

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 65 of 2015**

1. Bhisham Kumar Sahu S/o Kaliram Sahu aged about 23 Years R/o Vindhvasani Nagar, Rajim Road, Abhanpur, P.S. and Tah. Abhanpur, Distt. Raipur, Chhattisgarh.

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

1. Jitendra Kurre S/o Lakhan Lal Kurre, aged about 24 Years R/o Village- Basin, P.S. Fingeshwar, Tahsil Rajim, Durg, Distt. Gariyaband, Chhattisgarh. (Driver)
2. Onkar Suryavanshi S/o Ramlal Suryavanshi R/o Office Nagpur Road Lines, Amapara Rajim, P.S. Rajim, District Gariyaband, Chhattisgarh. (Owner)
3. The Branch Manager Through the Oriental Insurance Company Ltd., Branch No. 3, Devendra Nagar Road, Near Sai Mandir, Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri S.P. Sahu, Advocate.
Respondent No. 1 & 2	:	None.
For Respondent No. 3	:	Shri R.N. Pusty, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****26/03/2019**

- 1) This appeal is by the injured claimant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 09/04/2014 passed by the VII Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 52/2013 awarding the total compensation of Rs. 1,38,172/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non applicants jointly and severally.
- 2) As per claim petition on 07/10/2012 at around 01:15 PM claimant Bhisham Kumar Sahu, 23 years of age earning Rs. 6,000/- per month by doing computer work and selling Mobile Phones, was

riding his motor cycle bearing No. CG05 H 9137 with a moderate speed. However, on the way non-applicant No. 1 Jitendra Kurre by driving vehicle Eicher Tipper bearing No. CG04 JC 2605 (offending vehicle) in a rash and negligent manner dashed the motorcycle of the claimant. As a result of this accident, claimant suffered grievous injuries on his right leg, right elbow and other parts of the body. Due to said injury claimant/injured suffered permanent disability. At the time of accident the offending vehicle was owned by non-applicant No. 2 and insured with non-applicant No. 3.

- 3) On the claim petition being filed by the injured claimant under section 166 of Motor Vehicles Act, 1988, the Tribunal considering the evidence led by the parties passed an award as mentioned in para 1 of this judgment.
- 4) Learned counsel for the appellant/claimant submits as under:-
 - i) that the income of the claimant has wrongly being considered by the Tribunal as Rs. 3,000/- per month; whereas he was earning Rs. 6,000/- per month as Computer Operator and sale of Mobile Phones.
 - ii) that the amount awarded by the Tribunal of Rs. 5,000/- towards special diet and attendance and conventional has also assumed of Rs. 2,000/- awarded by the Tribunal towards pain and suffering is on the lower side and deserves to be enhanced.
- 5) On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.
- 6) No counter appeal has been filed by the respondent as submitted by counsel for the parties.
- 7) Heard, learned counsel for the parties and perused the material available on record.

- 8) As regards income of the claimant, though the claimant has pleaded that he was earning Rs. 6,000/- per month as Computer Operator and through selling of Mobile Phones but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the claimant is considered as Rs. 5,000/- as per minimum wages at the relevant time, of skilled labour. Further, considering the nature and extent of injuries suffered by the claimant, the fact that the claimant was operated upon twice, the period of his hospitalization, this Court is of the opinion that the amount of Rs 5,000/- awarded by the Tribunal towards special diet, attendance and conveyance can safely be enhanced to Rs. 10,000/- and likewise the amount towards pain and suffering can be enhanced to Rs. 30,000/-. Thus the claimant is held entitled for compensation in the following manner :-

Sl. No.	Heads	Calculation (In rupees)
01	Towards Medical expenses (as awarded by the Tribunal)	98,172
02	Towards loss of earning for 5 months	(5000x 5) = 25,000
03	Towards special diet, attendance and conveyance.	10,000
04	Towards pain and suffering	30,000
	Total compensation	1,63,172/-

Since the Tribunal has already awarded Rs. 1,38,172/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 25,000/- with interest @6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

-Sd/-
(Gautam Chourdiya)
Judge