AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1175 of 2014

- Nikhil Pandey, S/o Shri C. M. Pandy, aged about 33 years, Caste Brahaman, R/o Village Sivani, (Naila), Tahsil & District Janjgir-Champa (C.G.) Presently R/o D/18 Housing Board Colony, Balco Nagar, Tahsil & District- Korba (C.G.).

---- Appellant/claimant

Versus

1. Ritesh Mehto, S/o Shri Dashrat Mahto, aged about 27 years, R/o Village Bhawani Nagar, Sirgitti, Bilaspur, P.S. Tarbahar, Thasil Bilaspur, District- Bilaspur (C.G.) (Vehicle Driver- C.G.-04-Z.D.0799).

2. Shri Rakesh Kumar Jain, S/o Namalum, R/o Jagmal Block, Bilaspur, Tahsil & District- Bilaspur (C.G.) (Vehicle Owner- C.G.-04- Z.D.0799).

3. Branch Manager, Bajaj Allainj General Insurance Company Limited, 3rd Floor, Guru Kripa Tower, Beside ICICI Bank, Vyapar Vihar, Bilaspur (C.G.) (Vehicle No. C.G.-04-Z.D. 0799).

---- Respondents

For Appellant : Ms. Renu Kochar, Advocate
For Respondent No. 2 : Shri Ritesh Verma, Advocate

For Respondent No. 3 :Shri Rohitashav Singh, Advocate .

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/03/2019

(1) This appeal is by the claimant against the award dated 30.08.2014, passed by Additional Motor Accident Claims Tribunal (F.T.C.), Korba (for short 'the Tribunal') in Claim Case No. 165/2013 awarding total compensation of Rs. 3,35,000/- with interest @ 7% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

(2) Briefly stated facts of the case are that on 02.10.2011, injured claimant/appellant –Nikhil Pandey, aged about 33 years, earning Rs. 10,000/-pm as salesman was going on motor cycle Bajaj Pulser bearing registration No. C.G.12-AA-7198 with his friend Jitendra, (as pillion rider) which was being driven by Pramod Kumar Raidas (since deceased), the respondent No. 1 while driving the offending vehicle Trailor bearing registration No. C.G. 04-ZD-0799 rashly and negligently, dashed the motor-cycle, as a result of which appellant sustained multiple injuries resulting into permanent disability to the extent of 50%

(3) Learned counsel for the appellant submits that appellant/claimant was not the driver of the motorcycle and was riding on the motorcycle as pillion rider, therefore the Tribunal has erred in deducting 40% of award amount towards contributory negligence. He further submits that the amount awarded under the head of conventional head, special diet and conveyance allowance also appears to be on lower side. He submits that in the instant case though claimant has suffered multiple injuries including permanent disability to the extent of 50% vide permanent disability Certificate (Ex. A/112) but the learned Claims Tribunal, while assessing the amount of compensation has considered permanent disability to the extent of 30%. He also submits that the Claims Tribunal has further fallen in error in considering only five years of loss of income of the claimant looking to the multiple injuries suffered by the claimant as these injuries are long life injuries and there is no scope for improvement in it. Therefore, functional disability may be considered as the claimant has

suffered permanent disability to the extent of 50% since it is applied for the entire life. Furthermore, medical bills Ex. P/89 to P/92 has not been considered while assessing the amount of compensation.

(4) Learned Counsel for the respondent No. 2/owner of the offending vehicle supported the award impugned, which does not call for any interference in the instant appeal.

(5) Learned Counsel for the respondent No. 3/Insurance Company submits that as per Ex. A/112 the claimant sustained permanent disability to the extent of 50% for five years and needs to be reassessment after five years as per Ex. A/112 mentioned by the doctor, therefore, learned Tribunal has rightly considered functional disability to the extent of 30% looking to the injury on the part of the body of injured which does not call for any interference. So far as medical bills are concerned, they can not be considered as they are hand written document and not proved its authenticity. Regarding the contributory negligence at the time of accident three persons were riding on the motor-cycle therefore, it is violation of terms & condition of the insurance policy and the Tribunal has rightly considered the contributory negligence on the part of claimant.

(6) I have heard learned counsel appearing for the parties and perused the impugned award alongwith record of the Tribunal.

(7) It is not disputed by both the parties that at the time of accident, the injured was not driving the motorcycle but sitting as a pillion rider on the motor-cycle and no evidence adduced by both the parties regarding contributory negligence on the part of the claimant, therefore, learned Claims Tribunal has fallen in error in considering the

contributory negligence to the extent of 40%, therefore, the said finding is liable to be and is hereby set aside.

(8) Furthermore, as per Disability Certificate (Ex.A/112) issued by Dr. P.P. Singh, Medical Officer of District Hospital, Korba, looking to the injuries sustained by the claimant including permanent disability to the extent of 50% causing hemipursis in left side and as per his working capacity, 30% functional disability considered by the Tribunal is just & proper. Further, the medical bills vide P/89 to P/92(amount of Rs. 28785) has not been considered for the assessment of compensation only on the ground that they are hand written bills, but the fact remains that medicine are purchased form Appolo pharmacy on different dates, therefore, it is genuine bills and they can not be discarded.

09. Looking to the injuries sustained by the claimant and permanent disability to the extent of 50% and functional disability to the extent of 30% which is long life functional disability caused to the claimant, and it would definitely affect the income of the deceased, therefore, multiplier of 16 would be applicable for assessing the compensation looking to the age of the claimant/injured i.e. 33 years.

10. However, considering the overall facts and circumstances of the case, the period of hospitalization of the claimant, the nature of injuries suffered by him, the nature of his job and other relevant aspects of the matter, this Court is of the opinion that the claimant is entitled for compensation in the following manner:

Sl. No.	**Heads**	**Awarded by the Tribunal**	**Calculation (in rupees)**

01.	Income of the claimant @ Rs. 6,000/- per month	Rs. 6,000/-pm	Rs.6,000 x 12= Rs. 72,000/- per annum
02.	40% towards future prospect		Rs. 72,000+ 28,800= Rs. 100,800/-
03.	Loss of earning @ 30%	Rs. 1,08,000/- (only for five years, as awarded by the Tribunal)	Rs.30,240/-
04.	Multiplier of 16 to be applied		Rs. 4,83,840/-
05.	Towards Medical expenses	Rs. 4,26,344/- (as awarded by the Tribunal)	Rs. 4,26,344+28785 (Ex. P/89 to Ex. P/92)/- = Rs. 4,55,129/-
06.	Towards pain & suffering	Rs. 10,000/-	Rs. 10,000/- as awarded by the Tribunal
07.	Towards attendant	Rs. 6,000/-	Rs. 6,000/- (as awarded by the Tribunal)
08.	Towards conveyance	Rs. 5,000/-	Rs. 5,000/- (as awarded by the Tribunal)
09.	Towards special diet	Rs. 3,000/-	Rs. 3,000/- (as awarded by the Tribunal)
10.	**Total Compensation**		Rs. 9,62,969/-

Since the Tribunal has already awarded Rs. 3,35,000/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.6,27,969/- with interest as awarded by the Tribunal.

11. In the result the appeal filed by the claimant is allowed with modification in the impugned award to the above extent that the claimant shall However, rest of the conditions of the impugned award shall remain intact.

Sd/-

(Gautam Chourdiya)
Judge

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