

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Miscellaneous Appeal (Civil) No. 527 of 2017**

- Bhuwan Lal Sahu S/o Shri Phulji Sahu, aged about 59 years, R/o Village Bathena, Thana & Tahsil- Dhamtari, Civil & Revenue District- Dhamtari (C.G.)

**---- Appellant/Claimant**

**Versus**

1. Parvinder Singh Khalsa @ Binnu Khalsa, S/o Ajeet Singh Khalsa, aged about 39 years, R/o Baster Road Near Thal Tank Petrol Pump, Dhamtari, Thana & Tahsil- Dhamtari, Civil & Revenue District- Dhamtari (C.G.)

**(Driver & Owner)/Non-applicant No.1**

2. The Branch Manager, The Oriental Insurance Company Limited, Infront of Shani Mandir, M.B. Trade Center, Thana & Tahsil- Dhamtari, District Dhamtari (C.G.)

**(Insurer)/Non-applicant No.2**

**---- Respondents/Non-applicants**

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|                     |   |                                  |
|---------------------|---|----------------------------------|
| For Appellant       | : | Shri Sunil, Advocate             |
| For Respondent 1    | : | None                             |
| For Respondent No.2 | : | Smt. Chitra Shivastava, Advocate |

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**Hon'ble Shri Justice Gautam Chourdiya, J**

**Order**

**19.02.2019**

I.A. No. 1 of 2017:

This is an application for condonation of delay of 04 days in filing the appeal.

For the reasons mentioned in the application which is supported by the affidavit, the same is allowed and delay in filing the appeal is condoned.

Heard on admission.

The appeal being arguable on merits is admitted for hearing.

Heard finally with the consent of learned counsel for the parties.

**Judgment on Board**

1. This is Claimant's appeal filed under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal (FTC), Dhamtari, District Dhamtari (C.G.) in Claim Case No. 38 of 2016 vide award dated 24.12.2016.

2. As against compensation of Rs.12,42,000/- claimed by the Claimant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for injury sustained by him in the motor accident, the Tribunal awarded a total sum of Rs.3,38,080/- along with interest @ 6% per annum from the date of application till realization and fastened the liability upon Respondent No.2/non-applicant No.2 along with non-applicant No. 1 jointly and severally.

3. Brief facts of the case are that on 07.06.2015 when Bhuwan Lal Sahu- Appellant/Claimant was going to his house by his Activa bearing registration No. CG-05/U/2060 after purchasing the utensils from the shop situated on Raipur Road Dhamtari, non-applicant No. 1, rider and owner of the offending vehicle- motorcycle Passion Pro bearing registration No. CG-05/R/3691, riding the same in a rash and negligent manner, dashed the Activa. As a result thereof, Bhuwan Lal Sahu sustained grievous injuries on his right leg, head and face.

4. Learned counsel for the Appellant/Claimant submits that no multiplier has been applied by the Tribunal whereas due to the said accident, the Appellant sustained grievous injuries on his right leg, head and face and suffered 30% permanent disability. He further submits that no amount has been awarded to the Claimant towards loss of earning, attendant & conveyance and the amount awarded towards physical & mental agony is on the lower side which deserves to be enhanced suitably.

5. On the other hand, learned counsel for Respondent No. 2/Insurance Company supports the impugned award and submit that the Tribunal considering all the aspects of the matter has rightly awarded compensation which needs no interference by this Court. He also submits that disability certificate given by the Doctor to Claimant is for temporary disability, not permanent disability.

6. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

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

8. AW-2, Dr. Vinod Pandey, has specifically stated this fact that as per Ex.-P/10, disability certificate, the Claimant suffered 30% temporary disability and he also admits in para-3 that the injury sustained by the Claimant will improve in future. Therefore, the Claimant has failed to prove that he suffered 30% permanent disability. So far as non-application of multiplier by the Tribunal is concerned, since present is case of temporary disability to the Claimant, the question of applying multiplier does not arise and as such, the Tribunal was justified in not assessing compensation by multiplier.

9. As regards income of the Claimant, though the Claimant has pleaded that he is Salesman in Punjab Agriculture, Raipur Road Dhamtari and is earning Rs.19,000/- per month, however, no evidence in support thereof has been adduced. Thus, considering the gravity of the injuries suffered by the Claimant, the period of hospitalization and medical documents available on record, this Court is of the opinion that the Claimant is entitled for Rs.20,000/- towards loss of income for four months @ Rs.5,000/- per months.

10. Further, considering that the Claimant was hospitalized in Narayan Hospital Raipur from 07.06.2015 to 22.06.2015, his right leg was fractured and after operating, an iron rod was fitted which resulted in 30% temporary disability and definitely, the Claimant would have suffered inconvenience caused to him during hospitalization, this Court is of the view that the amount of Rs.10,000/- awarded by the Tribunal towards physical & mental agony deserves to be enhanced to Rs.15,000/-. This apart, the Claimant is also entitled to Rs.10,000/- for attendant and Rs.5,000/- for conveyance. Thus, the Claimant/Appellant is entitled for compensation in the following manner:-

manner:-

| Sl.No. | Heads                | Calculation<br>(In rupees)                 |
|--------|----------------------|--------------------------------------------|
| 1.     | For medical expenses | Rs.2,98,080/- (as awarded by the Tribunal) |
| 2.     | For grievous injury  | Rs.25,000/- (as awarded by the             |

|    |                                                                   |                                         |
|----|-------------------------------------------------------------------|-----------------------------------------|
|    |                                                                   | Tribunal)                               |
| 3. | For special diet                                                  | Rs.5,000/- (as awarded by the Tribunal) |
| 4. | For physical & mental agony                                       | Rs.15,000/-                             |
| 5. | Loss of four months income to the Claimant @ Rs.5,000/- per month | Rs.20,000/-                             |
| 6. | For attendant                                                     | Rs.10,000/-                             |
|    | For conveyance                                                    | Rs.5,000/-                              |
|    | <b>Total Compensation</b>                                         | <b>Rs.3,78,080/-</b>                    |

**11.** Since the Tribunal has already awarded Rs.3,38,080/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.40,000/- with interest @ 6% per annum from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

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

**13.** No order as to costs.

Sd/-  
**(Gautam Chourdiya)**  
Judge