

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 924 of 2013**

- Santosh Kumar Choubey S/o Ramnarayan Choubey, aged about 30 years, Occupation – Fitter and Mechanic, R/o Khursipar, Police Station – Chhawani, Bhilai, District – Durg (C.G.)

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

1. Makhan Das Mahilang S/o Shri Shivcharan Singh Mahilang, R/o Village – Gota, Post – Biroda, P.S. - Birla, Tahsil – Dhamdha, District – Durg (C.G.)
2. Reliance General Insurance Company Ltd., through the Branch Manager, Branch Office at Krishna Complex, Kachahri Chowk, Raipur (C.G.)

---- Respondents/Non-applicants

For Appellant	:	Shri Sayad Majid Ali, Advocate.
For Respondent No.1.	:	Shri S. P. Sahu, Advocate
For Respondent No. 2.	:	Shri S. S. Rajput, Advocate

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****30. 04.2019**

This appeal is by the claimant/injured against the award dated 25/04/2013, passed by 6th Additional Motor Accident Claims Tribunal, Durg, District Durg (C.G.) in claim case No. 90/2011, after considering the evidence led by the parties the learned Tribunal after deducted 50% amount towards contributory negligence of the claimant/injured awarded compensation of Rs. 6,350/-. alongwith interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

2. As per averments in the claim petition, on 03.06.2007, when the appellant was going in his motorcycle, he was dashed by the motorcycle bearing No. CG 07-LG/1446 coming from opposite

direction, which was driven rashly and negligently by non-applicant No. 1- Makhan Das Mahilange (owner of the offending vehicle). Due to the said accident, the appellant sustained grievous injuries on his head and his left leg got fractured, due to which, the appellant suffered 12% permanent disability. The offending vehicle is insured with Non-applicant No. 2- Reliance General Insurance Company Ltd.

3. On claim petition being preferred by the claimant/injured under Section 166 of the Motor Vehicles Act, 1988, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. No counter appeal has been filed by the respondent/insurance company.

5. Learned counsel for the appellant/claimant submits that in this case the learned Tribunal considered Rs. 3,000/- pm income of the injured/claimant which is on the lower side and therefore, it is required to be enhanced suitably. He further submits that the injured/claimant sustained permanent disability to the extent of 12% but the learned Tribunal awarded meager amount towards pain & suffering.

6. On the other hand, learned counsel for the respondent Nos. 1 & 2 supports the impugned award and submit 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. As regards income of the claimant/injured, though the claimant has pleaded that at the time of accident he was earning Rs. 4,000/- per month as Fitter & Mechanic but no documentary in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the claimant/injured considered as Rs. 3,000/- per month is just & proper. So far as injuries sustained by the claimant is concerned, the claimant suffered 12% permanent

disability but the learned Tribunal has not considered any functional disability in respect of permanent disability caused to the claimant/injured. As per the statement of Dr. Akhilesh Yadav (claimant witness No. 1), due to injury there is stiffness in the knee and it is difficult for him to move easily but no any functional disability was proved by the claimant before the Tribunal.

9. Having heard learned counsel for the parties, having gone through their pleadings, the evidence, oral and documentary, adduced by them, the disability certificate (Ex. P/1) and all relevant aspects of the matter, this Court feels it proper to award Rs. 10,000/- towards pain & suffering.

10. In the result, the appeal is allowed in part. The appellant/claimant is held entitled for additional compensation of Rs. 10,000/- along with interest @ 6% per annum from the date of application till realization. It is also made clear that the above said amount of compensation would not be deducted towards 50% contributory negligence. The award impugned stands modified to the above extent only. However, rest of the conditions of the award shall remain intact.

Sd/-

**(Gautam Chourdiya)
Judge**