

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1024 of 2014**

- Sunil Tiwari S/o R.M. Tiwari Aged About 54 Years R/o Q. No. MIG- 189, In Front Of Bharat Mata School Gali, Tatibandh, Raipur, P.O. Raipur, P.S. Amanaka, Raipur, Distt. Raipur C.G.

---Appellant**Versus**

1. Kapis Kumar Agrawal S/o Suresh Kumar Agrawal Aged About 21 Years R/o Marwadipara, Bargarh, P.O. And P.S. Bargarh, Tah. And Distt. Bargarh Odisha,

Present R/o C- 59, Samta Colony, House Of Vinay Singhanian, P.O. Raipur, P.S. Sarswati Nagar, Raipur, Tah. And Distt. Raipur C.G.

2. The United India Insurance Company Ltd. Through- Divisional Manager/divisional Office, Krishna Complex, Near Kutchery Chowk, Jail Road, Raipur, P.O. Raipur, P.S. Gol Bazar, Tah. And Distt. Raipur C.G.

---- Respondents

For Appellant

Shri Shivendu Pandya, Advocate.

For Respondent no.2

Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board**

25/02/2019

1. This is claimant's appeal seeking enhancement of compensation awarded by the 7th Additional Motor Accidents Claims Tribunal, Raipur, District Raipur, C.G. (for short 'the Tribunal') in Claim Case No. 84/2012 vide award dated 13.03.2014.
2. As against the compensation of Rs.42,00,000/- claimed by the appellant/claimant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the grievous

injuries sustained by him in the road accident on 27.12.2011, the Tribunal awarded a total sum of Rs.4,34,529/- along with interest @ 6% per annum from the date of application till its actual payment, fastening the liability on the Insurance Company. At the time of accident, injured was aged about 54 years, earning Rs.35,000/- per month working as a Managing Director in Vetek Scale Private Limited & Vetek Stument Private Limited, Raipur.

3. The Tribunal, on a close scrutiny of the evidence led by the both the parties held that the accident had occurred due to rash and negligent riding of motorcycle bearing registration No.CG04-DS-0436 by its driver Kapis Kumar Agrawal i.e., respondent No.1 herein: in the said accident appellant/claimant sustained grievous injuries on his body. At the time of accident, the vehicle was owned by respondent no.1 and insured with respondent no.2.
4. Learned counsel for the appellant submits that though he has raised various grounds in his memo of appeal for assailing the award, however, he is confined his argument only on the two grounds:

- (i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas it should have been Rs.35,000/- per month which the injured was earning as a Managing Director in Vetek Scale Private Limited & Vetek Stument Private Limited, Raipur.

- (ii) that loss of earning is considered by the learned Tribunal is on the lower side which needs to be enhanced suitably.

5. On the other hand, learned counsel for the respondent/insurance

company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

7. As regards the quantum of compensation, the Tribunal has assessed the age of the deceased as 54 years on the basis of documents produced by the claimants and the income has been assessed as per minimum wages prevalent at that time as Rs.3,000/- pm as the claimant has failed to prove that he was earning Rs.35,000/- per month as a Managing Director in the private company. Though, the claimant filed salary certificates of Ex.P-341 and Ex.P-342 but in cross-examination he admitted that he has not filed his appointment letter concerning the said firm. He has also admitted that he has not filed any document relating to payment of income tax and that the claimant has not examined any witness to substantiate the documents Ex.P-341 & Ex.P-342. In these circumstances, the income of the claimant assessed by the Tribunal as Rs.3,000/- on notional basis which cannot be faulted with. The Tribunal considering the nature and extent of injuries suffered by the claimant, the period of his hospitalization has come to the conclusion that the claimant was not able to work for at least a year and thus awarded Rs.36,000/- towards loss of earning for one year. Therefore, this Court finds no substance in the argument of counsel for the appellant that

income of the claimant as well as loss of earning has wrongly been considered by the Tribunal.

8. In the result, the appeal filed by the claimant/injured being without any substance deserves to be dismissed at the admission stage itself and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh