

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 938 of 2018**

1. Kuldeep S/o Shri Krishnadev, aged about 27 years, R/o village and Post:- Navdeha, P.S. & Tahsil Dudhi, District- Sonbhadra (U.P.)

---- Appellant

Versus

1. The New India Insurance Company Ltd. Through:- Divisional Office, SADA Complex, Bilaspur, District- Bilaspur (C.G.).
2. Devprasad S/o Shri Ramghani Aged about 26 years, R/o Village and Post:- Navdeha, P.S. & Tahsil Dudhi, District- Sonbhadra (U.P.)
3. Suresh Prasad Chaurasiya S/o- Shri Ramnarayan Chaurasiya R/o. Village and Post:- Navdeha, P.S. & tahsil Dudhi, District Sonbhadra (U.P.).

---- Respondents

For Appellant	: Shri D. N. Prajapati, Advocate
For Respondent No. 1	: Shri Anil Gulati, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

30.11.2018

1. This appeal has been preferred by the claimant / injured against the award 19th March, 2018 passed by Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur in Claim Case No. 24/2017 awarding total compensation of Rs.62,500/- along with interest @ 6% per annum from the date of application till realization, fastening liability of payment of compensation upon the non-applicants No. 1 to 3 jointly and severely.

2. As per claim petition, on 05.03.2016, at about 5.00 AM, the

appellant Kuldeep along with respondent No. 3 [driver of offending Vehicle (Pick Up) vehicle bearing registration No. U.P. 64 T 7163] was going Raipur for transporting vegetables, when he reached at village Dawankara, the respondent No. 3 while driving the offending vehicle rashly & negligently and in order to save cattle, suddenly turned the vehicle and dashed the same from the tree, as a result of which appellant –Kuldeep sustained grievous injuries in his right thigh and left knee including multiple fracture to the extent of 50% permanent disability.

3. On claim petition being preferred by the claimant / injured under Section 166 of the Motor Vehicles Act, 1988, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. No counter appeal has been filed by the respondent/insurance company.

5. Learned counsel for the appellant/claimant submits that the claimant sustained grievous injuries and as per statement of Dr. Pramod Prajapati, District Hospital, Sonbhadra, a rod was inserted into right leg of the claimant and he suffered permanent disability to the extent of 50% and due to the above-stated accident, his left leg got shortened. However, the amount awarded by the Tribunal is not proportionate to the injuries caused to the claimant as no amount towards future treatment & attendant has been awarded. He further submits that the Tribunal has further erred in not awarding adequate sum on the head of pain & suffering & nutritional diet and therefore, the amount awarded by the Tribunal deserves to be enhanced suitably.

6. On the other hand, learned counsel for the respondent No.1 /insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation, which needs no interference by this Court.

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

8. Considering the nature and extent of injuries suffered by the claimant, the statement of Dr.Pramod Prajapati, who issued disability certificate (Ex.P-9) and other medical documents, it is noticed that the claimant suffered permanent disability to the extent of 50% and long time treatment would be required for the claimant. Considering the nature and extent of injuries the nature of job of the claimant this Court is of the opinion that the claimant suffered loss of earning to the extent of 25%. However, the claimant is also entitled for 40% addition to the annual income towards loss of future prospects. So far as the age of the claimant is concerned the Tribunal has rightly held as 27 years of age. The Tribunal was not justified in assessing the income of the claimant as Rs. 4,500/- whereas considering the fact that the accident occurred on 5.3.2016 the minimum wages at the relevant time and the price index this Court is of the opinion that the income of the claimant can safely be assessed 6,000/- per month. The Tribunal has not awarded any amount towards attendant and future treatment. As regards the amount awarded towards medical expenses, the same is not in dispute. But, amount awarded towards nutritional diet and pain & suffering are on the lower side, which deserve to be enhanced to the extent of Rs.5,000/- each. Therefore, the claimant held entitled for the compensation in view of the Apex Court Judgment in the matters of **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121 & National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680** in following manner:-

Sl. No.	Heads	Awarded by the Tribunal	Calculation (in rupees)
01.	Income of the claimant	Rs. 45,00/-per month	6,000/-per month x12 = Rs. 72,000/- per annum
02.	40% to be added towards future prospect		72,000+ 28,800= Rs. 100800/-

03.	Loss of earning @ 25% per annum		Rs. 25,200/-
04.	Multiplier of 17 to be applied		Rs. 4,28,400/-
05.	Loss of earning for three months	Rs. 13,500/-	Rs. 18,000/-
05.	Total loss of earning		Rs. 4,46,400/-
06.	Towards expenses on Medicine	Rs. 30,000/-	Rs. 30,000/- as awarded by the Tribunal
07.	For nutritional diets	Rs. 5,000/-	Rs. 10,000/-
08.	Towards conveyance	Rs. 9,000/-	Rs. 9,000/- as awarded by the Tribunal
09.	Towards pain and suffering	Rs. 5,000/-	Rs. 10,000/-
10.	Total Compensation		Rs. 5,05,400/-

9. Since the Tribunal has already awarded Rs.62,500/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.4,42,900/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)
Judge

