

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 438 of 2014**

- Prafull Swarup Verma S/o Rajendra Verma Aged About 28 Years
R/o Chandkhuri Farm, P.S. Mandir Hasaud, Raipur, Distt. Raipur
C.G.

---Appellant

Versus

1. Narayan Nishad S/o Puran Nishad R/o Sahu Para, Khamtarai,
P.S. Khamtarai, Raipur, Distt. Raipur C.G.
2. Smt. Sarala Jain W/o Nemichand Jain R/o Santoshi Nagar, Near
Water Tank, Khamtarai, P.S. Khamtarai, Raipur C.G.
3. Reliance General Insurance Company Ltd Through In Charge
Officer, Ravi Bhawan, Jai Stambh Chowk, Raipur C.G.

---- Respondents

For Appellant	Shri Amiyakant Tiwari, Advocate.
For Respondent Nos. 1 & 2	None.
For Respondent No.3	Shri Sourabh Sharma, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

19/06/2019

01.This appeal is by the claimant/injured against the award dated 11.12.2013 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur, District Raipur C.G. in Claim Case No.167/2011 awarding total compensation of Rs.2,48,814/- with interest @ 6% per annum from the date of application till realization, fastening liability on the Insurance Company/non-applicant no.3.

02. As per claim petition, on 10.01.2011, claimant/injured Prafull Swaroop, aged about 28 years, earning Rs.20,000/- per month by

running grocery shop was travelling in the vehicle TATA Ace bearing No. CG04-JB-7468 along with his grocery items and was going from Raipur to Chandkhuri. However, on the way at around 8:00 pm non-applicant No.1 by driving the vehicle Tata Tipper bearing no. CG04-CW-1041 in a rash and negligent manner dashed the vehicle of the claimant, as a result of which claimant sustained grievous injuries including fracture of femur and tibia-fibula bones, resulting into 50% permanent disability. At the time of accident, offending vehicle was owned by non-applicant no.2/respondent no.2 and insured with non-applicant no.3/respondent no.3.

03. On claim petition being filed by the claimant/injured under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.24,20,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04.Learned counsel for the appellant submits that the Tribunal was not justified in ignoring the aspect of permanent disability suffered by the claimant on the ground that the permanent disability certificate has not been issued by the competent board and the Doctor who issued such certificated is not the treating doctor. He submits that looking to the nature and gravity of the injuries suffered by the claimant, the certificate of permanent disability (Ex.P-77) and the evidence of Dr. A.A. Saify (AW-3), it stands proved that the claimant suffered 50% permanent disability in the said accident, and therefore, looking to the nature of job of the claimant i.e. grocery shop keeper, the Tribunal ought to have considered the functional disability to the extent of 25% and by applying

the multiplier of 17, awarded compensation in favour of the claimant. The claimant is also entitled for grant of future prospect in view of decision of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

05. On the other hand, learned counsel for the respondent no.3 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. It is not in dispute that the accident occurred on 10.01.2011 due to rash and negligent driving of the offending vehicle by non-applicant No.1 in which the claimant/injured suffered grievous injuries on various parts of his body and underwent long treatment as is evident from the documents Ex.P-7 to Ex.P-71 and Ex.P-78. The medical documents show that the claimant suffered fracture of femur and tibia-fibula bone. As per Ex.P-77 certificate of disability was issued to the claimant by Dr. A.A. Saify (AW-3), according to which the claimant sustained 50% permanent disability. Dr.A.A. Saify examined on behalf of the claimant as AW-3 states that he is an experienced Orthopedic and Surgeon in Medical College, Raipur and retired in the year 2002. He states that after due examination of the claimant he issued him permanent disability certificate on the basis of (Manual of Orthopedic book) according to which the claimant sustained 50% permanent disability. He has duly proved the permanent disability certificate of Ex.P-77. From perusal of the disability certificate Ex.P-77, it is seen that the claimant was medically examined before issuance of such certificate and

detailed description of injuries and its effect have been mentioned therein by Doctor. The Dr. A.A. Saify (AW-3) has duly explained before the Tribunal as to on what basis the said certificate was issued to the claimant. The non-applicants have not brought on record anything in the cross examination of this witness which could render the disability certificate Ex.P-77 doubtful, forged or fabricated. In these circumstances, this Court is of the opinion that the Tribunal was not justified in disbelieving the permanent disability certificate Ex.P-77 merely on the ground that the same has not been issued by the Competent Board and the treating Doctor issuing such certificate has not treated the claimant.

According to the claimant, he is running a grocery shop and after the accident he is not in a position to earn his livelihood, therefore, considering the nature of job of the claimant viz-a-viz, the injuries suffered by him, which could safely be held that the claimant suffered 10% functional disability on account of the injuries sustained by him.

07. As regards the grant of future prospect, considering the age of the claimant i.e. 28 years and nature of his job, in view of the decision of Hon'ble Supreme Court in the matter of Pranay Sethi (supra), the claimant is entitled for 40% towards future prospect. On the basis of aforesaid discussion, the claimant is held entitled for compensation in the following manner:-

S.No	Head	Calculation
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1.	Income of the claimant Rs.14,500/- (as assessed by the Tribunal)	Rs. 14,500 x 12 = Rs.1,74,000/- per annum.
2.	Towards Future prospect 40%	Rs. 69,600/- Rs.69,600 + Rs.1,74,000 = Rs.2,43,600/-
3.	Loss of functional disability @ 10%	Rs.24,360/-
4.	Multiplier of 17 applied	Rs.4,14,120/-
5.	Towards medical treatment	Rs.1,31,814/- (as assessed by the Tribunal)
6.	Loss of income for 6 months during treatment	Rs.87,000/- (as assessed by the Tribunal)
7.	Towards diet, attendant and conveyance	Rs.5,000/- (as assessed by the Tribunal)
8.	Towards pain and suffering	Rs.25,000/- (as assessed by the Tribunal)
Total Compensation		Rs.6,62,934/-

08. In the result, the appeal is allowed in part. Since, the Tribunal has already awarded Rs.2,48,814/-, after deducting the same the claimant is held entitled for an additional compensation of Rs.4,14,120/- which shall carry interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge