

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1297 of 2014**

- Dilip Kumar Gayakwad S/o Ashwini Kumar Gayakwad Aged About 26 Years R/o Village- Telinsakti, Tahsil and District Dhamtari C.G.

----Appellant

Versus

1. Sheikh Burhan Khan S/o Basu Khan Aged About 45 Years R/o Adhari, Nawagaon, Dhamtari, Distt. Dhamtari C.G.
2. Smt. Rajinder Kaur Mundi W/o Arvinder Mundi Aged About 38 Years R/o Maitri Vihar Colony, Dhamtari, Distt. Dhamtari C.G.
3. Branch Manager, Bajaj Alliance General Insurance Company Ltd., Shiv Mohan Bhavan, Vidhan Sabha Road, Pandri, Raipur, Tahsil And District Raipur C.G.

---- Respondents

For Appellant

Shri A.L. Singroul, Advocate.

For Respondent No.3

Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

28/02/2019

1. This is claimant's appeal seeking enhancement of compensation awarded by the Chief Motor Accidents Claims Tribunal, Bastar, Dhamtari, District Dhamtari, C.G. (for short 'the Tribunal') in Claim Case No. 105/2013 vide award dated 01.10.2014.
2. As against the compensation of Rs.7,50,000/- 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 23.10.2012, the Tribunal awarded a total sum of Rs.18,065/- along with interest @ 6% per annum from the date of application till its actual payment, fastened the

liability on non-applicants no. 1 to 3 jointly and severally.

3. The Tribunal, on a close scrutiny of the evidence led by both the parties, held that the accident had occurred due to rash and negligent driving of Truck bearing registration No. CG04-G-7862 by its driver i.e., respondent No.1 herein: appellant/claimant sustained grievous multiple injuries on his body and his left leg was shortened by 2½ inch. As such, appellant suffered 30% permanent disability. At the time of accident, offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.
4. Learned counsel for the appellant submits that the appellant was a Labour, was earning Rs.300/- per day but learned Tribunal has not assessed his income as per minimum wages. He submits that as per Doctor certificate Ex.P-1 the claimant suffered 30% permanent disability, on account of which his Labour work as well as movement was restricted. Further, the Tribunal has not granted any amount towards future prospect, special diet, attendant and loss of earning capacity during the course of treatment. Therefore, the appellant prays for enhancement of the compensation suitably
5. Counsel for the respondent no.3 opposed the arguments advanced by the appellant's counsel and stated that as per Doctor certificate permanent disability was not in respect of the whole body but it was in respect of a particular limb. Further, the Tribunal considering the evidence available on record has rightly not considered permanent disability to the claimant and the amount awarded by the Tribunal being just and proper needs no interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.
7. So far as, the income of the injured is concerned, though he has

pleaded that he being Labour was earning Rs.300/- per day, however, no documentary evidence has been adduced in support thereof. Therefore, in these circumstances, in absence of any proof regarding income, the income of the claimant is considered as Rs.4,500/- per month as per minimum wages at the relevant time. However, the Tribunal has committed an error in not considering the permanent disability. Considering the pleading of the claimant, the disability certificate Ex.P-1 which shows that the claimant suffered 30% disability, the nature of job of the claimant in the facts and circumstances of the case it can be held that on account of the injuries the claimant suffered 10% loss of earning capacity. Further, the Tribunal was also not justified in ignoring the future prospect of the claimant which should have been 40% in the present case as the injured was 26-27 years of age as is evident from the claim petition, disability certificate and other medical documents. Therefore, in view of the decisions of the Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121**, & **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680**, the compensation is reassessed as under:-

S.No.	Head	Calculation
1.	Notional Income of the claimant	Rs. 4,500/- per month i.e. Rs.54,000/- per annum.
2.	Future prospect 40%	Rs. 21,600/- Rs.54,000/- + Rs.21,600 = Rs.75,600/-
3.	Loss of earning capacity @ 10%	Rs.7,560/-
4.	Multiplier of 17 applied	Rs. 1,28,520/-

5.	For pain and suffering	Rs. 5,000/-
6.	For medical expenses	Rs.15,065/- (as awarded by the Tribunal)
7.	For special diet	Rs.2,000/-
9.	For conveyance	Rs.2,000/-
Total		Rs.1,52,585/-

8. In the result, the appeal is allowed in part. Since, the Tribunal has already awarded Rs.18,065/-, after deducting the same the claimant is held entitled for an additional compensation of Rs.1,34,520/- with interest at the rate of 6% from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

9. No order as to costs.

Sd/-
Gautam Chourdiya
Judge