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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1199 of 2018

- Kuldeep Deshmukh S/o Udaikaran Deshmukh, Aged about 29 years, R/o Village Belaudi, P.S. - Pulgaon, Tahsil & District- Durg (C.G.)

---- Appellant/Claimant

Versus

1. Rakesh Kumar Sodhi S/o Toplal Sodhi, Aged about 25 years, R/o Laxman Bharda, Post- Mathal Dabri, P.S. - Dongargaon, Tahsil – Chhuriya, District – Rajnandgaon (C.G.) - **Driver**
2. Sheikh Lal Mahobia S/o Lakhan Lal Mahobia, R/o Ward No. 8, Sevta Tola, Dongargaon, P.S. - Dongargaon, Tahsil – Chhuriya, District – Rajnandgaon (C.G.) - **Owner**
3. The Oriental Insurance Company Limited, Through- Branch Manager, Branch Office – Near Rajendra Park Chowk, G.E. Road, Durg, Tahsil & District - Durg (C.G.) - **Insurer**

---- Respondents

For Appellant	: Shri P.R. Patankar, Advocate
For Respondent No.3	: Shri Deepak Gupta, Advocate
For Respondents 1 & 2	: None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

09.10.2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant/Appellant, seeking enhancement of the compensation awarded by the Seventh Additional Motor Accident Claims Tribunal, Durg vide award dated 04.04.2018 passed in Claim Case No.000082 of 2015.
2. The claimant/Appellant claimed compensation of Rs.12,20,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injury sustained by him in the motor accident.
3. The fact of the case is that on 23.03.2015 at about 06:25 PM when the Appellant/Claimant was going on his motorcycle towards Anjora, the driver of the

offending vehicle Maruti-Van bearing registration No. CG 08 K 1146 driving the said vehicle in a rash and negligent manner dashed the motorcycle of the injured/Claimant. As a result thereof, the Appellant sustained grievous injuries on his right leg, knee and other parts of the body and his thumb also got fractured. Due to the injury sustained by the Appellant, he was taken to the Rajvanshi Hospital Nehru Nagar, where rod was inserted in his leg.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.03,07,530/- in favour of the Appellant/Claimant with interest @ 9% per annum from the date of application till realization.

5. Contention of the learned counsel for the Appellant/Claimant is that the income of the injured/Claimant has been considered by the Tribunal at Rs.4,500/- per month. He contended that the deceased was Agent at ADV Co-operative Society Limited, Durg therefore his monthly income ought to have been considered as per minimum wages @ Rs.6,000/- per month. He also submits that the Tribunal has awarded only Rs.2,000/- for loss of amenities in future life and Rs.5,000/- for mental agony, pain and suffering, therefore, it may also be enhanced.

6. Learned counsel for the Respondent No.3/Insurance Company however opposes the appeal and submits that the learned Tribunal has rightly assessed the income of the deceased, therefore, it is just and reasonable and does not call for any interference in the instant claim petition.

7. I have heard the learned counsel appearing for the parties and perused the impugned order including the records of the Claims Tribunal.

8. Considering the evidence adduced by the Appellant/Claimant, the income taken by the learned Tribunal at Rs.4,500/- per month appears to be on lower side and as the Appellant/Claimant, 29 years of age, was an Agent at ADV Co-operative Society Limited, Durg, his income can be taken at Rs.6,000/- per month. This apart

the Tribunal has also awarded only Rs.2,000/- for loss of amenities in future life and Rs.5,000/- for mental agony, pain and suffering. However, considering the facts and circumstances of the case, the amount awarded towards loss of amenities deserves to be enhanced to Rs.35,000/- and likewise, for mental agony, pain and suffering the same can be enhanced to Rs. Rs.15,000/-. Based on the above income, the compensation is calculated as under:-

Sl.No.	Head	Calculation
1	Total monthly income of the injured/Claimant	Rs.6,000/-
2	26% of total monthly income on account of 26% disability	Rs.1,560/-
3	Total loss of annual income	Rs.1,560/- x 12 = Rs.18,720/-
4	After multiplier of 17 applied	Rs.18,720/- x 17 = Rs.3,18,240/-
5	Medical expenses	Rs.57,850/-
6	Mental agony, pain and suffering	Rs.15,000/-
7	Expenses for healthy food	Rs.2,000/-
8	Conveyance for Hospital costs	Rs.1,000/-
9	Expenses for attendant	Rs.1,000/-
10	Loss of amenities in future life	Rs.35,000/-
	Total Compensation	Rs.4,30,090/-

Since the Tribunal has already awarded Rs.3,07,530/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.1,22,560/-.

9. Resultantly, the appeal is allowed in part and the impugned award is

modified to the extent that the Claimant/Appellant shall be entitled to a total enhanced amount of compensation of Rs.1,22,560/- with further direction of payment of interest on the enhanced amount of compensation @ 9% per annum from the date of filing of the claim petition till the date of actual payment. However, rest of the conditions of the impugned award shall remain intact.

10. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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