

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 30 of 2014**

- Khemsingh S/o Narayan Singh Aged About 48 Years R/o Nayapara Adawal, P.S. Bodhghat, Distt. Bastar C.G.

----Appellant/Claimant**Versus**

1. Ganesh Das S/o Shankar Das Aged About 25 Years R/o Samund Chowk, P.S. Kotwali, Jagdalpur, Distt. Bastar C.G.
2. Pushpi Agrawal D/o Late Balbir Agrawal R/o Subhash Traders, Kumharpara, Jagdalpur, Distt. Bastar C.G.
3. Branch Manager, The Bharati Aixa Insu.Co.Ltd., First Floor Chawla Complex, Sai Nagar, Raipur, Distt. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

For Appellant	Shri Praveen Kumar Tulsyan, Advocate.
For Respondent No.3	Shri P. Acharya, Advocate along with Shri Amrito Das, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****12/11/2018**

1. This is claimant's appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Bastar, Jagdalpur, District Bastar, C.G. (for short 'the Tribunal') in Claim Case No. 105/2012 vide award dated 26.10.2013.
2. As against the compensation of Rs.8,50,000/- claimed by the appellant/claimant by filing claim application under

Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the grievous injuries sustained by him in the road accident on 14.02.2012, the Tribunal awarded a total sum of Rs.76,000/- along with interest @ 8% per annum from the date of application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led by the parties, held that the accident had occurred due to rash and negligent driving of vehicle bearing registration No. CG18/GA/1888 by its driver Ganesh Das i.e., respondent No.1 herein: appellant/claimant sustained grievous multiple injuries on his right side hip and right hip and leg bone has been broken. Respondent No.3/ Bharati Axa General Insurance Company was held liable for payment of compensation as it could not establish any violation of policy conditions and the Tribunal assessed and awarded the aforesaid sum as compensation.
4. Learned counsel for the appellant submits that the Tribunal was not justified in ignoring the point of permanent disability suffered by the claimant whereas according to the statement of Dr. Lakhan Thakur and the disability certificate produced by the claimant, it is clear that the claimant suffered permanent disability to the extent of 55% which rendered him totally disabled to perform his work as a Labour. The Tribunal has further fallen in error by not awarding any amount towards future prospect, whereas, the claimant was

entitled for the sum in view of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. Lastly, he submits that the amount awarded by the Tribunal under the other heads such as medical treatment, pain and suffering, loss of income during treatment is also on the lower side and needs to be enhanced suitably.

5. On the other hand, learned counsel appearing for the Insurance Company supported the award impugned and submits that in the facts and circumstances of the case, the amount of compensation awarded by the Tribunal is just and proper compensation, which does not call for any interference.
6. Heard learned counsel for the parties and perused the material available on record including the impugned award..
7. As regards the income of the claimant/injured, considering the fact that the accident occurred on 14.02.2012, the fact that the claimant was a labour, the minimum wages at the relevant time the income of the claimant assessed at the rate of Rs.6,000/- per month by the Tribunal appears to be just and proper. Further, the Tribunal was also justified in not awarding any amount towards medical expenses as according to the claimant himself the entire expenses incurred on his medical treatment was borne by non applicant No.2 Pushpi Agrawal, However, considering the

disability certificate of Ex.A-41 issued by the District Medical Board, Jagdalpur which shows that the claimant suffered 55% physical disablement, the evidence of AW-2 Dr. Lakhan Thakur, who has stated that 55% disability in the right leg of the claimant was permanent in nature, and the evidence of claimant that after the accident he is not able to do the work of labour, which has not been challenged in his cross-examination by the non-applicants, this Court is of the opinion that the Tribunal was not justified in not granting any amount towards permanent disability. Having regard to the facts and circumstances of the case, the nature and quality of evidence adduced by the parties as well as the nature of job of the claimant and the permanent disability sustained in his leg, this Court is of the opinion that due to the injuries suffered by the claimant, his working and earning capacity reduced to the extent of 40%. The claimant has pleaded that he was 48 years of age at the time of accident. As per FIR Ex.A-1, application for medical examination of the claimant Ex.A-4 and the disability certificate Ex.A-41, the claimant was 50 years of age at the relevant time. Thus, at the time of accident, the claimant was in the age of group of 46-50 years. The Tribunal has not awarded any amount towards future prospect of the claimant whereas in view of decision in *Pranay Sethi (supra)*, considering the fact that the claimant was self employed, and was in the age group of 46-

50 years, 25% of his annual earning ought to have been added thereto towards future Prospect. Thus, keeping in view the decision of Hon'ble Supreme in the matters of **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121 & Pranay Sethi (supra)**, the claimant is held entitled for compensation in the following manner:-

Head	Compensation
Notional Income of the claimant	Rs.6,000/- i.e. Rs.72,000/-
Future Prospect 25%	Rs.18,000/- Rs.72,000 + Rs.18,000/- = Rs.90,000/-
Loss of earning capacity @ 40%	Rs.36,000/-
Multiplier of 13 applied	Rs.4,68,000/-

8. As regards the amount awarded by the Tribunal towards pain and suffering of Rs.10,000/-, loss of income during treatment of Rs.10,000/- and for future treatment of Rs.20,000/-, the same appears to be just and proper looking to the nature of injuries, the nature of job and the period of hospitalization of the claimant. Since, this Court is awarded compensation to the claimant by applying multiplier method, the amount of Rs.36,000/- awarded by the Tribunal towards loss of income to the claimant for 6 months due to injury suffered by him is not being added to the compensation

assessed by this Court.

9. In the result, the appeal is allowed in part. The claimant/injured is held entitled for a total compensation of Rs. 4,68,000 + Rs. 40,000/- = Rs. 5,08,000/-. Since, the Tribunal has already awarded Rs.76,000/-, after deducting the same the claimant is held entitled for an additional compensation of Rs.4,32,000/-. The enhanced amount shall carry interest at the rate of 8% from the date of application till its realization. However, rest of the conditions shall remain intact.

10.No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh