

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 582 of 2013

- Hinsaram Sahu S/o Late Sundar Lal Sahu, Aged about 46 years, R/o Sanjay Nagar, Lakholi, Rajnandgaon, Tahsil and District Rajnandgaon, at present R/o Village Pendri Kala, P.S. and Tahsil Khairgarh, Post Office Pendri Kala, Revenue and Civil District Rajnandgaon (C.G.)

---- Appellant/Claimant

Versus

1. Abdul Samad S/o Nijammudin Musalman, Aged about 49 years, R/o Luchakipara, Ward No. 7 Durg, P.S. Tahsil, Post Office Durg, Revenue and Civil District Durg (C.G.)
(Driver)
2. Smt. Premlata Jain W/o Shri Shanti Lal Jain, R/o MIG 606 Padmanabhpur, Durg, P.S., Tahsil and Post Office Durg, Revenue and Civil District Durg (C.G.)
(Owner)
3. Reliance General Insurance Company Limited, Through- Branch Manager, Branch Office- Ravi Bhawan Raipur, Tahsil, P.S. and Post Office Raipur, Revenue and Civil District Raipur (C.G.)
(Insurer)

---- Respondents/Non-applicants

For Claimant/Appellant	:	Shri R.N. Jha, Advocate
For Respondents No. 1 & 2/ Driver & Owner	:	Shri Vedant Bhilonde, Advocate appears on behalf of Shri P.R. Patankar, Advocate
For Non-applicant No. 3	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

16.05.2019

1. This is Claimant's appeal filed under Section 173 of the Motor Vehicles Act for enhancement of compensation awarded by the Additional Motor Accident Claims Tribunal, Khairagarh (C.G.) in Claim Case No. 79 of 2011 vide award dated 22.03.2013.
2. As against compensation of Rs.6,68,000/- claimed by Claimant Hinsaram Sahu by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for the injury sustained by him in the motor accident, the Tribunal awarded a total sum of Rs.1,28,490/- along with interest @ 6% per annum from the date of application till realization, fastening liability upon Respondent No.3/non-applicant

No.3 Insurance Company along with non-applicants No. 1 & 2 jointly and severally.

3. Brief facts of the case are that on 17.05.2011, the Claimant had gone to village Mudhipar by his motorcycle Hero Honda CD Delux bearing registration No. CG-08/J/1335 to attend marriage in relation. When he was returning in the night from Mudhipar to Rajnandgaon alongwith his three relative by his motorcycle, at about 11:00 pm, non-applicant No.1, driver of the offending vehicle Santro Car bearing registration No. CG-07/M/0453, owned by non-applicant No.2 and insured with non-applicant No.3, driving the said Car in a rash and negligent manner, dashed the motorcycle. As a result thereof, Hinsaram Sahu sustained grievous multiple injuries, his right leg was fractured and he suffered 40% permanent disability.

4. Learned counsel for the Appellant/Claimant submits that at the time of accident, the Claimant was aged about 44 years, he was a labour/coolie in Warehouse Corporation, Rajnandgaon and was earning Rs.300/- per day, but the income of the Claimant has wrongly been assessed by the Tribunal as Rs.3,000/- per month. He further submits that as per Ex.-P/44, disability certificate, issued by District Medical Board, Rajnandgaon, Claimant Hinsaram Sahu had suffered 40% permanent disability, but the Tribunal has wrongly considered 15% towards loss of earning capacity. He submits that due to accident, the right leg of the Claimant was fractured, his leg was operated and iron rod was fitted, due to which he is unable to do his work properly because there was 1½ inch shortening of his right leg, therefore, 50% functional disability may be considered. He also submits that no amount towards future prospect has been granted by the Tribunal to the Claimant and amount awarded towards pain & suffering and towards special diet is on the lower side which deserves to be enhanced suitably.

5. Learned counsel for Respondents 1 & 2 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has right awarded compensation which needs no interference by this Court.

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

Company opposes the contention made by learned counsel for the Appellant/Claimant and submits that as per statement of Dr. Anil Mahakalkar (AW-2), the disability of the Claimant can be cured and improve in future.

7. As submitted by the parties, no counter appeal has been filed by the Respondents/non-applicants.

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

9. As regards income of the Claimant, the Claimant has pleaded that he was earning Rs.300/- per day as labour/coolie and his work is loading and unloading in Warehouse, 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.4,000/- per month as per minimum wages at the relevant time.

10. So far as non-consideration of permanent disability of the Appellant/Claimant Hinsaram Sahu to the extent of 40% by the Tribunal is concerned, as per Ex.-P/44, a certificate of disability issued by District Medical Board, Rajnandgaon, the Appellant had suffered 40% disability in relation to his right leg, but it was not in relation to the whole body and the Tribunal has considered 15% towards loss of earning capacity. Therefore, looking to the nature of job of the Claimant and as per statement of Dr. Anil Mahakalkar (AW-2) that the disability of the Claimant can be cured and improve in future, this Court is of considered view that the Appellant/Claimant has suffered in total 20% functional disability.

11. Looking to the treatment and period of hospitalization, the Claimant must have suffered loss of income for three months, therefore, this Court is of the opinion that the Claimant is entitled for three months income as Rs.12,000/- @ Rs.4,000/- per month. Further, the amount of Rs. 10,000/- awarded by the Tribunal towards pain & suffering is enhanced to Rs.50,000/- and amount of Rs.5,000/- towards special diet is enhanced to Rs.10,000/-.

12. Further, considering the age of Claimant i.e. 44 years, the nature of his job,

functional disability i.e. 20% and the decisions of the Hon'ble Supreme Court in ***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***, the Appellant/Claimant is held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the Claimant @ Rs.4,000/- per month	Rs.48,000/- per annum
2.	25% towards future prospects added to annual income	(Rs.48,000/- + Rs.12,000/-) Rs.60,000/-
3.	Loss due to 20% functional disability	Rs.12000/-
4.	Multiplier of 14 applied	Rs.12,000/- x 14= Rs.1,68,000/-
5.	Loss of three months income of the Claimant @ Rs.4,000/- per month	Rs.12,000/-
6.	For pain & suffering	Rs.50,000/-
7.	For special diet	Rs.10,000/-
8.	For medical expenses & treatment	Rs.18,890/- (as awarded by the Tribunal)
9.	For attendant	Rs.3,000/- (as awarded by the Tribunal)
10.	For conveyance	Rs.4,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.2,65,890/-

Since the Tribunal has already awarded Rs.1,28,490/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.1,37,400/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge