

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 463 of 2017**

- Satish Kumar Singh S/o Dhanjeet Singh, Aged About 40 Years R/o Village Satpata, Aroda Public School Road, Sai Sewa Sadan, Vishrampur, P.S. Vishrampur, District Surajpur, Chhattisgarh

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

1. The New India Insurance Company Ltd. Through Branch Manager, D.O.Sada Complex Transport Nagar, Korba, District Korba, Chhattisgarh
2. Jitendra Singh S/o Jagarnath Singh, Aged About 22 Years R/o Rajeev Nagar, Namnakala, In Front Of Kabristan Gate, Ambikapur, District Surguja, Chhattisgarh
3. Satish Bansal S/o S.N.Bansal, Aged About 32 Years R/o Agrasen Marg, Ambikapur, District Surguja, Chhattisgarh

---- Respondents

For Appellant	:	Shri SS Painkra, Adv.
For Respondent No.1	:	Smt. Chitra Shrivastava, Adv.
For Respondent Nos. 2 & 3	:	None though served.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****12.03.2019**

This appeal is by the injured/claimant under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") against the award 20.12.2016 passed by Motor Accident Claims Tribunal, Surajpur, Distt. Surajpur, in Claim Case No.75/2014 awarding total compensation of Rs.3,86,311/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicant No.1/insurance company jointly and severally along with non-applicants No. 2 & 3/driver & owner.

02. As per claim petition, on 15.9.2013 claimant Satish Kumar Singh, 40 years of age, earning Rs.25,000/- as a contractor, along with Neeraj Singh was going on motorcycle as a pillion rider to his house. However, on the way near Satpata Convent School, Main Road, non-applicant No.2 Jitendra Singh by driving Duster car bearing No. CG 15 CP 2621, owned by non-applicant No.3 and insured with non-applicant No.1, in a

rash and negligent manner, dashed the said motorcycle from behind as a result of which Satish Kumar and Neeraj Singh both suffered grievous injuries and fell unconscious on the spot itself. The claimant was first taken to SECL Hospital at Vishrampur for primary treatment, from where he was referred to District Hospital, Ambikapur and then to Tejkaur Nursing Home, Bilaspur and thereafter, for better treatment he was referred to Ramkrishna Mission Hospital, Raipur where his waist and thigh were operated upon.

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

04. Learned counsel for the appellant/claimant submits that the claimant suffered 60% permanent disability in his leg, which has been duly proved by the claimant and the doctor AW-3 Dr. Shashi Tirky, who was one of the members of the District Medical Board issuing the said certificate of Ex.P/53, but the Tribunal has awarded only towards loss of income for three months @ Rs.10,000/- per month i.e. Rs.30,000/-; Rs.50,000/- for grievous injury, pain and suffering; Rs.1,74,911/- towards medical expenses, Rs.29,400/- towards transportation expenses, Rs.1 lac towards future surgery expenses and Rs.2,000/- towards attendance, extra nourishment and loss of amenities etc. The Tribunal did not consider the functional disability of the claimant whereas considering the nature and extent of injury suffered by the claimant and the nature of his job, his functional disability may be taken as 50%. Further, in view of decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the claimant is also entitled for 25% addition to his annual income towards future prospect as the claimant was 40 years of age.

05. On the other hand, learned counsel for the insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

06. Heard learned counsel for the parties and perused the material

available on record.

07. It is not in dispute that the claimant sustained injuries due to accident occurred on 15.9.2013 on account of rash and negligent driving of the offending vehicle by non-applicant No.2 who dashed the motorcycle in which the claimant was sitting as a pillion rider and the said injury resulted in 60% permanent disability to the claimant vide Ex.P/53. No counter appeal has been filed by the respondents as has been submitted by counsel for the claimant.

08. As per evidence of AW-3 Dr. Shashi Tirky, who was one of the members of the District Medical Board issuing the disability certificate of Ex.P/53, the claimant suffered 60% permanent disability in his leg and reassessment was recommended after two years by the Medical Board. Though this witness has stated that after two years there was possibility of improvement in the disability of the claimant, but he has not stated as to what extent it could have been improved. The claimant in his evidence has stated that due to injuries suffered by him, he is not able to do anything and has been rendered dependent upon others. The said evidence of the claimant remains unrebutted in the cross-examination. Therefore, considering the gravity of the injury, the permanent disability of 60% in the leg, the nature of job of the claimant and the oral including medical as well as documentary evidence on record, this Court is of the opinion that the functional disability of the claimant can safely be taken as 15%. Further, keeping in view the decision of the Hon'ble Supreme Court in Pranay Sethi (supra), the claimant is also entitled for 25% addition to his annual income towards future prospect as the claimant was 40 years of age at the time of accident as is evident from medical documents filed and proved by him. Rest of the assessment by the Tribunal being just and proper needs no interference by this Court. Thus, the claimant is entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.10,000/- per month	1,20,000/- per annum

02.	25% of (i) above to be added towards future prospects.	1,20,000 + 30,000 = 1,50,000/-
03.	Loss of earning @ 15%	22,500/-
04.	Multiplier of 15 to be applied for assessing total loss of earning.	3,37,500/-
05.	Loss of income for three months @ Rs.10,000/-	30,000/- (as awarded by Tribunal)
06.	Towards grievous injury, pain and suffering.	50,000/- (as awarded by Tribunal)
07.	Towards medical expenses	1,74,911/- (as awarded by Tribunal)
08.	Towards transportation	29,400/- (as awarded by Tribunal)
09.	Towards future surgery expenses	1,00,000/- (as awarded by Tribunal)
10.	Towards attendant, extra nourishment and loss of amenities etc.	2,000/- (as awarded by Tribunal)
	Total :	7,23,811/-

Since the Tribunal has already awarded Rs.3,86,311/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.3,37,500/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/

(Gautam Chourdiya)
Judge