

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 930 of 2018**

- Shriram General Insurance Co. Ltd. Maruti Height, 4th Floor, Beside R.K. Mall, Aamanaka, Raipur, District Raipur, Chhattisgarh. (Insurer/ Respondent No. 3), District : Raipur, Chhattisgarh

---- Appellant.**Versus**

1. Mohitram Dahariya S/o Shiv Prasad Dahariya, Aged About 39 Years R/o Address No. 1 - Gurunanak Ward, Panchshil Nagar, Bhatapara, District Balodabazar, Chhattisgarh. Address No. 2 - Lakshmi Niwas, Prayag Vihar, Boriyakhurd Road, Thana Tikrapara, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Mohammed Iraaz S/o Mohammed Kamruddin, Permanent Address Village Saidpur, Thana Vidyupur, District Vaishali (Bihar) Address No 2. Through Harjinder Singh, Gurudwara Road, Mahaveer Nagar, House No. C/4, New Purena, Thana New Rajendra Nagar, District Raipur, Chhattisgarh. (Vehicle Trailer Bearing Registration No. Cg 04 Dm 2072 Driver). (Non - Applicant No. 1), District : Raipur, Chhattisgarh
3. Harjinder Singh, S/o Charan Singh, R/o Gurudwara Road, Mahaveer Nagar, House No. C/4, New Purena, Thana New Rajendra Nagar, District Raipur, Chhattisgarh. (Vehicle Trailer Bearing Registration No. Cg 04 Dm 2072 Owner) (Non - Applicant No. 2), District : Raipur, Chhattisgarh
4. Shubham Agrawal, S/o Gyanu Agrawal, R/o K.K. Ward, Behind Fci Godown, Bhatapara, District Balodabazar, Chhattisgarh. (Vehicle Hiva Bearing Registration No. Cg 22 C 0216 Owner) (Non - Applicant No. 4), District : Balodabazar-Bhathapara, Chhattisgarh
5. The New India Insurance Co. Ltd, Through Divisional Manager, Office Divisional Manager, Division No. 2, Near Lic Office, Pandri Road, Raipur, Chhattisgarh. (Non Applicant No. 5), District : Raipur, Chhattisgarh

---- Respondents

For the appellant : Mr. Amrito Das &
Mr. P. Acharya, Advocates.
For respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

16-7-2018.

1. This appeal is preferred by the appellant against the award dated 15-12-2017 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur, District Raipur (CG) in Claim Case No. 628 of 2014, wherein the said Tribunal awarded compensation of Rs.18,87,000/- in favour of claimant/respondent No.1 Mohitram Dahariya.
2. As per case of the claimant, he was driver of Hyva Truck bearing registration No. CG 22 C-0216 and by driving the said vehicle on 10-5-2014 going towards Bhatapara, at village Bammanmudi Lavan Road, respondent No.2 Mohammad Irraz by driving the Trailer bearing registration No. CG04 DM 2072 rashly and negligently dashed Hyva Truck as a result of which respondent No.1 was badly injured and he sustained serious injuries on various parts of his body and his left leg was amputated by which he became permanent handicapped. After recording the evidence of both

sides and hearing the parties, the Tribunal awarded as mentioned above.

3. Learned counsel for the appellant submits that the accident occurred as head on collision between Hyva and Trailer owing to the negligence on the part of the claimant/respondent No.1, therefore, the finding of the Tribunal regarding sole negligence of respondent No.2 is not in consonance with factual matrix of the case.
4. In view of this Court, the argument of the appellant is without substance. Claimant Mohitram Dahariya was examined as AW/1 and he categorically stated that the accident occurred due to sole negligence of respondent No.2. Version of this witness is unrebutted during cross examination and no other witness is examined by other side to rebut the same, therefore, it cannot be held that it is a case of contributory negligence.
5. It is further contended on behalf of the appellant that the claimant has failed to prove his income and the Tribunal committed error in computing the notional monthly income of Rs.7,000/- of the claimant.
6. In view of this court, notional income is calculated on the basis of minimum wages prevailing on the date of incident. In the present case, date of incident is 10-5-2014 and on that date minimum wages was more than

Rs.200/- per day, therefore, monthly income calculated by the Tribunal is based on minimum wages and same cannot be termed to be on higher side.

7. It is further contended on behalf of the appellant that the loss of earning capacity was not computed by the Tribunal in accordance with law and treating disability as 100%, loss of income is incorrect.
8. In view of this court, from the evidence, it is established that left leg of the claimant was amputated, his livelihood was working as a driver and after amputation of leg he was unable to drive the vehicle and completely became unfit to drive any vehicle, therefore, loss of dependency is 100% and the finding recorded by the Tribunal on this count is not liable to be interfered while invoking jurisdiction of the appeal.
9. The next point raised on behalf of the appellant is that the claimant was awarded the amount on conventional head which is not as per law laid by the Honorable Apex Court.
10. After perusal of the award, it appears that the Tribunal has not awarded any sum on conventional head and the Tribunal awarded Rs.20,000/- on account of mental pain and physical sufferings, therefore, the finding

arrived at by the Tribunal is not liable to be disturbed on this count also.

11. On overall assessment of the award, the award is based on monthly income, future prospects, medical expenses, attendant expenses and transportation expenses. As the age of the claimant/respondent No.1 was about 39 years on the date of incident, future prospects is calculated as 40% of the net income of the deceased which is well within the law laid down by the Honorable Apex Court in case of **Sarla Verma and others vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121.**

12. Considering all the facts, this Court is of the view that the award passed by the Tribunal is based on proper appreciation of evidence and the material placed before it and the appeal has no ground to interfere with the same.

13. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**

Raju