

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1341 of 2014**

1. Sheikh Nasir S/o. Shri Shiekh Najruddin, aged about 29 years, R/o. Village- Bakarupara Narayanpur, Thana- Narayanpur, Revenue Distt.- Narayanpur, Civil Distt.- Jagdalpur (C.G.).

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

1. Jageshwar @ Jaggu S/o Shri Vishnuram Sahu, aged about 23 years, R/o Village- Joratarai, Post- Bhakhara, Thana- Bhakhara, Civil & Revenue Distt.- Dhamtari (C.G.) (Driver of the Vehicle No. CG-05-ZC-0262)
2. Arvind Pal Singh S/o Shri Mehtab Singh, aged about 57 years R/o Sihava Chowk Dhamtari, Thana & Tahsil- Dhamtari, Civil & Revenue Distt.- Dhamtari (C.G.). (Owner of the Vehicle No. CG-05-ZC-0262)
3. Divisional Manager, Oriental Insurance Company Limited, M.B. Trade Balak Chowk Dhamtari, Tahsil and Distt.- Raipur (C.G.) (Insurer of the Vehicle No. CG 05-ZC-0262)

---- Respondents

For Appellant	: Shri Sunil Sahu, Advocate
For Respondent Nos. 1 & 2	: None
For Respondents No. 3	: Shri Raj Awasthi, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

19.02.2019

1. This appeal is by the claimant/injured against the award dated 14.11.2014 passed by Additional Motor Accident Claims Tribunal, Dhamtari in Claim Case No.60/2014 awarding total compensation of Rs.1,97,000/- 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 20.02.2009, the claimant was taking the CRPF personnel to Narayanpur Camp from Raipur in a Truck bearing registration No. CG17-H/1071, as per direction of the State Government and the owner. However, when he reached near village Chati, due to mechanical break down he duly parked the vehicle on the side of the road with parking light on. At that time Non-applicant No. 1/respondent No. 1-Jageshwar @ Jaggu by driving the offending vehicle (truck) CP05-ZC/0262 in a rash & negligent manner, dashed the said truck as a result of which the appellant/claimant suffered grievous injuries on his leg and other parts of the body which resulted into 30% 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.

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

5. Learned counsel for the appellant/claimant submits that the claimant sustained grievous injuries and as per statement of Dr. Vinod Kumar Pandey (AW-2), Member of District Medical Board, Dhamtari forefinger of right leg of the claimant was amputated due to injuries sustained by him which resulted in 30% permanent disability to the claimant which is not likely to improve in future. He has further opined that the claimant can not drive any vehicle in future. 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.A-36) and other medical documents, it is noticed that the claimant suffered permanent disability to the extent of 30% and long time treatment would be required for the claimant. Therefore, in these circumstances 30% functional disabilities 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 35 years of age. Considering the fact that the accident occurred on 20.02.2009, the Tribunal was fully justified in assessing the income of the claimant as Rs. 3,000/-pm as per the minimum wages at the relevant time and the price index. As regards the amount awarded towards medical expenses, the same is not in dispute. The Tribunal has awarded a total sum of Rs. 20,000/- towards special diet and pain & suffering is just & proper. Therefore, the claimant is held entitled for the compensation in view of 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** in following manner:-

Sl. No.	Heads	Awarded by the Tribunal	Calculation (in rupees)
01.	Income of the claimant	Rs. 3,000/-per month	3,000 x12 = Rs. 36,000/- per annum
02.	40% to be added towards future prospect		36,000+ 14,400= Rs. 50,400/-

03.	Loss of earning @ 30% per annum		Rs. 15,120/-
04.	Multiplier of 16 to be applied		Rs. 2,41,920/
05.	Towards expenses on Medicine	Rs. 4,200/-	Rs. 4,200/- as awarded by the Tribunal
06.	Towards pain and suffering, nutritional diets	Rs. 20,000/-	Rs. 20,000/- As awarded by the Tribunal
07.	Total Compensation		Rs. 2,66,120/-

9. Since the Tribunal has already awarded Rs.1,97000/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.69,120/- 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