

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 681 of 2014**

1. Yogesh Kumar Sahu, S/o Ghanshyam Sahu, aged about 20 years, R/o Village Bandha, Tahsil Nagri, District- Dhamtari (C.G.).

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

1. Shriram Yadav S/o Kejuram Yadav, aged about 44 years. (Driver of alleged tractor bearing registration No. C.G. 05/G/3901).
2. Kejuram Dewangan S/o Ramswaroop Dewangan, aged about 60 years. (Owner of alleged tractor bearing registration No. C.G. 05/G/3901) No. 1 & 2 R/o village Hathbandh, Post Hasda No. 2, Tahsil Kurud, District- Dhamtari (C.G.).
3. The Oriental Insurance Company Limited, through, Branch Office- M. B. Trade Centre, 2nd Floor, Ghadi Chowk, Dhamtari, District- Dhamtari (C.G.).

---- Respondents

For Appellant	: Shri Samir Singh, Advocate
For Respondent Nos. 1 & 2	: None
For Respondents No. 3	: Shri Aakash Shrivastava, Advocate on behalf of Shri Arvind Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

22.02.2019

1. This appeal is by the claimant/injured against the award dated 15.05.2014 passed by Chief Motor Accident Claims Tribunal, Dhamtari in Claim Case No.23/2013 awarding total compensation of Rs.1,37,805/- along with interest @ 6 % per annum from the date of filing of claim petition till its actual payment, fastening liability upon the Insurance Company as it could not establish the violation of policy conditions.
2. As per averments in the claim petition, on 04.05.2012,

injured/claimant was riding his motorcycle bearing registration No. C.G. 07/LM/8312, near village Gadadeeh, Kabir Aashram, non-applicant No. 1 driving the vehicle (tractor & trolley) bearing registration No. CG05/G/3901 & CG04/DA/4556 in a rash & negligent manner, dashed the motorcycle of the claimant/injured as a result of which the appellant/claimant suffered grievous injuries on his leg and other parts of the body which resulted into 45% permanent disability.

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

4. No counter appeal has been filed by the respondent/insurance company.

5. Learned counsel for the appellant/claimant submits that as per statement and certificate issued in favour of claimant/injured by Dr. Vinod Kumar Pandey (AW-2), Member of District Medical Board, Dhamtari the claimant sustained grievous injuries resulted in 45% permanent disability but the learned Tribunal had not considered any functional disability and awarded a lump-sum amount of Rs. 1,34,805/- to the claimant. However, the amount awarded by the Tribunal is not proportionate to the injuries caused to the claimant as no amount towards future prospect awarded to the claimant/injured. He further submits that the Tribunal has further erred in not awarding adequate sum on the head of pain & suffering & nutritional diet and therefore, the amount awarded by the Tribunal deserves to be enhanced suitably.

6. On the other hand, learned counsel for the respondent No.3 /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.

7. Heard learned counsel for the parties and perused the material available on record.

8. Considering the nature and extent of injuries suffered by the

claimant, the statement of Dr. Vinod Kumar Pandey (AW-2), who issued disability certificate (Ex.P/87) and other medical documents, it is noticed that the claimant suffered permanent disability to the extent of 45% and long time treatment would be required for the claimant. It is not disputed in this case Yogesh K. Sahu injured/claimant is unable to move without crutch and his right leg is stiff. Therefore, in these circumstances 15% functional disability can be considered as per his working capacity. However, the claimant is also entitled for 40% addition to the annual income towards loss of future prospects. So far as the age of the claimant is concerned, the Tribunal has rightly held him 20 years of age. Considering the fact that the accident occurred on 04.05.2012, but the Tribunal has not considered any income of the deceased therefore, the income of the claimant/injured can safely be considered as Rs. 4,500/- pm as per the minimum wages at the relevant time. Further considering the medical bills (Ex. A/08 to 70) Rs. 1,34,805/- considered by the Tribunal is just & proper. The claimant is also entitled for Rs. 10,000/- towards pain & suffering, Rs. 5,000/- towards special diet, and towards attendant Rs. 2,000/- and keeping in view the Apex Court Judgment 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***, the claimant is held entitled for the compensation in following manner:-

Sl. No.	Heads	Awarded by the Tribunal	Calculation (in rupees)
01.	Income of the claimant		4,500 x12 = Rs. 54,000/- per annum
02.	40% to be added towards future prospect		Rs. 54,000+216, 00= Rs. 75600/-
03.	Loss of earning @ 15% per annum		Rs. 11340/-

04.	Multiplier of 18 to be applied		Rs. 2,04,120/-
05.	Towards expenses on Medicine	Rs. 1,34,805/-	Rs. 1,34,805/- as awarded by the Tribunal
06.	Towards pain and suffering, nutritional diets	Rs. 3,000/-	Rs. 10,000/- As awarded by the Tribunal
07.	Toward conveyance		Rs. 2,000/-
08.	Towards special diet		Rs. 5,000/-
09.	Towards attendant		Rs. 2,000/-
10.	Total compensation		Rs. 3,57,925/-

9. Since the Tribunal has already awarded Rs.1,37,805/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.2,20,120/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-

Gautam Chourdiya
Judge