

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 97 of 2015**

- Surjit Singh, S/o Shri Budhram Singh Kanwar, aged about 35 years, R/o Village Purega, Police Station Banki Mongra, Tahsil Katghora, Civil & Revenue District Korba (C.G.).

---- Appellant/claimant**Versus**

1. Dileshwar Prasad Yadav, S/o Shri Bundram Kanwar, aged about 27 years,
2. Bholaram Yadav, S/o Bundram Yadav, aged about 29 years,

Both are resident of village Deori, Police Station Banki Mongra, Tahsil Katghora, Civil & Revenue District Korba (C.G.)

3. The Oriental Insurance Company through : Branch Manager, Office, District Korba (C.G.)

---- Respondents

For Appellant	: Shri Govind Ram Miri, Advocate.
For Respondent No. 3.	: Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****25/04/2019:**

1. This is claimant's/injured appeal seeking enhancement of compensation awarded by Additional Motor Accident Claims Tribunal, Katghora (for short 'the Tribunal') in claim case No. 87/2011 vide award dated 3rd November, 2014.

2. As against compensation of Rs. 27,00,000/- claimed by appellant/claimant, by filing claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the injuries sustained

by him in the motor accident on 8.1.2010, the Tribunal awarded a total sum of Rs.81,550/- as compensation along with interest @ 6 percent per annum from the date of filing of claim petition till its actual payment in favour of the appellant/claimant. Learned Tribunal, after considering the material available on record fastened the liability to pay compensation upon the Non-applicant Nos. 1 to 3 jointly and severally as it could not establish the violation of policy conditions and awarded aforesaid sum as compensation to the appellant /claimant.

3. Facts of the case leading to filing of the claim petition are that on 08.01.2010 at about 7.00 pm near Durena turning road, the non-applicant No. 1- Dileshwar Prasad Yadav while driving the offending vehicle bearing registration No. C.G.12F-2333 rashly and negligently, dashed the appellant/claimant, as a result of which he sustained grievous injuries including permanent disability to the extent of 40%.

4. Learned counsel for the appellant/claimant submits that learned Claims Tribunal has assessed the income of the claimant/injured as Rs. 3,000/- pm, which appears to be on lower side, looking to the minimum wages prevailing at the relevant time as skilled labour the income of the claimant should have been considered as Rs. 7,000/- per month. He also submits that according to Dr. Rudrapal Singh (AW-4), claimant sustained multiple injuries including permanent disability to the extent of 40% and it is very difficult for him to move without any support but the learned Tribunal has erred in assessing the functional disability to the extent of 10% whereas it should have been considered to the extent of 40%. He also submits that amount awarded under the other heads are also appears to be on lower side,

where deserve to be enhanced suitably and the medical bills has not been considered property and no amount towards future prospect has been granted.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

5. Learned counsel for the Insurance Company opposes the contention made by learned counsel for the claimant and submits that after considering all the relevant aspect of the matter learned Tribunal has rightly awarded the compensation to the claimant which need no interference by this Court.

6. It is submitted by both the parties that no counter appeal is filed by the Insurance Company.

7. I have heard learned counsel appearing for the parties and perused the material available on record.

8. It is not disputed by both the parties that claimant sustained grievous injuries due to the accident occurred on 8.1.2010 due to rash & negligent driving of the non-applicant No. 1. As per pleading of the appellant/claimant, he was working as Mason (Rajmistri) at the time of accident and earning Rs.7,000/- per month i.e. 84,000/- per annum but no evidence has been adduced by him in support thereof, therefore, looking to the minimum wages prevailing at the relevant point of time, income of the claimant would be considered as Rs.3,500/-pm.

9. So far as the permanent disability is concerned, looking the evidence of Dr. Rudrapal Singh, who was examined before the Tribunal has stated in his statement that vide Ex. P/5 medical certificate issued by the Medical Board after examining the claimant, claimant has suffered grievous injuries including 40% permanent disability and his right leg and that statement remained uncontroverted. Therefore, looking to the 40% permanent disability, 20% functional disability can safely be taken for the assessment of loss of income to the claimant.

10. So far as the age of the claimant is concerned, the Tribunal has rightly held him 35 years of age. Further the medical bills of Rs. 3,950/- (Exs. A/6 to A/15) considered by the Tribunal is just & proper and one bill of Rs. 16,000/- vide Ex. A/16 would also be considered. The claimant is also entitled for Rs. 30,000/- instead of Rs. 20,000/- towards pain & suffering and Rs. 10,000/- towards future treatment. However, the nature of his job and other relevant aspects of the matter and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi*, (supra), this Court is of the opinion that the claimant is entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.3500/- per month.	Rs. 3500x12= Rs. 42,000/- per annum
02.	40% towards future prospect	Rs. 42,000+ 16,800= Rs. 58800/- per annum.
03.	Loss of earning @ 20%.	Rs.11760/-
04.	Multiplier of 16 to be applied	Rs. 1,88,160/-

05.	Towards medical expenses	Rs.3,950 (as awarded by the Tribunal) + Rs. 16,000/-
06.	Towards pain & suffering	Rs.30,000/-
07.	Towards future treatment	Rs.10,000/-
08.	Total compensation :	Rs.2,48,110/-

Since the Tribunal has already awarded Rs.81,550/- after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.1,66,560/- with interest as awarded by the Tribunal.

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

Sd/-

(Gautam Chourdiya)
Judge