

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 746 of 2018

- The New India Assurance Company Limited Through Divisional Manager, Office 2nd Floor, Rama Trade Center, In Front Of Rajeev Plaza, Old Bus Stand, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh (Insurer)

---- Appellant

Versus

1. Sunil Singh S/o Shri Nakul Singh Thakur Aged About 35 Years R/o E.W.S. 53, Janta Quarter, Nehru Nagar, Tahsil And District Bilaspur, Chhattisgarh (Claimant)
2. Vijay Kumar Manuja S/o Late Shrichand Manuja Aged About 39 Years R/o Nariyal Kothi, Madhuban Road, Dayalband, Police Station City Kotwali, Tahsil And District Bilaspur, Chhattisgarh (Driver Of Vehicle)
3. Ashok Manuja S/o Late Shrichand Manuja Aged About 39 Years R/o Nariyal Kothi, Madhuban Road, Dayalband, Police Station City Kotwali, Tahsil And District Bilaspur, Chhattisgarh (Owner Of Vehicle)

---- Respondent

For Appellant	:	Shri Qamrul Aziz, Advocate.
For Respondents No.1	:	Shri Rajesh Jain, Advocate.
For Respondents No.2 & 3	:	None.

MAC No. 911 of 2018

- Sunil Singh S/o Nakul Singh Thakur, Aged About 35 Years R/o EWS 53 Janta Quarter, Nehru Nagar, Tahsil And District Bilaspur Chhattisgarh.

---- Appellant

Claimant

Versus

1. Vijay Kumar Manuja S/o Late Shirchand Manuja, Aged About 39 Years R/o Nariyal Kothi Madhuban Road, P.S. City Kotwali Dayalband, Tahsil And District Bilaspur Chhattisgarh. (Driver Of Vehicle Maruti Car Bearing No. C.G. 10/ F-8680)
2. Ashok Manuja S/o Late Shirchand Manuja, Aged About 39 Years R/o Nariyal Kothi Madhuban Road, P.S. City Kotwali Dayalband, Tahsil And District Bilaspur Chhattisgarh. (Owner Of Vehicle Maruti Car Bearing No. C.G. 10/ F - 8680)
3. The New India Insurance Company Ltd, Through Divisional Manager, Office Opposite To Rajive Plaza 2nd Flower Rama Trade Center, Old Bus Stand, Bilaspur Tahsil And District Bilaspur Chhattisgarh.

---- Respondents

For Appellant	:	Shri Raiesh Jain, Advocate.
For Respondents No.1 & 2	:	None.
For Respondent No.3	:	Shri Qamrul Aziz, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

09/10/2018

As both these appeals arise out of a common award dated 23.1.2018 passed by 1st Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No.141/2015, wherein in an injury case the Tribunal has awarded compensation of Rs.6,75,286/- fastening the liability on the insurance company, they are being disposed of by this common judgment.

02. **MAC No.746/2018**: This appeal has been filed by the insurance company challenging the quantum of compensation. According to learned counsel for the insurance company, the Tribunal has erred in assessing the monthly income of the injured at Rs.8000/- per month without any sufficient evidence in this regard and also erred in considering permanent disability of the claimant to the extent of 30% because as per the treating doctor AW-2 Dr. SS Bhatia, the disability suffered by the claimant does not fall within the category of handicap as per government rules and therefore, the claimant has been denied disability certificate by the Medical Board. Lastly he submits that the Tribunal has also committed illegality in granting medical expenses, which is very much on the higher side.

03. **MAC No.911/2018**: This appeal has been filed by the claimant/injured seeking enhancement of compensation on the ground that the Tribunal has erred by not granting any amount towards permanent disability, the income assessed by the Tribunal is also on the lower side and further, no amount towards future treatment has

been granted by the Tribunal.

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

05. From perusal of the record it is seen that the claimant/injured suffered grievous injuries in an accident occurred on 3.8.2014 and the right leg of the claimant got fractured. He remained hospitalized from 3.8.2014 to 21.8.2014. As per AW-2 Dr. SS Bhatia, the claimant suffered fracture of tibia bone of right leg, there is stiffness in his knee and his permanent disability is 30%. He has further clarified that as per government rules, in case of permanent disability being less than 40%, the victim does not fall within the category of handicap and as such, not entitled for disability certificate from the Board. Thus, the Tribunal considering the entire evidence adduced by the parties, the medical evidence including the medical documents of Ex.A/5 to A/51, held that the claimant suffered permanent disability to the extent of 30%.

06. As regards income of the claimant, the Tribunal considering the pleading of the claimant and the evidence adduced by him, the income certificate Ex.P/52 issued by Singh Associates where the claimant was working as Accountant and earning Rs.8000/- per month, which has not been challenged in cross-examination, came to the conclusion that the claimant's monthly income is Rs.8000/-. Further, considering the nature of injury suffered by the claimant and the period of his hospitalization, the Tribunal came to the conclusion that on account of such injury the claimant could not have done his work for at least three months and hence, assessed the loss of earning for three months @ Rs.8000/- per month at Rs.24,000/-.

07. Learned counsel for the claimant submits that on account of injury suffered by the claimant, he was removed from service and as such, his loss of earning is 100% whereas the Tribunal has not considered the same. However, there is no evidence on record which could show that due to injury suffered by the claimant he was removed from service or that the nature of injury is as such which affects 100% working capacity of the claimant. The Tribunal, on the basis of overall evidence, oral and documentary, has rightly assessed the income of the claimant at Rs.8000/- and loss of earning capacity to the extent of 30%. The amounts awarded towards medical expenses and under other heads are also just and proper.

08. On the basis of aforesaid discussion, this Court is of the opinion that the compensation awarded by the Tribunal is based on proper appreciation of the evidence led by the parties and as such, needs no interference by this Court. Resultantly, both the appeals being without any substance are hereby dismissed.

Sd/

(Gautam Chourdiya)

Judge