

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 898 of 2014

- Yogendra @ Shyamlal S/o Dhan Singh Aged About 40 Years R/o Sonarpal, Thana- Parpa, Civil and Revenue Distt. Bastar C.G.

---- Appellant/claimant

Versus

1. Sumit Jain S/o Santosh Kumar Jain Aged About 25 Years R/o Sadar Ward, Main Road, Jagdalpur, Civil and Revenue Distt. Bastar C.G.(Driver)
2. Upendra Singh Chawhan S/o Vijaypal Singh Chawhan Aged About 36 Years R/o Permanent Address Shanti Nagar Ward, Jagdalpur, Bastar, Temporary Address- Satyabhan Singh, Bhagat Singh Ward, Dantewada, Civil and Revenue Distt. Dantewada C.G. (Owner)
3. Branch Manager Reliance General Insurance Co. Ltd., Plat No. 29, Nehru Nagar East Commercial Complex, Bhilai, Distt. Durg C.G. (Insurer)

---- Respondents

For Appellant	:	Shri Punit Ruparel, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04/02/2019

This appeal is by the injured claimant under Section 173 of the Motor Vehicles Act against the award 8.8.2013 passed by First Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (CG) in Claim Case No. 234/2010 awarding total compensation of Rs.87,600/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3 jointly and severally along with non-applicants No.1 & 2/driver & owner.

02. As per claim petition, on 5.7.2010 while claimant Yogendra along with one Raghunath was going on bicycle, non-applicant No.1 Sumit Jain by driving car bearing No. CG 18 C 9900, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner, dashed the bicycle as a result of which both Yogendra and Raghunath suffered grievous injuries.

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

04. Learned counsel for the appellant/claimant submits as under:

(i) that income of the claimant has wrongly been considered by the Tribunal as Rs.3,000/- whereas he was earning Rs.6000/- per month as a labour and also earning Rs.1.50 lacs from agriculture work.

(ii) that as the claimant suffered 65% permanent disability, looking to the nature of work of the claimant his loss of earning capacity should have been considered 50% whereas the Tribunal has assessed the same as 10% only.

(iii) that no amount towards future prospect has been granted to the claimant.

(iv) that the amount awarded towards medical expenses is also on the lower side.

(v) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

05. 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 matters has rightly awarded compensation which needs no interference by this Court.

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

07. As regards income of the claimant, though the claimant has pleaded that he was earning Rs.6000/- per month as a labour and Rs.1.50 lacs from agriculture work, but no documentary or oral 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.3,500/- per month as per minimum wages at the relevant time. Further, considering the age of the claimant i.e. 35 years as is evident from disability certificate Ex.P/62, the nature and extent of injury, the permanent disability of 65% suffered by him, which has been duly proved by him, the evidence of the doctor AW-2 Dr. LL Thakur, his loss of earning can safely be taken as 35%. This apart, the claimant is also entitled for 40% addition to his annual income towards future prospect in view of decision of Hon'ble Supreme Court in *Pranay Sethi* (supra). Therefore, considering the facts and circumstances of the case, the medical evidence on record, the period of hospitalization of the claimant i.e. 62 days, his disability certificate Ex.P/66 according to which he suffered 65% permanent disability, that rod was inserted in his right leg, keeping in view decision of the Hon'ble Supreme Court in *Sarla Verma* and *Pranay Sethi* (supra), the claimant is held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.3500/- per month.	42,000/- per annum
02.	40% towards future prospect	42,000/- + 16,800/- = 58,800/- per annum.
03.	Loss of earning @ 35%.	20,580/-

04.	Multiplier of 16 to be applied	3,29,280/-
05.	Towards medical expenses	23,000/-
06.	For pain and suffering	20,000/-
07.	For future treatment	20,000/-
08.	Nutritional diet	5,000/-
09.	Towards loss of amenities in life	30,000/-
	Total :	4,27,280/-

Since the Tribunal has already awarded Rs.87,600/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.3,39,680/- with interest as awarded by the Tribunal.

08. In the result, the appeal is allowed with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge