

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 240 2015

- Sunder Ram, aged about 35 years, son of Shri Devlal, occupation – Rajmistry (Wrongly mentioned as Labourer), resident of village – Jargim, P.S./Tahsil – Shankargarh, District Balrampur (C.G.)

---- Appellant/Claimant

Versus

1. Santosh Yadav @ Buluram, aged about 22 years, son of Shri Ram Naresh Yadav, occupation-Driver
2. Ram Naresh, aged about 48 years, son of Shri Beegan Ram Yadav, occupation-Owner

Both are resident of village – Jargim, P.S. and Tahsil-Shankargarh, District Balrampur (C.G.)

3. The Oriental Insurance Company Limited, registered office – Oriental House, Aasaf Ali Road, New Delhi, local address- The Branch Manager- The Oriental Insurance Company Limited, Ambedkar Chauk, Ambikapur, District Surguja (C.G.) Through- The Divisional Manager, The Oriental Insurance Company Limited, Divisional Office, Bilaspur (C.G.)

---- Respondents

For Appellant : Shri Vivek Bhakta, Advocate

For Respondents 1 & 2 : Shri A.K. Yadav, Advocate

For Respondent No. 3 : Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Order

06.10.2018

I.A. No. 1

This is an application for condonation of delay of 67 days in filing the appeal.

For the reasons mentioned in the application which is supported by affidavit, the same is allowed and the delay in filing the appeal is condoned.

Heard on admission.

Admit.

Heard finally with the consent of learned counsel for the parties.

Judgment on Board

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant, seeking enhancement of the compensation awarded by Motor Accident Claims Tribunal, Surguja (Ambikapur) vide award dated 26.09.2014 passed in Claim Case No. 29 of 2013.
2. The claimant/Appellant claimed compensation of Rs.67,31,500/- 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 brief facts of the case are that on the date of accident i.e. 14.11.2011 at about 12:00 Noon when the appellant was going towards Shankargarh-bazar, Respondent No.1/driver of the offending vehicle Mahindra Pick-up bearing registration No. CG 15 A 9396 driving the said vehicle in a rash and negligent manner dashed the injured/Claimant-Sunder Ram. The Claimant sustained grievous injuries, his right leg was operated thrice due to infection and thereafter his right leg below the knee had to be amputated. The Claimant/appellant suffered 70% permanent disability. At the time of accident the appellant/Claimant was about 35 years of age.
4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.6,18,737/- to injured with interest @ 6% per annum from the date of application till realization.
5. Contention of the learned counsel for the Appellant/Claimant is that the Appellant sustained 70% permanent disability due to accident, but the learned Tribunal wrongly assessed the monthly income of the claimant at Rs.3,000/- which appears to be on lower side. Considering the fact that the Appellant was a skilled labour, as per minimum wages prevalent at that time his monthly income ought to have been taken at Rs. 4,500/-. He further submits that the amount of Rs. 1,00,000/- awarded by the Tribunal towards loss of amenities also deserves to be

enhanced to Rs.1,50,000/-. Lastly he submits that the Tribunal has not awarded any amount towards future prospect, this may also be granted in this appeal.

6. Learned counsel for the Respondents 1 and 2 and Respondent No.3, however, oppose the appeal and submits that the learned Tribunal has rightly assessed the income of the injured/Claimant, therefore, it is just and reasonable, which 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 facts and circumstances of the case, the evidence available on record, the fact that no counter appeal has been filed the Insurance Company/Respondent No.3 and Respondents 1 and 2, the age i.e. 35 years of the injured/Claimant and evidence adduced by Appellant/Claimant that he was doing job of Labour, the minimum wages of the skilled labour is Rs.4,500/- per month at the relevant time, this Court is of the opinion that the income considered by the learned Tribunal as Rs.3,000/- per month is on lower side and it can safely be taken as Rs.4,500/- per month. This apart the Tribunal has also awarded only Rs.1,00,000/- for loss of amenities. However, considering the facts and circumstances of the case, the amount awarded towards loss of amenities deserves to be enhanced to Rs.1,50,000/-. In view of the decision of the Apex Court in **National Insurance Company Limited** vs. **Pranay Setthi, (2017) 16 SCC 680**, the injured/Claimant is entitled for compensation in the following manner :

Sl.No.	Head	Calculation
1	Income of the injured/claimant	Rs.4,500/- per month i.e. Rs.54,000/- per annum
2	40% towards future prospects added to annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/- per annum

3	Loss due to 70% permanent disability	Rs.52,920/-
4	Multiplier of 16 applied	Rs.52,920/- x 16 = Rs.8,46,720/-
5	Mental agony, pain and suffering	Rs.50,000/-
6	Loss of amenities,	Rs.1,50,000/-
7	Medical expenses for treatment	Rs.7,537/-
8	Special diet during treatment, attendant and conveyance costs	Rs.40,000/-
9	Towards loss of earning for three months after discharge	Rs.18,000/-
	Total	Rs.11,12,257/-

Since the Tribunal has already awarded Rs.06,18,737/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.4,93,520/-.

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.4,93,520/- with further direction of payment of interest on the enhanced amount of compensation @ 6% 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