

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (Civil) No. 321 of 2014**

- Dileshwar, aged about 32 years, S/o Harbhajan Singh Sahu, R/o Village Gagram, Kanketra, Tahsil and District Rajnandgaon

---- Appellant/Claimant**Versus**

1. Mohd. Sajid, aged about 30 years, S/o Mohd. Meraj Khan, R/o Gajipur, Shubham Nagar, T.P. Nagar, Hathkhoj, Bhilai, District Durg
(Driver)
2. Sanjy Biru, S/o Dhanji Bhai Viru, R/o House 1520, Raman Mandir Ward, Fafadih, Raipur
(Owner)
3. Branch Manager, National Insurance Co. Ltd. Local Branch Office, Kamtee Line Rajnandgaon
(Insurer)

---- Respondents/Non-applicants

For Appellant	:	Shri Salvik Tiwari, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Qamrul Aziz, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J**Judgment on Board****26.06.2019**

1. This appeal is by the Claimant/Appellant against the award dated 08.01.2014 passed by the Additional Motor Accident Claims Tribunal, Circuit Court, Dongargarh (C.G.) in Claim Case No. 46/2012 awarding total compensation of Rs.3,22,311/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No.3 along with non-applicants No. 1 & 2 jointly and severally.

2. As per claim petition, on 12.04.2012 the Claimant aged about 32 years, earning Rs.14,000/- per month as tractor driver in Ashoka Builders Company sustained injuries and as per Ex.-P/15, he suffered 60% permanent disability in motor vehicular accident caused due to rash and negligent driving of the vehicle-Trailer bearing registration No. CG-04/JC/6933 by non-applicant No.1, owned by

non-applicant No.2 and insured with non-applicant No.3.

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

4. Learned counsel for the Appellant/Claimant submits that income of the Claimant has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas it should have been Rs.4,500/- per month. He further submits that no amount towards future prospect and towards pain & suffering has been granted to the Claimant, therefore, the compensation amount deserves to be enhanced suitably. In support of his contention, reliance has been placed on the decision of the Hon'ble Supreme in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

5. On the other hand, learned counsel for 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.

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

7. In the present case, as per Ex.-P/15, disability certificate, issued by District Medical Board, Rajnandgaon, the Claimant has suffered 60% permanent disability in relation to the particular limb of the body and not in relation to the whole body. As per statement of Dr. Prakash Bhalerao (AW-2), disability of the Claimant can be cured through physiotherapy, therefore, the Tribunal has rightly considered 20% physical & functional disability of the Claimant.

8. It was argued by learned counsel for the Appellant/Claimant that no amount towards pain & suffering granted to the Claimant. As per Ex.-P/55 to Ex.-P/77, the Claimant was admitted for treatment in Pt. Jawaharlal Nehru Hospital & Research Centre, Bhilai from 12.04.2012 to 02.05.2012. As per statement of Dr. Prakash

Bhalerao (AW-2), on 11.08.2012, the Claimant was present in District Medical Board, Rajnandgaon for obtaining disability certificate, therefore, his medical test and X-ray was done and on the basis of this, due to previous injury, femur bone of right thigh of the Claimant was fractured as well as fibula of right leg was fractured and disability was found in right leg. Therefore, this Court is of the view that the interest of justice will be safeguard by providing amount of Rs.20,000/- towards pain & suffering and inconvenience caused to the Claimant during hospitalization.

9. As regards income of the Claimant, though the Claimant has pleaded that he was earning Rs.14,000/- per month as tractor of his father was engaged in Ashoka Builders Company and he driving the same but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the Claimant is considered as Rs.4,500/- per month as per minimum wages at the relevant time. Further, considering the age of the Claimant i.e. 32 years, the nature of his job and the decisions of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** and *Pranay Sethi* (supra), the Claimant is held entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the Claimant	Rs.4,500/- per month Rs.54,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/- per annum
3.	Loss of earning capacity due to 20% physical & functional disability	Rs.15,120/-
4.	Multiplier of 16 to be applied	Rs.15,120- x 16 = Rs.2,41,920/-
5.	For medical treatment & medical bills	Rs.1,24,611/- (as awarded by Tribunal)
6.	For attendant	Rs.5,500/-(as awarded by Tribunal)
7.	For special diet	Rs.4,000/- (as awarded by Tribunal)
8.	For conveyance	Rs.3,000/- (as awarded by Tribunal)

9.	For future treatment	Rs.70,000/- (as awarded by Tribunal)
10.	For pain & suffering	Rs.20,000/-
	Total Compensation	Rs.4,69,031/-

- 10.** Since the Tribunal has already awarded Rs.3,22,311/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.1,46,720/- 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.
- 11.** In the result, the appeal is allowed in part with modification in the impugned award to the above extent.
- 12.** No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge