

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1083 of 2014

- Beeman Ray S/o Shri S.K. Ray, aged about 59 years, R/o Bangali Camp Kirandul, Police Station- Kirandul, Civil & Revenue District- Janjgir-Champa (C.G.)

---- Appellant/Claimant

Versus

1. Keshav Ratan, S/o Shri Rupratan, aged about 30 years, R/o Village- Kumhari, Civil & Revenue District- South Bastar Dantewada (C.G.)
(Driver of the offending vehicle Bus No. CG-07/E/0481)
2. Awtar Singh S/o Shri Kikkar Singh R/o Devendra Nagar Raipur, Civil & Revenue District Raipur (C.G.)
(Owner of the offending vehicle Bus No. CG-07/E/0481)
3. The Oriental Insurance Company Ltd., D.O.-1 Jail Road Raipur, Civil & Revenue District Raipur (C.G.)
(Insurer of the offending vehicle Bus No. CG-07/E/0481)

---- Respondents/Non-applicants

For Appellant	:	Shri Parasmani Shriwas, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Rajneesh Shrivastava, Advocate appears on behalf of Deppak Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

05.03.2019

1. The Claimant/Injured has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 seeking enhancement of compensation awarded by the Additional Motor Accident Claims Tribunal, South Bastar, Dantewada (C.G.) vide award dated 30.09.2014 passed in Claim Case No. 267 of 2014.
2. The injured- Claimant/Appellant- Beeman Ray, aged about 59 years, claimed compensation of Rs.19,20,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injury sustained by him in the motor accident.
3. Brief facts of the case are that on 12.08.2008 the Claimant- Beeman Ray had gone to Bacheli from Kirundul by sitting in a Jeep of Contractor for bringing machanic, when he was returning from Kirundul with the machanic, Respondent

No.1/non-applicant No.1- Keshav Ratan, driver of the offending Bus bearing registration No. CG-07/E/0481, owned by non-applicant No.2 and insured with non-applicant No.3, driving the said Bus in a rash and negligent manner dashed the jeep in which the Claimant was sitting. As a result thereof, Beeman Ray sustained injuries on elbow of his left hand, right hand and right thigh. He also suffered permanent disability on his right thigh.

4. The learned Tribunal, in the impugned award has awarded a compensation of Rs.84,000/- in favour of the Appellant/Claimant with interest @ 7.5% per annum from the date of application till its realization and has fastened liability upon the non-applicant No.3 along with non-applicants No.1 and 2 jointly and severally to pay compensation to the Claimant.

5. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

6. Learned counsel for the Appellant/Claimant submits that at the time of accident, the Claimant was working as supervisor under Contractor namely Papchan and was earning Rs.5,000/- per month. He further submits that due to accident, Claimant suffered 45% permanent disability. He also submits that no amount towards future prospect has been granted to the Claimant by the Tribunal. He further submits that the Tribunal has considered the age of the Claimant above 60 years and has applied the multiplier of 5 whereas in view of the decision of the Hon'ble Supreme Court in the matter of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** in between age group of 61-65 years, it should have been multiplier of 7.

7. 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.

8. Heard learned counsel for the parties and perused the material available on record.
9. Considering the facts and circumstance of the case, the oral and documentary evidence adduced by the parties, as per Ex.-P/22, a disability certificate, issued by the Doctors in which it was mentioned that the Claimant/Appellant had suffered 45% permanent disability in relation to right lower limb and not in relation to the whole body, therefore, the Tribunal was justified in assessing the functional disability to the extent of 30% vide para 9 of the award and in awarding Rs.54,000/- towards loss of income, Rs.25,000/- towards treatment, special diet and for treatment in future, Rs.5,000/- towards pain and suffering.
10. So far as argument relating to non-grant of future prospect by the Tribunal is concerned, considering the age of injured/Claimant i.e. 59 years, the nature of his job, in view of the decisions of the Hon'ble Supreme Court in the matters of *Smt. Sarla Verma* (supra) and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the Claimant/Appellant is entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the Claimant (as considered by the Tribunal)	Rs.3,000/- per month i.e. Rs.36,000/- per annum
2.	10% towards future prospect added to the annual income	(Rs.36,000/- + Rs.3,600/-) Rs.39,600/-
3.	Loss of income due to functional disability to the extent of 30% (as assessed by the Tribunal)	Rs.11,880/-
4.	Multiplier of 7 to be applied	Rs.11,880/- x 07 = Rs.83,160/-
5.	For treatment, special diet and treatment in future	Rs.25,000/- (as awarded by the Tribunal)
6.	Towards pain and suffering	Rs.5,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.1,13,160/-

11. Since the Tribunal has already awarded Rs.84,000/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.29,160/- with interest @ 7.5% per annum from the date of application till its 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.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge