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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 835 of 2013

- Lochan Sahu S/o Shri Ramvishal, age 45 years, R/o Village Mohandi, Post Nardha, P.S. Bhilai-3, Tahsil and District Durg (C.G.)

---- Appellant/Claimant

Versus

1. Shaqir @ Arshad Ahmad S/o Sarban Khan, R/o Takiya-Para, Durg, Tahsil and District Durg (C.G.)

(Driver of Vehicle CG-08/1436)

2. Smt. Sabra Fatima W/o Navshad Ahmad Qureshi, R/o Sahdev Nagar, District Rajnandgaon (C.G.)

(Owner of Vehicle CG-08/1436)

3. The Divisional Manager, The Oriental Insurance Co. Ltd. Parmanand Bhawan, Near Rajendra Park Chowk, Near G.E. Road, Tahsil and District Durg (C.G.)

(Insurer of Vehicle CG-08/1436)

---- Respondents/Non-applicants

For Appellant	:	Shri Amiyakant Tiwari, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri H.S. Patel, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

02.04.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant/Appellant, seeking enhancement of the compensation awarded by the Fifth Additional Motor Accident Claims Tribunal, Durg (C.G.) vide award dated 17.06.2013 passed in Claim Case No. 122 of 2012.

2. The Claimant/Appellant- Lochan Sahu, claimed compensation of Rs.14,96,282/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injuries sustained by him in the motor accident.

3. Brief facts of the case are that on 13.02.2011 Claimant Lochan Sahu was coming along with one Ramesh Sahu by motorcycle bearing registration No. CG-07/J/9892 from Village Khaira to Rajnandgaon and when they reached near Parri-

Nala, Ramesh Sahu parked his motorcycle and talking on a mobile phone, suddenly the offending vehicle Indica Car bearing registration No. CG-08 – 1436 which was being driven by non-applicant No.1, owned by non-applicant No. 2 and insured with non-applicant No.3, driving the said Indica Car in a rash and negligent manner, dashed the motorcycle. As a result thereof, Lochan Sahu sustained grievous injuries and suffered 21% permanent disability.

4. The learned Tribunal, in the impugned award, after considering 16% functional disability and also considering 25% contributory negligence on the part of the Claimant, has awarded a compensation of Rs.1,70,389/- in favour of the Appellant/Claimant with interest @ 6% per annum from the date of application till realization and has fastened the liability on non-applicant No.3/Insurance Company.

5. Learned counsel for the Appellant/Claimant submits that the Tribunal has wrongly deducted 25% on account of contributory negligence on the part of the Claimant as the Claimant was pillion rider in the said motorcycle. He further submits that the assessment of functional disability of the Claimant/Appellant to the extent of 16% by the Tribunal, as per Ex.-P/136, a certificate of permanent disability issued by the Medical Officer, Government Hospital, Durg, the Claimant had suffered 21% permanent disability. He also submits that no amount towards future prospect has been granted to the Claimants.

6. Learned counsel for Respondent No.3/Insurance Company, however, opposes the appeal and about 25% contributory negligence on the part of the Appellant/Claimant, he submits that the accident occurred due negligence of the Appellant along with Ramesh Sahu. Therefore, the compensation awarded by the Tribunal is just and reasonable and does not call for any interference in the instant appeal.

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

8. It is not in dispute that the accident occurred on 13.02.2011. The motorcycle was parked near divider of Parri-nala Road by Ramesh Saha and was talking on

the phone and the Appellant/Claimant was sat on the motorcycle, non-applicant No.1 – Shaqir @ Arshad Ahmad was driving the offending vehicle Indica Car in a rash and negligent manner dashed motorcycle in which the Appellant was sat. As per Ex.-P/1 -Charge-sheet, Ex.-P/2 – FIR, it is mentioned that offence under Sections 279, 337 and 338 of IPC was registered against non-applicant No.1 by the police. FIR goes to show that it is the non-applicant No.1 who was driving the offending vehicle in a rash and negligent manner which resulted in unfortunate accident. Further, non-applicant No.1 - Shaqir @ Arshad Ahmad was not examined before the Tribunal. The Claimants was the pillion rider of the motorcycle and was sat on the motorcycle which was parked on the divider of the road, only on the basis of this, it would not be justifiable to hold the Claimant responsible for the accident to any extent. The finding of the Tribunal regarding contributory negligence of the Claimant appears to be based on mere presumption and surmises. Therefore, considering overall facts and circumstances of the case and nature of quality of evidence adduced by the parties, this Court is of the view that the Tribunal has not justified in holding the Claimant contributory negligence to the extent of 25% and according, it is held that the accident occurred due to negligence on the part of non-applicant No.1 only.

9. As regards the assessment of functional disability of the Claimant/Appellant to the extent of 16% by the Tribunal, as per Ex.-P/136, a certificate of permanent disability issued by the Medical Officer, Government Hospital, Durg, the Appellant had suffered 21% permanent disability in relation to the particular limb of the body and not in relation to the whole body, therefore, the Tribunal has rightly considered 16% functional disability of the Appellant.

10. Though the Claimant has pleaded that he was aged about 45 years on the date of accident, but, the Tribunal has considered the age of Claimant as 48 years. As per Ex.-P/12- patient information form and Ex.-P/14- progress & treatment form of Chandulal Chandrakar Memorial Hospital, Bhilai, it was mentioned that the Claimant was 48 years of the age. It has also pleaded that the Claimant was

earning Rs.1,00,000/- per annum, but no documentary evidence in support thereof has been adduced. Therefore, as per Ex.-P/12 and Ex.P/14, this Court is also considered the age of Claimant as 48 years and looking to the income of the Claimant as Rs.3,000/- per month as considered by the Tribunal, he is also entitled to 25% towards future prospect.

11. On the basis of aforesaid discussions and keeping in view of the decisions of the Hon'ble Supreme Court in the matters of ***National Insurance Co. Ltd Vs. Pranay Sethi, (2017) 16 SCC 680*** and ***Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121***, this Court is of the view that the Claimant/Appellant is entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased	Rs.3,000/- per month i.e. Rs.36,000/- per annum
2.	25% towards future prospect added to annual income	(Rs.36,000/- + Rs.9,000/-) Rs.45,000/-
3.	Loss due to 16% functional disability	Rs.7,200/-
4.	Multiplier of 13 applied	Rs.7,200/- x 13 = Rs.93,600/-
5.	Loss of three months income of the Claimant @ Rs.3,000/- per month	Rs.9,000/- (as awarded by the Tribunal)
6.	For medical treatment and medical bills	Rs.1,26,901/- (as awarded by the Tribunal)
7.	For pecuniary loss and pain & suffering	Rs.4,000/- (as awarded by the Tribunal)
8.	For attendant	Rs.7,400/- (as awarded by the Tribunal)
9.	For special diet and conveyance	Rs.5,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.2,45,901/-

12. Since the Tribunal has already awarded Rs.1,70,389/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.75,512/- 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

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