

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 360 of 2015**

- Ramawtaar Alias Ramu S/o Sanwarmal Aged About 44 Years R/o Village- Milupara, Police Station And Tahsil Gharghoda, District Raipur, Chhattisgarh, Chhattisgarh

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

1. Brij Bhushan And Ors. S/o Shivshankar Aged About 29 Years R/o Mitwa Nagar, Koriya Colony, Khelri, Police Station Chirmiri, District Koriya, Chhattisgarh, Chhattisgarh
2. Dhananyay Gupta S/o Ashok Kumar Gupta Aged About 30 Years R/o Baikunthpur, Police Station, Tahsil And District Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh
3. The Regional Manager Reliance General Insurance Company Ltd. Shop No. 412, 413, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:Shri Sandeep Shrivastava, Advocate.
For Respondent No.3	:Shri Rohitashav Singh, Advocate

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****15.03.2019**

1. This is claimant's/injured appeal seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Raigarh (for short 'the Tribunal') in claim case No. 14/2012 vide award dated 03rd March, 2015.

2. As against compensation of Rs. 24,00,000/- claimed by appellant/claimant, by filing claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the injuries sustained

by him in the motor accident on 23.11.2009, the Tribunal awarded a total sum of Rs.2,37,834/- as compensation along with interest @ 6 percent per annum from the date of filing of claim petition till its actual payment in favour of the appellant/claimant.

3. The Tribunal, on a close scrutiny of the evidence led by both the parties, held : the accident had occurred due to rash and negligent driving of Dumper bearing registration No. C.G.13-D/2022 by its driver respondent No.1 –Brij Bhushan; appellant/claimant sustained grievous injuries resulting into permanent disability in the accident occurred on 23.11.2009. Learned Tribunal, after considering the material available on record fastened the liability to pay compensation upon the respondent No. 3 /Insurance Company as it could not establish the violation of policy conditions and awarded aforesaid sum as compensation to the appellants /claimants.

4. Facts of the case leading to filing of the claim petition are that on 23.11.2009 when claimant Ramavatar @ Ramu riding the motorcycle, non-applicant No. 1- Barid Bhushan while driving the offending vehicle Dumper bearing registration No. CG13-D/2022 rashly and negligently, dashed the motorcycle of the injured/claimant, as a result thereof, appellant sustained grievous injuries result into permanent disability to the extent of 60%.

5. Learned counsel for the appellant submitted that due to injuries sustained by the claimant/injured in the motor occurred on 23.11.2009, he suffered grievous injuries resulting into permanent disability to the extent of 60% as per disability certificate issued by the Medical Board. He also submits that the Dr. Sharad Awasthi (AW-2), member of the

concerned Medical board was also examined and according to him, there is no any scope for improvement in the injuries sustained by the claimant, but the learned Tribunal has not examined any functional disability regarding the disabilities on the lower limb of the body of the injured which occurred due to said accident. He also submits that at the relevant time, injured/claimant was earning Rs. 10,000/- per month by running of grocery shop but the learned Tribunal has not been considered the aforesaid income of the injured/claimant. He further submits that learned Tribunal has not given any amount towards future prospect looking to the age of the injured/claimant and meager amount awarded toward the pain & suffering attendant and conveyance, which deserve to be suitably enhanced.

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, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

6. Learned counsel for respondent No. 3/Insurance Company would support the impugned award.

7. Learned counsel for the both the parties submitted that no counter appeal has been filed by the respondents.

8. Heard and perused the material available on record and the award impugned.

9. It is not disputed that the claimant/injured sustained injuries due to the said accident and at the time of accident, the claimant/injured was aged about 44 years. The chargesheet has been filed under

Sections 279 & 338 of the Indian Penal Code and FIR (Ex. P/1) lodged against the driver of the offending vehicle. As per Ex. P/18 medical bills and treatment bills also produced & proved by the claimant. The claimant/injured, in paragraph 4 of his statement, has stated that at the relevant time, he was earning Rs. 10,000/- per month by running of grocery shop but neither documents regarding profit & income of the claimant was produced nor he filed any income tax return document and bank pass book, therefore, in these circumstances, looking to the minimum wages as skilled person at the relevant time Rs. 3,500/- per month income can be safely considered.

10. So far as the permanent disability is concerned, looking the evidence of Dr. Sharad Awasthi (AW-2), who was examined before the Tribunal has stated in paragraphs 1, 2, and 3 of his statement that vide Ex. P/69 medical certificate issued by the Medical Board after examining the claimant, claimant has suffered grievous injuries including 60% permanent disability and his both legs are paralised and that statement remained uncontroverted. Therefore, looking to the 60% permanent disability, 40% functional disability can be safely taken for the assessment of loss of income to the claimant.

11. However, considering the overall facts and circumstances of the case, the period of hospitalization of the claimant, the nature of injuries is traumatic paraplegia (paralised) which was suffered by the claimant/injured, the nature of his job and other relevant aspects of the matter and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi*, (supra), this Court is of the opinion that the claimant is entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.3500/- per month.	Rs.42,000/- per annum
02.	25% towards future prospect	Rs. 42,000+ 10,500/- = Rs. 52,500/- per annum.
03.	Loss of earning @ 40%.	Rs.21,000/-
04.	Multiplier of 14 to be applied	Rs. 2,94,000/-
05.	Towards medical expenses	Rs.1,80,000/-
06.	Towards attendant	Rs.15,000/-
07.	Towards pain & suffering	Rs.30,000/-
08.	Towards conveyance	Rs.10,000/-
09.	For future treatment	Rs.1,00,000/-
10.	Loss of earning during treatment	Rs.30,000/-
11.	Total :	Rs.6,59,000/-

Since the Tribunal has already awarded Rs.2,37,834/- after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.4,21,166/- with interest as awarded by the Tribunal.

12. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)

Judge

