

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (Civil) No. 559 of 2017**

- Pavittar Singh S/o Raghuvir Singh, aged about 40 years, R/o Vrinda Nagar, Camp-1, P.S. Chhawani, Bhilai, Tahsil and District Durg (C.G.)

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

1. Ramdesi Thakur S/o Bhukhau Thakur, aged about 29 years, At present R/o Behind LIG Colony, Jhopda, Sector 6, Bhilai, District Durg (C.G.)
(Driver of Vehicle TATA 207 No. C.G. 07.C.2935)
2. Dipesh Kumar Nathwani S/o Mansukh Lal Nathwani, R/o Q.No.699, Vaishali Nagar, Bhilai, District Durg (C.G.)
(Owner of Vehicle TATA 207 No. C.G.07.C.2935)
3. The Oriental Insurance Company Limited, 16, R.S.S. Market, Bhilai, District Durg, Through- Branch Office Old R.T.O. Bhawan Near Rajendra Park Chowk, Durg, District Durg (C.G.)
(Insurer of Vehicle TATA 207 No. C.G.07.C.2935)

---- Respondents/Non-applicants

For Appellant	:	Shri Syed Majid Ali, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri R.N. Pusty, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J**Judgment on Board****25.06.2019**

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the injured-Claimant/Appellant, seeking enhancement of compensation awarded by the Sixth Additional Motor Accident Claims Tribunal, District Durg (C.G.) vide award dated 27.01.2017 passed in Claim Case No. 0128 of 2015.
2. The Claimant/Appellant claimed compensation of Rs.50,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injury sustained by him in the motor accident.
3. Facts of the case, in brief, are that on the date of accident i.e. 14.10.2014, the Claimant was going towards Chandra Mourya under-bridge from Sector 6 by

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his motorcycle bearing registration No. CG-07/LJ/6575 in his side. At about 07:30 pm, the offending vehicle Tata 207 bearing registration No. CG-07/C/2935 was coming in a rash and negligent manner, seeing this Claimant stopped the motorcycle on the left side of the road taking full care and caution and stood on the bus stop, but the offending vehicle rashly and negligently hit the Claimant. As a result thereof, Claimant sustained grievous injuries on various parts of the body and was admitted in Ramkrishna Care Hospital where his treatment was going on and hip bone of right leg and tibia fibula were fractured and right leg was amputated above the knee and he also suffered 80% permanent disability as per Ex.-P/12-C.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.11,84,324/- to the Appellant/Claimant with interest @ 9% per annum from the date of filing of the application till realization fastening liability on non-applicant No.3 along with non-applicants No. 1 & 2.

5. Learned counsel for the Appellant/Claimants submits that the right leg of the Appellant was amputated above knee and he is unable to work smoothly, therefore, 100% permanent disability may be considered. He further submits that no amount towards future prospects has been granted to the Appellant. In support of his contention, reliance has been placed on the decision of the Hon'ble Supreme in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**.

6. On the other hand, learned counsel for Respondent No.3/Insurance Company 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.

7. Heard learned counsel for the parties and perused the material available on record.

8. It is not disputed that due to accident, the Appellant/Claimant sustained grievous injuries on the various parts of the body and his hip bone of right leg and tibia fibula were fractured due to which his right leg was amputated above the knee.

As regards the assessment of permanent disability of the Claimant/Appellant to the extent of 80% by the Tribunal, as per Ex.-P/12-C, a certificate of permanent disability issued by Government Civil Hospital Supela, the Appellant had suffered 80% permanent disability in relation to a particular limb of the body and not in relation to the whole body, the Tribunal has rightly considered 80% permanent disability of the Appellant to a particular part of the body and has rightly considered functional disability and loss of earning 80% looking to the job and injuries sustained to the Claimant.

9. According to the Appellant/Claimant, aged about 40 years, prior to the accident he was working as Sales Executive in Urotech Marketing Private Limited and earning Rs.12,000/- per month but no documentary evidence in support thereof has been adduced, therefore, the Tribunal, in absence of proof regarding income, the income of the Claimant has considered as Rs.6,000/- per month & Rs.72,000/- per annum. As per Ex.-P/12-C, the Tribunal has considered 80% permanent disability to a particular limb of the body of the Claimant, the loss of earning capacity worked out to Rs.57,000/- per annum. After applying the multiplier of 15 to the loss of earning i.e. 57,000/-, the total loss of earning capacity worked out to Rs.8,64,000/-. Further, the Tribunal has awarded Rs.2,53,374/- towards medical bills & treatment; Rs.5,000/- for conveyance; Rs.5,000/- for special diet; Rs.1,950/- for attendant; Rs.5,000/- for pain & suffering and Rs.50,000/- for future treatment. Thus, the Tribunal has awarded a total compensation of Rs.11,84,324/- to the Claimant/Appellant.

10. It is argued by learned counsel for the Appellant/Claimant that no amount towards future prospect has been granted to the Appellant. Looking to the loss of earning capacity of the Appellant in future due to amputation of his right leg above the knee, this Court is of the opinion that in view of the decision in the matter of *Pranay Sethi* (supra), the Claimant/Appellant is also entitled for 25% towards future prospect. Thus, the Claimant/Appellant is held entitled for compensation in the

following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the Claimant (as considered by Tribunal)	Rs.6,000/- per month Rs.72,000/- per annum
2.	25% towards future prospects added to annual income	(Rs.72,000/- + Rs.18,000/-) Rs.90,000/- per annum
3.	Loss of earning capacity due to 80% permanent disability to a particular limb of the body	Rs.72,000/-
4.	Multiplier of 15 to be applied	Rs.72,000- x 15 = Rs.10,80,000/-
5.	For medical treatment & medical bills	Rs.2,53,374/- (as awarded by Tribunal)
6.	For conveyance	Rs.5,000/-(as awarded by Tribunal)
7.	For special diet	Rs.5,000/- (as awarded by Tribunal)
8.	For attendant	Rs.1,950/- (as awarded by Tribunal)
9.	For pain & suffering	Rs.5,000/- (as awarded by Tribunal)
10.	For future treatment	Rs.50,000/- (as awarded by Tribunal)
	Total Compensation	Rs.14,00,324/-

11. Since the Tribunal has already awarded Rs.11,84,324/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.2,16,000/- with interest @ 9% per annum from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

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

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge