

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 323 of 2014**

- Kamaluram S/o Somaruram Aged About 24 Years R/o Dongaripara, Sedava, P.S. Darbha, District Bastar C.G.

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

1. Shekh Saleem S/o Shekh Shekhu Aged About 35 Years R/o Ganganagar Ward, Opposite Sibaka Hotel, Jagdalpur, Distt. Bastar C.G.
2. Amrit Lal Jain S/o Premraj Jain R/o Subhash Ward Jagdalpur, Distt. Bastar C.G.
3. Branch Manager S/o Thru- The Oriental Insu.Co.Ltd., Laxman Avenue Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Appellant	Shri Praveen Dhurandhar, Advocate.
For Respondent nos. 1 &2	Shri Subhash Yadav, Advocate.
For Respondent no.3	Smt. Chitra Shrivastava, Advocate.

MAC No. 314 of 2014

- Ruknath S/o Lachhuram Aged About 24 Years R/o Dongaripara, Sedava, P.S. Darbha, District Bastar C.G.

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

1. Shekh Saleem S/o Shekh Shekhu Aged About 35 Years R/o Ganganagar Ward, Opposite Sibaka Hotel, Jagdalpur, District Bastar C.G.
2. Amrit Lal Jain S/o Premraj Jain R/o Subhash Ward Jagdalpur, District Bastar C.G.
3. Branch Manager Through the Oriental Insurance Company Ltd., Laxman Avenue Jagdalpur, District Bastar C.G.

---- Respondents

For Appellant	Shri Praveen Dhurandhar, Advocate.
For Respondent nos. 1 &2	Shri Subhash Yadav, Advocate.
For Respondent no.3	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****06/12/2018**

1. Heard on I.A. No.1, application filed by Shri P.K. Tulsyan, Advocate for permission to withdraw his Vakalatnama on behalf of the appellants.
2. For the reasons mentioned in the aforesaid application, the same is allowed and Shri Tulsyan, Advocate to withdraw his Vakalatnama on behalf of the appellants. Shri P.K. Dhurandhar, has already filed his Vakalatnama for the appellants.
3. As both these appeal arise out of the award dated 26.02.2014 passed by the Motor Accident Claims Tribunal, Bastar place at Jagdalpur, District Bastar, C.G. in Claim Cases No.131/12 in MAC No.323/2014 and 02/2013 in MAC No.314/2014, they are being disposed of by this common judgment.
4. As per averments in the claim petitions, on the date of accident i.e. 07.07.2012 Kamaluram, aged about 24 years

along with Rukhnath, aged about 24 years, both earning Rs.5,000/- per month working as a Labour, got injured in the motor vehicular accident caused due to rash and negligent driving of Truck bearing registration no.CG13-D-2744 by non-applicant No.1. At the time of accident, offending vehicle was owned by respondent no.2 and insured with respondent no.3.

5. On separate claim petitions under Section 166 of the Motor Vehicle Act being filed by the injured/claimants i.e. claim cases no. 131/12 and 02/13 respectively, the Tribunal considering the evidence led by the parties by the impugned award granted compensation in favour of the claimants in claim case no. 131/12 of Rs. 21,196/- and Rs. 13,500/- in claim case no.02/13 with interest @ of 8 percent per annum from the date of application till its realization, fastening the liability on non-applicant no.3/Insurance Company.

6. **MAC No.323/14 & MAC No.314/2014** :- Learned counsel for the appellants/claimants submits that though the claimant Rukhnath has suffered 45% permanent disability as per Ex.A-7 which was duly proved by him and likewise claimant Kamluram also suffered 48% permanent disability as per Ex.A-17 which has been duly proved by Dr. Lakhan Thakur, AW-2, the Tribunal did not consider the issue of

permanent disability. The claimants were labour by profession and therefore, considering the injuries suffered by them, their earning capacity would definitely be affected and therefore, the Tribunal should have considered the loss of earning of the claimants by assessing their monthly income and applying the proper multiplier. However, the Tribunal did not compute the compensation in this manner and also awarded meager amount under the other heads. Lastly, he submits that the Tribunal did not award any amount towards future prospect to the claimants and in the present case, considering the age of the claimants i.e. 24 years, the nature of their job, they are entitled for 40% addition to their annual income towards future prospect. Reliance has been placed on the decisions of the Hon'ble Supreme Court 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.***

7. On the other hand, learned counsel for the respondents supporting the impugned award submits that the amount awarded by the Tribunal is just and proper and needs no interference by this Court.
8. No counter appeal has been filed by the respondents in both these appeals as submitted by counsel for both the

parties.

9. Heard both the parties and perused the material available on record.

10. **MAC No.323/2014**:- So far as, the income of the injured/Kamluram is concerned, though he has pleaded that he being Labour was earning Rs.5,000/- per month, however, no documentary evidence has been adduced in support thereof. Therefore, in these circumstances, in absence of any proof regarding income, the income of the claimant is considered as Rs.4,500/- per month as per minimum wages at the relevant time. However, the Tribunal has committed an error in not considering the permanent disability. Considering the pleading of the claimant, the disability certificate Ex.P-17 which shows that the claimant suffered 48% disability, the nature of job of the claimant in the facts and circumstances of the case it can be held that on account of the injuries the claimant suffered 10% loss of earning capacity. Further, the Tribunal was also not justified in ignoring the future prospect of the claimant which should have been 40% in the present case as the injured/claimant was aged about 24-25 years of age as is evident from the pleading of the claimant in the claim petition, MLC Ex.A-3, Discharge Ticket Ex.A-6 and Disability Certificate Ex.A-17. Therefore, in view of the decisions of the Supreme Court in

Smt. Sarla Verma & Pranay Sethi (supra), the compensation is reassessed as under:-

S.I. No.	Head	Calculation
1	Notional Income of the claimant	Rs. 4500/- i.e. Rs.54,000/- per annum.
2.	Future prospect 40%	Rs. 21,600/- Rs.54,000 + Rs.21,600 = Rs.75,600/-
3.	Loss of earning capacity @ 10%	Rs.7,560/-
4.	Multiplier of 18 applied	Rs.1,36,080/-
5.	For pain and suffering, special diet, travelling and for attendant	Rs.25,000/- lumpsum
	Total Compensation	Rs.1,61,080/-

Since the Tribunal has already awarded Rs.21,196/-, after deducting the same from the above amount, the claimant Kamluram is held entitled for additional compensation of Rs.1,39,884/- with interest @ 8 % per annum from the date of application till realization.

11. **MAC No.314/2014**:- So far as, the income of the injured/Rukhnath is concerned, though he has pleaded that he being Labour was earning Rs.5,000/- per month, however, no documentary evidence has been adduced in support thereof. Therefore, in these circumstances, in absence of any proof

regarding income, the income of the claimant is considered as Rs.4,500/- per month as per minimum wages at the relevant time. However, the Tribunal has committed an error in not considering the permanent disability. Considering the pleading of the claimant, the disability certificate Ex.P-7 which shows that the claimant suffered 45% disability, the nature of job of the claimant in the facts and circumstances of the case it can be held that on account of the injuries the claimant suffered 10% loss of earning capacity. Further, the Tribunal was also not justified in ignoring the future prospect of the claimant which should have been 40% in the present case as the injured/claimant was aged about 24-25 years of age as is evident from the pleading of the claimant in the claim petition, MLC Ex.A-3, Discharge Ticket Ex.A-6 and Disability Certificate Ex.A-7. Therefore, in view of the decisions of the Supreme Court in **Smt. Sarla Verma & Pranay Sethi (supra)**, the compensation is reassessed as under:-

S.I. No.	Head	Calculation
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3.	Loss of earning capacity @ 10%	Rs.7,560/-
4.	Multiplier of 18 applied	Rs.1,36,080/-

5.	For pain and suffering, special diet, travelling and for attendant	Rs.25,000/- lumpsum
	Total Compensation	Rs.1,61,080/-

Since the Tribunal has already awarded Rs.13,500/-, after deducting the same from the above amount, the claimant Rukhnath is held entitled for additional compensation of Rs.1,47,580/- with interest @ 8 % per annum from the date of application till realization.

12. In the result, both the appeals are allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh