basis of oral and documentary evidence available on record. However, looking to the medical documents Ex.P-6 to Ex.P-20, the fact that the claimant remained admitted in hospital for about a month, he had to undergo continuous treatment during the said period, he is resident of village Pali, District Korba and was taken for treatment to Apollo Hospital, Bilaspur from time to time and further considering the nature and extent of injuries, this Court is of the opinion that the claimant is entitled for a sum of Rs.5,000/- towards conveyance allowance,

Rs.5,000/- towards special diet and Rs.20,000/- towards future treatment.

10. Considering the gravity of the injury suffered by the claimant and the period of his hospitalization, in the opinion of this court the amount of Rs.25,000/- awarded by the Tribunal towards pain and suffering is on the lower side and it deserves to be enhanced to Rs.40,000/-. Thus, the claimant Subham Agrawal is held entitled for compensation in the following manner:

Heads	Calculation
Towards Medical Expenses	Rs.2,20,730/-
Towards Pain and Suffering	Rs.40,000/-
Towards Conveyance	Rs.5,000/-
Towards Special Diet	Rs.5,000/-
Towards Future Treatment	Rs.20,000/-
Total Compensation	Rs.2,90,730/-

Since the Tribunal has already awarded Rs.2,45,730/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.45,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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11. In the accident injured claimant Maniram suffered 100% disability, the same has been duly proved by the claimant and there is no counter appeal by the respondents challenging the said vehicle. So far as income of the claimant assessed by the Tribunal as

Rs.3,000/- is concerned, considering the fact that the accident occurred on 09.03.2010, the minimum wages at the relevant time, his income can safely be taken Rs.4,000/- per month. Further, keeping in view the age, nature and job of the claimant, in the light of decision of Hon'ble Supreme Court in matter of **Pranay Sethi** (supra), 40% addition towards future prospect. Considering the nature and extent of injuries suffered by the claimant, the period of his hospitalization, the fact that he would be required future treatment in the future, due to injuries suffered by him he is totally dependent on his wife, this Court is of the opinion that a lumpsum amount of Rs.1,00,000/- towards pain and suffering, attendant, conveyance, future treatment and loss of amenities in future life would be just and proper. Hence, the claimant is entitled for compensation in the following manner:

Head	Calculation
Income of the claimant @ Rs.4,000/- per month	Rs.48,000/- per annum.
40% towards future prospect	Rs.19,200/- Rs.48,000/- + Rs.19,200/- = Rs.67,200/-
100% loss of earning	Rs.67,200/-
Multiplier of 16 applied	Rs.67,200/- x 16 = Rs.10,75,200/-
towards pain and suffering, attendant, conveyance, future treatment and loss of amenities (as awarded by the Tribunal),	Rs.1,00,000/-
Total Compensation	Rs.11,75,200/-

Since the Tribunal has already awarded Rs.5,76,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.5,99,200/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. In the result:

- **MAC No.1320 of 2014** filed by the claimant Subham Agrawal is allowed with modification in the impugned to the above extent that the claimant shall be entitled for additional compensation of Rs.45,000/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.
- **MAC No.1319 of 2014** filed by the claimant Maniram is allowed with modification in the impugned to the above extent that the claimant shall be entitled for additional compensation of Rs.5,99,200/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge