AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 939 of 2016

- Branch Manager, The Oriental Insurance Company Limited Branch Office- Laxman Avenue Medical College Road, Jagdalpur, Chhattisgarh,....... Non-Applicant No. 3,

---- Appellant

Versus

1. Digeshwar Usendi @ Tikeshwar S/o Chaitan, Aged About 22 Years Caste- Gond, R/o- Village- Dubeumargaon, Police Station Bhanpuri, District- Bastar, Chhattisgarh,............ Claimant

2. Komal Prasad Sahu, S/o Shri Krishna Kumar Sahu, Aged About 25 Years R/o- Tetarkhuti, Jagdalpur, District- Bastar, Chhattisgarh,......... Non-Applicant No. 1

3. Krishna Kumar Sahu, S/o Sawantram Sahu, Aged About 48 Years R/o- Tetarkhuti, Jagdalpur, District- Bastar, Chhattisgarh,............ Non-Applicant No. 2.

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Adovate.
For Respondent No.1	:	Shri PK Dhurandhar, Advocate.
For Respondents No.2&3	:	None though served.

MAC No. 1404 of 2016

- Digeshwar Usendi @ Tekeshwar S/o Chaitan, Aged About 22 Years R/o Village Dubeyumargaon P.S. Bhanpuri District Bastar, Chhattisgarh ....Claimant

---- Appellant

Versus

1. Komal Prasad Sahu S/o Shrikrishna Kumar Sahu, Aged About 25 Years R/o Village Tetarkhuti Jagdalpur District Bastar, Chhattisgarh ....Driver

2. Krishna Kumar Sahu S/o Sawantram Sahu, Aged About 48 Years R/o Tetarkhuti Jagdalpur District Bastar, Chhattisgarh ....Owner.

3. Branch Manager, The Oriental Insurance Co. Ltd. Branch Office

Medical College Road Jagdalpur District Bastar, Chhattisgarh ....Insurer

---- Respondents

For Appellant	:	Shri PK Dhurandhar, Advocate.
For Respondents No.1&2	:	None though served.
For Respondent No.3	:	Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

26/11/2018

As both these appeal arise out of the award dated 21.3.2016 passed by II Additional Motor Accident Claims Tribunal, Jagdalpur in Claim Case No.145/2012, they are being disposed of by this common judgment.

02. As per averments in the claim petition, on 21.4.2009 the claimant Digeshwar Usendi, aged 22 years, earning Rs.100/- per day, was travelling in the vehicle Bolero bearing No. CG 17 T 0298 carrying marriage articles as a Hamal and had gone to Village – Dubeyumargaon. After unloading the goods while he was coming back by the said vehicle, near Village-Metawada, Main Road. NH No.43 non-applicant No.1 Komal Prasad Sahu due to rash and negligent driving of the vehicle hit a stationary truck parked by the side of the road. As a result thereof, the claimant suffered grievous injuries over elbow, head and other parts of the body including fracture of left hand bone. On report being made, offence was registered against non-applicant No.1 by the police.

03. On claim petition being filed by the claimant under Section 166 of

the Motor Vehicles Act claiming compensation of Rs.4.56 lacs under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs.1,19,200/- with interest @ 9% per annum from 24.9.2014 till realization as the insurance company was impleaded as a party on 24.9.2014 only.

04. **MAC No.939/2016**: This appeal has been filed by the insurance company challenging its liability. Learned counsel for the appellant/insurance company submits that as the offending was being used as a commercial vehicle and the claimant was travelling in the vehicle as a gratuitous passenger, the Tribunal was not justified in fastening liability on the insurance company. He further submits that as the stationary vehicle was parked without any indicator or parking light, the Tribunal ought to have held contributory negligence on the part of the driver and owner of the stationary vehicle to the extent of 50%.

05. On the other hand, learned counsel for respondent No.1/claimant supports the impugned award insofar as it relates to fastening of liability on the insurance company. However, the claimant has also challenged the award on the point of quantum and has filed a separate appeal i.e. MAC No.1404/2016 for enhancement of compensation.

06. **MAC No.1404/2016**: This appeal has been filed by the claimant for enhancement of compensation. Learned counsel for the appellant/claimant submits that the Tribunal has wrongly considered income of the claimant as Rs.3000/- per month whereas even as per minimum wages prevalent at the relevant time, his income comes to Rs.4500/- per month. Further, the Tribunal has erred in assessing loss

of earning of the claimant to the extent of 15% only whereas considering the nature of job of the claimant i.e. Labour and the permanent disability of 45%, his loss of earning was 100%. The Tribunal was also not justified in not granting any amount towards future prospect of the claimant and other heads such as loss of marriage prospects, attendant, future treatment etc. and the amount awarded by the Tribunal towards medical treatment and pain & suffering is also on the lower side. Therefore, he prays for enhancement of the total compensation by this Court suitably.

07. Opposing the above contention, learned counsel for the insurance company submits that the Tribunal has already awarded compensation on the higher side and therefore, there is no need for its enhancement by this Court.

08. Heard learned counsel for the parties and perused the material available on record.

09. So far as appeal preferred by the insurance company is concerned, the insurance company has assailed the award of the Tribunal on three grounds, first that the offending vehicle was being used for commercial purpose by carrying the marriage articles for some consideration, second that deceased was travelling in the offending vehicle as a gratuitous passenger and third that there was contributory negligence on the part of driver of the stationary vehicle parked by the side of the road as the same was parked without any parking light or indicator. The aforesaid grounds have not been pleaded by the insurance company specifically in its written statement and are being raised for the first time in this appeal. Further, no evidence, either

oral or documentary, has been adduced by the insurance company in support of the grounds pleaded in the written statement. Even otherwise, considering the reasons assigned by the Tribunal for holding the insurance company liable for payment of compensation, this Court is of the opinion that the Tribunal has not committed any illegality in recording the said finding. Therefore, the appeal preferred by the insurance company being without any substance is liable to be dismissed.

10. As regards the appeal filed by the claimant for enhancement, the Tribunal was justified in assessing the income of the claimant as Rs.3000/- per month on notional basis considering the minimum wages at the relevant time as the claimant could not prove his income as Rs.5000/- by any oral or documentary evidence. As per disability certificate Ex.P/9, which has been duly proved by the claimant, he suffered 45% permanent disability. The Tribunal considering the medical evidence of AW-2 Dr. LL Thakur and the claimant, the nature of job of the claimant and the law in this regard, has taken the loss of earning of the claimant at 15%, which appears to be just and proper. Likewise, age of the claimant has also been rightly assessed by the Tribunal as 22 years on the basis of material available on record, which has not been challenged by the other side. However, no amount towards future prospect has been granted by the Tribunal. Therefore, considering the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, 40% of the annual income is to be added thereto towards future prospect. Having done so, the annual income of the claimant comes to Rs.50,400/-.

However, considering the overall facts and circumstances of the case, the period of hospitalization of the claimant, the nature of injuries suffered by him, the nature of his job and other relevant aspects of the matter, this Court is of the opinion that the claimant is entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the claimant @ Rs.3000/- per month.	36,000/- per annum
02.	40% towards future prospect	36,000/- + 14,400/- = 50,400/- per annum.
03.	Loss of earning @ 15%.	7560/-
04.	Multiplier of 18 to be applied	1,36,080/-
05.	Loss of earning for two months	6,000/-
06.	Total loss of earning	1,42,080/-
07.	Towards medical expenses	10,000/-
08.	For future treatment	20,000/-
09.	Nutritional diet	5,000/-
10.	Towards attendant	5,000/-
11.	Towards conveyance	3,000/-
12.	Towards pain and suffering	10,000/-
	Total :	**1,95,080/-**

Since the Tribunal has already awarded Rs.1,19,200/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.75,880/- with interest as awarded by the Tribunal.

11. In the result:

- MAC No.939/2016 preferred by the insurance company being without any substance is hereby dismissed.

- MAC No.1404/2016 filed by the claimant is allowed with modification in the impugned to the above extent that the claimant shall be entitled for additional compensation of Rs.75,880/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan