

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 981 of 2018**

1. Balaram Kewat S/o Shri Khailuram Kewat aged about 30 years, R/o Near Village- Sildaha, Thana & Tahsil- Pathariya, Civil & Revenue Distt.- Mungeli (C.G.).

---- Appellant

Versus

1. Balram Dhiwar S/o Shri Atmaram aged about 27 years, R/o village- Loharsi, Thana- Sheorinarayan, Distt.- Janjgir- Champa (C.G.).

(Driver of Vehicle No. CG-10-C-8472)

2. Santram Aditya S/o Late Shri Ramlal Kejuram Aditya, aged about 47 years, R/o. Ward NO. 13 Titaripara Sheorinarayan, Thana- Sheorinarayan, Abhishek Aalu Bhandar, Vyapar Vihar Bilaspur (C.G.)

(Owner of Vehicle No. CG-10-C-8472)

3. Branch Manager, The New India Insurance Company Limited, In-front of Rajeev Plaza, Old Bus Stand Bilaspur Distt.- Bilaspur (C.G.)

(Insurer of Vehicle No. CG-10-C-8472)

4. Ashok Singh S/o Shri N. S. Thakur, aged bout 45 years, R/o Kalash Awasiya Parisar, Old Sarkanda, Distt.- Bilaspur (C.G.).

(Owner of Vehicle No. CG-10-K--3337)

---- Respondents

For Appellant	: Shri Sumit Shrivastava, Advocate
For Respondents No. 3	: Shri Anil Gulati, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

04.12.2018

1. This appeal is by the claimant/injured against the award dated 15.05.2018 passed by Additional Member of Additional Motor Accident Claims Tribunal, Mungeli in Claim Case No.42/2015 awarding total compensation of Rs.2,90,400/- along with interest @ 7.5 % per annum

from the date of filing of claim petition till its actual payment, fastening liability upon the Insurance Company as it could not establish the violation of policy conditions.

2. As per averments in the claim petition, on 5.04.2015, respondent No. 1-Balram Dhiwar while driving the offending vehicle Tata Mazda bearing registration No. CG10-C/8472 rashly & negligently, dashed the vehicle Hywa bearing registration No. C.G. 10-K/3337, which was being driven by claimant/appellant, aged about 30 years, as a result of which claimant sustained grievous injuries resulting into permanent disability.

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

4. Learned counsel for the appellant/claimant submits that as per disability certificate (Ex.A-112) issued by the Doctor, who has examined before the Tribunal, the claimant has suffered permanent disability to the extent of 40% and as per paragraphs 1 to 4 of the statement of the doctor, due to the injuries sustained by the claimant in the accident occurred on 5.4.2015, claimant's leg is band, tibia bone is crushed and the claimant is unable to stand and not capable to move without any support. Doctor has also stated that if the injured should have taken physiotherapy treatment for about three years, permanent disability may be reduced to the some extent. He further submits that after considering the evidence of the Dr. Anand Manjhi (AW-2) and certificate vide Ex. A/112 proved by aforesaid treating doctor Dr. Anand Manjhi (AW-2), the learned Tribunal wrongly considered only temporary disability caused to the claimant/injured. The claimant is a driver and his entire livelihood is based on his job and his physical fitness, therefore, looking to the injuries and his livelihood, 25% permanent disability may be considered for his loss of earning capacity and it is also prayed that future prospect in this respect is also not provided to the injured that may also be provided.

5. Learned counsel for the respondent No. 3/Insurance Company

support the impugned award.

6. I have heard learned counsel appearing for the parties and perused the record of Claims Tribunal including award impugned.

7. As per evidence of Dr. Anand Manjhi (AW-2), it is clearly proved that injuries caused to the claimant/injured in his leg due to which the tibia bone is crushed and the leg is bend and he is unable to stand and not move without any support. As per disability certificate (Ex. A/112), it also shows that the injuries caused to the claimant is permanent in nature but in the certificate (Ex. A/112) this fact is mentioned in column c that injuries suffered by the claimant is temporary in nature. This explanation specifically given by the treating doctor that the injuries caused to the claimant is to the extent of 40%, if he will take physiotherapy treatment, it can be reduced to the some extent. Therefore, considering the job and his well being and looking to the injuries caused to him his loss of earning can be considered to the extent of 15 % permanent disability. Therefore, I propose to re-compute the amount of compensation in the following manner :-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.6000/- per month.	Rs. 72,000/- per annum
02.	40 % towards future prospect	Rs. 72,000/- + 28,800/- = Rs. 1,00,800/- per annum.
03.	Loss of earning @ 15%.	Rs. 15,120/-
04.	Multiplier of 17 to be applied	Rs. 2,57,040/-
05.	Towards mental pain & agony	Rs. 15,000/-
06.	Towards special diet	Rs. 5,000/-
07.	Towards conveyance	Rs. 5,000/-

08.	Towards attendant	Rs. 2,000/-
09.	Towards Medical expenses	Rs. 1,77,000/-
10.	Towards future treatment	Rs. 10,000/-
11.	Total compensation	Rs. 4,71,040/-

Since the Tribunal has already awarded Rs. 2,90,400/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.1,80,640/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

08. In the result, the appeal is allowed in part with modification in the impugned award to the extent indicated hereinabove.

Sd/-

Gautam Chourdiya
Judge

Amita