

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 171 of 2013

1. Gopal Rajak S/o Nanku Ram Rajak Aged About 45 Years Near Shanta Hotel, Bhanpuri, P.S. Khamtarai, Raipur (C.G.).

---- Appellant/Claimant

Versus

1. Nilkanth Banjare S/o Ramji Banjare Aged About 28 Years Sanyasipara, Near Ramji Electric Shop, P.S. Khamtari, Raipur (C.G.) (Driver)
2. Gurudip Singh S/o Jogendar Pal Aged About 34 Years Satkar Hotel, Gali Station Road, P.S. Ganj, District Raipur (C.G.) (Owner).
3. ICICI Lombard General Insurance Co. Ltd. Through- Branch Manager, Brach Office, 3rd Flr. Lal Ganga Shoping Mal, G E Road, Raipur District Raipur (C.G.) (Insurer)

---- Respondents

For Appellant : Miss Premlata Khalkho, Advocate on behalf of
Shri Raghavendra Pradhan, Advocate.
Respondent No. 3 : Shri Amrito Das, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

01/04/2019

- 1) This appeal is by the claimant injured under Section 173 of the Motor Vehicles Act, 1988 against the award dated 03/12/2011 passed by Second Additional Motor Accident Claims Tribunal, Raipur, District Raipur (C.G.) in Claim Case No. 17/2011 awarding total compensation of Rs. 1,59,600/- with interest @ 6% per annum from the date of application till realization, fastening liability on the respondents/non-applicants jointly and severally.
- 2) As per claim petition on 04/06/2009 at around 10:30 PM claimant Gopal Rajak, 45 years of age, earning Rs. 5000 per

month and 200 Daily allowance as Driver. However, near Vyas Pond, in front of Bihari Hotel, Main Road Birgaon, Non-applicant No. 1/Nilkanth Banjare was driver of offending vehicle Truck bearing No CG04 C 0823 rashly and negligently dashed the claimant. As a result of this accident, claimant suffered grievous injuries on his both legs and other parts of the body. Due to injury suffered by him he has become permanent disabled to the extent of 40%. At the time of accident offending vehicle was owned by non applicant No.2/Gurudip Singh and insured with Non applicant No. 3/ICICI Lombard General Insurance Co. Ltd.

- 3) On claim petition being filed by the claimant injured under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
- 4) Learned counsel for the appellant/claimant has raised various grounds in this memo of appeal, however, he is not pressing on those grounds and is assailing the awards on the following grounds only:-
 - i) that income of the claimant has wrongly been considered by the Tribunal as Rs. 3000/- per month; whereas it should have been Rs.6,000/- per month.
 - ii) that 1/3rd deduction towards personal and living is also against the law and it should have not been deducted as the claimant is 40 percent permanent disabled person.
 - iii) that no amount towards future prospect has been granted to the claimant.
 - iv) that the amount awarded under the other heads also being on the lower side deserves to be enhanced suitably.

In support of above contention, 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*** and ***National Insurance Co. Ltd. Vs. Pranay***

Sethi, (2017) 16 SCC 680.

- 5) On the other hand, learned counsel for the respondent/insurance company opposed the contention made by the counsel for the appellant and supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.
- 6) No any counter appeal is filed by the respondents as submitted by both 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 have pleaded that he was earning Rs. 5,000/- per month as Driver but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, the income assessed by the learned Tribunal as Rs. 3000/ per month is just and proper and as per minimum wages for skilled labour at the relevant time. However, the Tribunal has committed an error in not considering the permanent disability. Considering the pleading of the claimant, the unrebutted evidence of AW-2 Dr. P.K. Gupta who found that due to amputation of great toe of left foot and contraction in fore toes as well as ankylosis in mid hird foot joints, the claimant suffered 40% permanent disability, he has unable to driver heavy goods vehicle and cannot move like normal people, the nature of job of the claimant, it can be held that on account of injures the claimant suffered 40% permanent disability (Ex. P-46). Further, the Tribunal was also not justified in ignoring the future prospect of the claimant which should have been 40% and deducted 1/3 towards personal & living expenses, in the present case as the injured was aged about 39 years. Therefore, in view of the decisions of the Hon'ble Supreme Court in *Sarla Verma* and *Pranay Sethi* (supra), the claimant is held entitled for compensation in the following manner:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs. 3,000/- per month.	(Rs. 3000x12) = Rs. 36000 per annum (as awarded by the Tribunal)
02.	40% of (1) above to be added towards future prospects.	(Rs. 36000 + 14400) = Rs. 50400/-
03.	40% permanent disability & loss of earning capacity	(Rs. 50400X40%) = Rs. 20,160/-
04.	Multiplier of 15 to be applied	(Rs. 20160 x15) = Rs. 3,02,400/-
05.	Towards medical expenses	Rs. 4,200 (as awarded by Tribunal)
06.	Towards pain and suffering	Rs. 15,000/-
07.	Towards attendant	Rs. 5,000/-
08.	Towards special diet	Rs. 5,000/-
09.	Towards conveyance	Rs. 2,000/-
10.	Towards future treatment	Rs. 15,000/-
	Total compensation	Rs. 3,48,600/-

Since the Tribunal has already awarded Rs. 1,59,600/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 1,89,000/- 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