

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1495 of 2016**

- Bhavesh Sahu S/o Om Prakash Sahu, Aged About 22 Years R/o Village Puri Tahsil And District- Dhamatari, Chhattisgarh.

----Appellant**Versus**

1. Ramesh Kumar Desai S/o Bachan Desai, Aged About 58 Years R/o Village Puraina Basti, Bhilai-3 District- Durg, Chhattisgarh.
2. Mohmmad Usmani S/o Gulam Mustaffa, Aged About 33 Years R/o Road No.1 Kasaridhi, Thana- Durg, District Durg, Chhattisgarh.
3. The National Insurance Company Ltd., Branch Office Bhutani Complex G.E. Road Power House Bhilai District Durg, Chhattisgarh.

---- Respondents

For Appellant

Shri A.L. Singroul, Advocate.

For Respondent No.3

Shri Anil Gulati, Advocate.

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

21/02/2019

1. This is claimant's appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Dhamtari, C.G. (for short 'the Tribunal') in Claim Case No. 105 of 2016 vide award dated 1.09.2016.
2. As against the compensation of Rs.27,80,000/- claimed by the appellant/claimant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the grievous injuries sustained by him in the road accident on 17.10.2014, the Tribunal awarded a total sum of Rs.2,38,950/- along with interest @ 6% per annum from the date of application till its actual payment, deducting

50% contributory negligence on the part of the claimant. At the time of accident, Injured/claimant was aged about 28 years, earning Rs.150/- per day by doing computer work.

3. The Tribunal, on a close scrutiny of the evidence led by both the parties, held that the accident had occurred due to rash and negligent driving of Crane bearing registration no. CG07/NA/4522 by its driver i.e., respondent No.1 herein: appellant/claimant sustained grievous multiple injuries and his right leg was fractured and he suffered 75% temporary disability, respondent No.3 / Insurance Company liable for payment of compensation as it could not establish any violation of policy conditions; assessed and awarded the aforesaid sum as compensation.
4. Learned counsel for the appellant submits that the Tribunal was not justified in holding contributory negligence on the part of the claimant because no such evidence has been adduced by the non-applicants and the Tribunal merely on the basis of spot map Ex.P-3 considered contributory negligence on the part of the claimant. He submits that no offence was registered against the claimant by the Police. He also submits that though the claimant has duly proved that he suffered 75% permanent disability, his right leg got shortened by 9 inch but the Tribunal did not consider the above aspect of the matter. Therefore, considering the permanent disability of the claimant the compensation is required to be assessed by applying appropriate multiplier along with future prospect. Lastly, he submits that the amount awarded under the conventional heads is also on lower side and needs to be enhanced suitably.
5. On the other hand, learned counsel for the respondent/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. No counter appeal has been filed by the respondents.
- 7. Heard learned counsel for the parties and perused the material available on record.
- 8. So far as quantum of compensation is concerned, considering the pleadings of the claimant and the evidence available on record, the Tribunal was justified in assessing the income of the claimant as Rs.150/- per day. Further, considering the gravity of the injury suffered by the claimant, the disability certificate Ex.P-45 according to which the claimant suffered 75% disability on the right leg, the evidence of AW-2 Vinod Kumar Pandey the fact that right leg of the claimant got shortened by 9 inch, according to AW-2 there is no possibility of improvement in the said injury, the nature of job of the claimant i.e. computer work, his age i.e. 22 years, this Court is of the opinion that the said permanent disability resulted into 40% functional disability and in view of decision of Hon'ble Supreme 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** for assessment of compensation multiplier of 18 is applicable and likewise towards future prospect. In view of above, the claimant is entitled for compensation in the following manner:-

S.No.	Head	Calculation
1.	Notional Income of the claimant	Rs.4,500/- per month i.e. Rs.54,000/- per annum.

2.	Future prospect 40%	Rs.21,600/- Rs.54,000 + Rs.21,600 = Rs.75,600/-
3.	Loss of earning capacity @ 40%	Rs.30,240/-
4.	Multiplier of 18 applied	Rs.5,44,320/-
5.	For pain and suffering	Rs. 5,000/-
6.	For medical expenses	Rs.2,91,872 + Rs.1,48,528 = Rs.4,40,400/-
7.	For special diet and other miscellaneous expenses	Rs.7,000/-
8.	For attendant	Rs.9,750/-
9.	For loss of earning	Rs.9,750/-
10.	For Conveyance	Rs.6,000/-
Total		Rs.10,22,220/-

9. As regards the contributory negligence on the part of the claimant, the Tribunal while considering this issue in para 11 of this award has observed that as per spot map Ex.P-3, the offending vehicle dashed the motorcycle in question from the right side which makes it clear that the claimant was riding the motorcycle on the wrong side of the road and as such was himself negligent which resulted in unfortunate accident. Thus, considering the manner in which the accident occurred, this Court is of the opinion that the Tribunal was fully justified in holding the claimant contributory negligent on the extent of 50%. In view of above, claimant is held entitled for **Rs.5,11,110/-**

Since the Tribunal has already awarded Rs.2,38,950/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,72,160/- with interest as awarded by the Tribunal. 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

Akhilesh