

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 335 of 2014

- Krishna Kumar S/o Basant Singh Aged About 22 Years R/o Aani, P.S. And Tah. Baikunthpur, Distt. Korea C.G.

---- Appellant/claimant

Versus

1. Sandeep Kumar S/o Chuthal Uraon Aged About 25 Years (Driver of alleged vehicle).
2. Dilrakhan S/o Devratan Aged About 48 Years (Owner of alleged vehicle)

Both R/o Village Aani, P.S. And Tah. Baikunthpur, Distt. Korea C.G.

---- Respondents

For Appellant	:	Shri Anil Gulati, Advocate.
For Respondents	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

28.01.2019

This appeal is by the injured/claimant under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") against the award 18.2.2014 passed by Motor Accident Claims Tribunal, Koriya (Baikunthpur), in Claim Case No. 40/2011 awarding total compensation of Rs.86,393/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 & 2/driver & owner jointly and severally.

02. As per claim petition, on 28.11.2010 at around 9 pm the claimant, aged 22 years, earning Rs.3000/- per month and assisting his father in agriculture work, was going on motorcycle CT-100 bearing No. CG 16C/5007 which was being ridden by non-applicant No.1 Sandeep

Uraon. However, due to rash and negligent riding of the motorcycle by non-applicant No.1, it got dashed against an electric poll, the claimant fell down from the motorcycle and suffered grievous injuries including fracture of left leg.

03. On claim petition being filed by the injured claimant under Section 166 of the Motor Vehicles Act claiming compensation to the tune of Rs.5.15 lacs with 18% interest, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant/claimant submits that the claimant suffered 45% permanent disability in his leg, which has been duly proved by the claimant and the treating doctor AW-2 Dr. R. Banshariya, who issued disability certificate Ex.P/14, but the Tribunal has awarded only Rs.86,393/- without considering the loss of earning capacity by applying proper multiplier. He submits that looking to the nature of injury, the permanent disability, which is not curable, the loss of earning of the claimant may be considered as 25% and accordingly, future prospect may also be granted in view of decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

05. None for the respondent though served.

06. Heard learned counsel for the appellant/claimant and perused the material available on record.

07. It is not in dispute that the claimant sustained injuries due to accident occurred on 28.11.2010 on account of rash and negligent riding of the motorcycle by non-applicant No.1 in which the claimant was sitting as a pillion rider and the said injury resulted in 45% permanent disability to the claimant. No counter appeal has been filed by the respondents as has been submitted by counsel for the claimant.

08. As per Exs.P/15 to P/25, which are medical bills, the same have also been proved by the claimant and these documents have not been controverted by the respondents. Likewise, the documents from Exs.P/1 to P/14 have also been proved by the claimant and not

controverted by the respondents. As per evidence of AW-2 Dr. R. Banshariya, he proved the disability certificate of Ex.P/14 and stated that due to injury caused to the claimant in his left leg, his femur bone got fractured, there is stiffness and disfigurement in left knee and the claimant sustained 45% permanent disability. He has stated that the claimant cannot do his work with the same efficiency as he was doing prior to the accident, he cannot be do work requiring lifting of heavy goods/articles; he is also unable to move fast and cannot sit by folding legs. In cross-examination, the doctor states that even if surgical operation is done, the permanent disability would remain 40%. He states that the claimant is walking with the aid of crutch.

09. The Tribunal did not consider the loss of earning of the claimant only on the ground that there is nothing on record to show that he is earning anything, he is only a student and assists his father in agriculture work. This finding of the Tribunal is not sustainable. Even if the claimant is a student and is not earning anything, considering the pleadings of the claimant that he is assisting his father in running grocery shop and in agriculture work, his age i.e. 22-23 years as is evident from Ex.P/4 MLC of the claimant, Ex.P/14 disability certificate and other relevant documents, the minimum wages and the price index at the relevant time, his notional income can be taken as Rs.3000/- per month. Further, considering the nature and extent of injury, the age of the claimant and the fact that as per evidence of AW-2 Dr. R. Bansariya, permanent disability shall affect the claimant for long life, his loss of earning due to permanent disability of 45%, which was in relation to whole body, can safely be taken as 10%. This apart, keeping in view the decision of the Hon'ble Supreme Court in *Pranay Sethi* (supra), the claimant is also entitled for 40% addition to the annual income towards future prospect. As regards the amount awarded by the Tribunal towards medical expenses, transportation, special diet and pain & suffering, the same being just and proper and based on correct appreciation of material available on record needs no interference by this Court. Thus, considering the facts and circumstances of the case, in view of decisions in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6***

SCC 121 and *Pranay Sethi* (supra), the claimant is entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.3000/- per month	36,000/- per annum
02.	40% of (i) above to be added towards future prospects.	36,000 + 14,400 = 50,400/-
03.	Loss of earning @ 10%	5040/-
04.	Multiplier of 18 to be applied for assessing total loss of earning.	90,720/-
05.	Towards medical expenses	4,668/-
06.	Towards transportation	4,725/-
07.	Towards special diet	2,000/-
08.	Towards pain & suffering and other inconveniences	25,000/-
	Total:	1,27,113/-

Since the Tribunal has already awarded Rs.86,393/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.40,720/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/
(Gautam Chourdiya)
Judge