NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 581 of 2014

- Kishan Lal Khutel S/o Bislal Khutel Aged About 32 Years R/o Nevai In Front Of Liquor Shop, P.S. Nevai, Tah. And Distt. Durg C.G.

---Appellant

Versus

1. Suresh Kumar Yadav S/o Satruhan Yadav Aged About 27 Years R/o Rakhi, P.S. Saja, Distt. Durg C.G.
2. Vikas Agrawal S/o Prabhat Agrawal Aged About 35 Years R/o House No. 39/4, Neharu Nagar, Bhilai, Tah. And Distt. Durg C.G.
3. The United India Insurance Company Ltd. Tara Complex, G.E. Road, Power House, Bhilai, Tah. And Distt. Durg C.G.

---- Respondents

For Appellant	Shri C.K. Sahu, Advocate.
For Respondent No.3	Shri Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

30/01/2019

1. This appeal has been preferred by the appellant/injured claimant under Section 173 of the Motor Vehicle Act, against the award dated 12.03.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Durg, District Durg, C.G. in claim case No. 06/20102, awarded a total compensation of Rs. 34,500/- with interest at the rate of 6% percent per annum from the date of application till its realization, fastening the liability on non-applicants jointly and severely.

2. As per claim petition on 16.09.2011, Appellant Kishan Lal Khutel was riding motorcycle TVS Axel bearing no. CG07-AA-1007 and

was going from village Nevai to Parsada. However, on the way at around 7:00 pm, non applicant No.1 Suresh Kumar Yadav by driving the vehicle Truck bearing no. CG07-C-9267 in a rash and negligent manner dashed the vehicle of the appellant, as result of which Kishan Lal Khutel suffered grievous injuries in his right leg and other parts of the body and sustained 40% permanent disability.

3. The appellant/claimant filed a claim petition under Section 166 of the Motor Vehicle Act stating that at the time of accident he was 32 years of age, earning Rs. 6,000/- as a Mason and due to injuries sustained by him, he is completely disabled to do his work. With the aforesaid averments, the appellant/claimant prayed for grant of compensation to the tune of Rs13,76,000/- from the non-applicants with interest.

4. Learned Tribunal considering the evidence led by both the parties assessed total compensation of Rs.69,000/- and holding the appellant/claimant negligent to the extent of 50%, awarded Rs.34,500/- with interest as mentioned in para 1 of this judgment.

5. Learned counsel for the appellant submits that the Tribunal has committed an error in assessing the income of the appellant at Rs.3,000/- whereas he was earning Rs.6,000/- per month as a Mason. Further, the Tribunal has wrongly deducted 50% from the total compensation towards contributory negligence of the appellant without there being any cogent and trustworthy evidence in this regard. Hence, the compensation awarded by

the Tribunal deserves to be enhanced suitably.

6. On the other learned counsel for the respondent No.3 supports the award impugned. She submits that no counter appeal has been preferred by the Insurance Company.

7. I have heard learned counsel appearing for the parties and perused the record of the Tribunal as well as award impugned.

8. So far as the contributory negligence of the appellant is concerned, considering the manner in which the accident occurred, the fact that no evidence has been adduced by the respondents on the point of contributory negligence, the evidence of claimant AW-1 that the accident occurred due to negligence of non-applicant No.1 and non-rebuttal of the same in his cross-examination, and the fact that FIR was registered against non-applicant No.1 (Ex.P-3) and he was chargesheeted for the offence u/s 279, 337 & 338 of IPC, this Court is of the opinion that the Tribunal was not justified in holding the appellant/claimant negligent without there being any cogent and reliable evidence on record. Being so, the finding recorded by the Tribunal on the point of contributory negligence of the appellant deserves to be set aside and is hereby set aside.

9. As regards the income of the claimant, though he has pleaded that he was earing Rs.6,000/- per month 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 deceased is considered as Rs.4,000/- per

month as per minimum wages at the relevant time. From the over all evidence available on record, including the medical evidence, the Tribunal was justified in assessing functional disability of the claimant as 10% due to injuries suffered by him in the accident. Therefore, keeping in view the decisions of Hon'ble Supreme Court in ***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,*** considering the age of the claimant i.e. in between 36-40 years, the nature of job, the gravity of the injuries, he is held entitled for compensation in the following manner:-

S.No	Head	Calculation
1.	Income of the claimant	Rs..4,000/- per month i.e. Rs.48,000/- per annum.
2.	Future prospect 40%	Rs. 19,200/- Rs.48,000 + Rs.19,200 = Rs.67,200/-
3.	Loss of earning capacity @ 10%	Rs.6,720/-
4.	Multiplier of 15 applied	Rs.1,00,800/-
5.	For Transportation	Rs. 1,000/-
6.	For attendant	Rs.1,000/-
7.	For special diet	Rs.1,000/-
8.	For pain and suffering	Rs.5,000/-
9.	For loss of amenities	Rs. 5,000/-
10.	Towards medical expenses	Rs.2,000/-

	Total Compensation	**Rs.1,15,800/-**

11. Since the Tribunal has already awarded Rs.34,500/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.81,300/- with interest @ 6% per annum from the date of application till 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.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh