

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1320 of 2016**

Smt. Shaiasta Parveen, wife of Mohd. Imran Khan, aged about 32 years, R/o. Infront of Masjid, Subhash Nagar, Durg, Tahsil and District Durg (C.G.)

---- Appellant/claimant**Versus**

1. Karamveer Singh, son of Keval Lal Singh, R/o. Sadak No.14, LIG-12, Shanti Nagar, Bhilai, District Durg (C.G.)

(Driver of Vehicle No. C.G.10, F-6903)

2. Ashok Mehara, son of late Pyare Lal, aged about 55 years, Shop No. K-4/16, Sector-11, Zone Fish Market, Kursipar, Bhilai, District Durg (C.G.).

(Owner of Vehicle No. C.G. 10, F-6903)

3. National Insurance Company Limited, Address G.E. Road, Power House Bhilai, through : Branch Office, Akash Ganga, Supela, Bhilai, District Durg (C.G.)

(Insurer of Vehicle No. C.G. 10, F-6903)

---- Respondents

For Appellant	: Shri Syed Majid Ali, Advocate
For Respondent No. 3	: Shri Qamrul Aziz, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

05.03.2019

01. This appeal is by the claimant against the award dated 09.05.2016, passed by Fourth Additional Motor Accident Claims

Tribunal, Durg in Claim Case No.79/2015 awarding total compensation of Rs.3,02,300/- alongwith interest @ 6 % per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

02. Facts of the case leading to filing of the claim petition is that in the intervening night of 5/6-02-2015 at about 12.30 pm, the appellant/injured along with her husband Mohd. Imran and other family members was coming from Raipur to her resident at Durg in the car bearing registration No. CG-04, DB-9933 and when they reached near Nehru Nagar Square, respondent No. 1, while driving the offending vehicle bearing registration No. CG-10, F-6903, rashly and negligently, dashed the car, as a result of which, he sustained grievous head injuries and got fractured and the claimant suffered permanent disability to the extent of 12%. The vehicle is owned by Non-applicant No. 2 and insured with non-applicant No. 3.

03. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel appearing for the appellant/injured submits that the learned Claims Tribunal has assessed the income of the claimant as Rs. 5,000/- per month, which appears to be on lower side, therefore, it should be enhanced to Rs.7,500/- per month. He

also submits that amount of compensation awarded on the other heads are also appears to be lower side, which deserves to be enhanced suitably.

05. On the other hand, learned counsel for the respondent No. 3/Insurance Company submits that the Tribunal has rightly considered the income, medical expenses and other miscellaneous expenses incurred by the claimant and awarded sufficient amount which needs no interference by this Court however, he submits that the Tribunal has wrongly awarded 50% towards future prospect to the claimant whereas considering the age of the claimant i.e. 32 years, the nature of her job in view of the judgment rendered by the Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Prany Sethi, (2017) 16 SCC 680**, 40% towards future prospect as such the award needs to be modified to the above extent.

06. I have heard learned counsel appearing for the parties and perused the impugned award including record of the Claims Tribunal.

07. No counter appeal is filed by the Insurance Company as submitted by learned counsel for both the parties.

08. It is undisputed fact that the liability to pay compensation upon the respondent Nos. 1 to 3 jointly and severally and no counter appeal has been filed by the Insurance Company.

According to the disability Certificate (Ex. P/18) issued by Dr. Akhilesh Yadav (AW3), the claimant sustained disability to the extent of 12% is assessed by the learned Tribunal is just & proper. Though, the claimant has pleaded that the claimant was earning Rs.7,500/- per month as an advocate however, no evidence in support thereof has been adduced by him. In these circumstances, her monthly income can safely taken as Rs.7,000/- per month as an Advocate. Further, considering the age of the injured i.e. 32 years, the claimant is also entitled for 40% addition to her annual income towards future prospect. Thus, considering the age of the claimant, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, 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.7,000/- per month.	Rs84,000/- per annum
02.	40 % of (1) above to be added towards future prospects.	Rs. 84,000+33,600= Rs. 1,17,600/-
03.	Loss of earning @ 12%	Rs14,112/-
04.	Multiplier of 16 to be applied	Rs. 2,25,792/-
05.	Towards Medical expenses	Rs.62,500 (as applied by the Tribunal)
06.	Towards pain and suffering	Rs.20,000/-(as applied by the Tribunal)

07.	Towards special diet	Rs.5,000/- (as applied by the Tribunal)
08.	Towards transportation	Rs.10,000/- applied by (as the Tribunal)
09.	For attendant	Rs.27,000/- awarded by (as the Tribunal)
10.	Total other expenses	Rs.5,000/- awarded by (as the Tribunal)
11.	Total compensation	Rs. 3,55,292/-

Since the Tribunal has already awarded Rs.3,02,300/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs 52,992/- with interest @ 6% per annum from the date of application till realization. Rest of the conditions mentioned in the award shall remain intact.

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

Sd/-

Gautam Chourdiya
Judge