

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1032 of 2014

- Rakesh Kumar S/o Late Rajkumar Soni, Aged about 27 years, Occupation Jewelry Workman, R/o Mahamaya Ward, Mungeli Police Station and Tahsil-Mungeli, District Mungeli (C.G.)

---- Appellant/Claimant

Versus

1. Ramesh Kumar S/o Lalji Sahu, Aged about 23 years, Vehicle Driver Tractor No. C.G.07/C/5563, R/o Banki Mongara, Ward No. 4, District Korba (C.G.)
2. Mrinal Bhatiya, aged about 50 years, R/o Haney Tower, Near Vijay Talkies, Korba (C.G.)
3. I.C.I.C.I. Lombard General (Wrongly mentioned Janari) Insurance Company Limited, Branch Office V.R. Plaja Link Road Bilaspur (C.G.)

---- Respondents/Non-applicants

For Appellant	:	Shri A.L. Singroul, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the injured- Claimant/Appellant, seeking enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur (C.G.) vide award dated 06.08.2014 passed in Claim Case No. 16 of 2008.

2. Facts of the case, in nutshell, are that on 21.10.2007 the Claimant-injured was going to Raipur from Mungeli on the motorcycle of one Rajkumar Soni. The Claimant was traveling in the said motorcycle as pillion rider. In the afternoon when they reached near Village Darchura, one trailer bearing registration No. CG-07/C/5563 which was being driven by Respondent No.1, coming from Raipur side, dashed the said motorcycle as a result the Claimant sustained injuries on various

parts of his body including fracture in his legs. He was admitted in the Community Health Centre, Simga and thereafter in Ramkrishna Hospital, Raipur for treatment. The Claimant filed a claim application seeking compensation to the tune of Rs.13,85,000 on the ground that in the said accident he has sustained permanent disability.

3. The learned Tribunal, in the impugned award, has considered the evidence available on record and has awarded a compensation of Rs.2,25,000/- in favour of the Appellant/Claimant with simple interest @ 6% per annum from the date of application till realization. The liability to pay compensation has been fastened on the Insurance Company/Respondent No.3.

4. The driver and owner/Respondents 1 and 2 were proceeded *ex parte* before the Tribunal.

5. Learned counsel for the Claimant/Appellant submits that the Appellant used to earn Rs.8,000/- per month as a goldsmith, but, the Tribunal has wrongly considered the income of the Appellant as Rs.100/- per day and has assessed monthly income of the Appellant at Rs.2,500/- on the ground that the Appellant would have been getting work only for 25 days in a month. He further submits that due to accident, the Appellant was unable to earn anything for two years and the Tribunal has wrongly awarded Rs.40,000/- for loss of income for two years after deducting 1/3rd towards personal expenses of the Appellant. He also submits that very low amount has been awarded by the Tribunal on the heads of conveyance, special diet and pain suffering, therefore, the Tribunal has fallen in error in awarding only Rs.2,25,000/- as compensation, which deserves to be suitably enhanced.

6. Learned counsel for the Insurance Company/Respondent No.3, however, opposes the appeal and submits that the learned Tribunal has rightly awarded the amount of compensation, therefore, it is just and reasonable, which does not call for any interference in this matter.

7. I have heard the learned counsel for the parties and perused the record of

the Tribunal including award impugned.

8. Perusal of the record shows that the Medical Board has issued a certificate regarding disability of the injured/Claimant to the extent of 50%, but it is also mentioned that condition of the Claimant is likely to improve and reassessment was recommended after two years and medical bills of Rs1,75,000/- produced by the Appellant have been duly considered by the Tribunal.

9. As regards income of the Appellant/Claimant, though the learned counsel for the Appellant has pleaded that the Appellant was earning Rs.8,000/- per month as a goldsmith but no documentary or oral evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the Appellant is considered as Rs.3,000/- per month as per minimum wages at the relevant time. Considering the facts and circumstances of the case, particularly considering that the Appellant was unable to earn anything for two years on account of injuries sustained by him, he is entitled for Rs.72,000/- towards loss of income for two years. Keeping in view of overall facts and circumstances of the case, pleadings of the parties and the evidence adduced by them, this Court is of the opinion that the Claimant/Appellant is entitled for compensation in the following manner:-

Sl.No.	Head	Calculation
1	For medical treatment	Rs.1,75,000/- (as awarded by the Tribunal_
2	Income of two years	Rs.72,000/-
3	For conveyance	Rs.2,000/-
4	For special diet	Rs.5,000/-
5	For attendant	Rs.2,000/- (as awarded by the Tribunal)
6	For pain and suffering	Rs.20,000/-
	Total Compensation	Rs.2,76,000/-

Since the Tribunal has already awarded Rs.2,25,000/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.51,000/-.

10. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimant/Appellant shall be entitled to a total enhanced amount of compensation of Rs.51,000/- with further direction of payment of simple interest on the enhanced amount of compensation @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge