

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 855 of 2013**

- Akhilesh Kumar Gupta S/o Shiv Prasad Gupta Aged About 38 Years R/o Supela Market, Bhilai, Tah. And Distt. Durg C.G., Chhattisgarh.

---- appellant

Versus

1. Jitendra Kumar Patel S/o Prakash Kumar Patel R/o Semharkhapa, P.S. Mandala, Tah. And Distt. Mandala M.P., Madhya Pradesh
2. Mo. Imtiyaz S/o Haz Gulam Mohammad R/o Bai Band Mohalla, Hanuman Tal, Jagalpur M.P., District : Jabalpur, Madhya Pradesh,
3. Branch Manager S/o Ifko-Tokyo General Insu.Co.Ltd., 3rd Floor, Shop No. 345-347, Lal Ganga Shopping Mall, G.E. Road, Raipur, Distt. Raipur C.G., District : Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Shri Amiyakant Tiwari, Advocate
For Respondent No. 3	: Shri Amrito Das, Advocate with Shri K. Rohan, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

20.06.2019

1. This appeal under Section 173 of the Motor Vehicle Act has been preferred by the claimant/injured against the award 28.01.2013 passed by 3rd Additional Motor Accident Claims Tribunal, Durg in Claim Case No. 149/2011 awarding total compensation of Rs.73,520/- along with interest @ 7.5% per annum from the date of application till realization, fastening liability of payment of compensation upon the non-applicant No. 3.
2. As per claim petition, on 25.04.2009, the claimant/injured aged

about 38 years earning Rs. 12,500/- per month by working of hardware business was going to Bhilai sitting in santro car bearing CG 06/8567 near village Somni, non-applicant No. 1 by rash and negligently driving of offending vehicle (Tavera) bearing registration No. MP 20BA/0727 dashed the aforesaid car due to which claimant sustained injuries on his solder and other part of the body. Due to the aforesaid injuries the claimant/injured suffered permanent disability to the extent of 15%.

3. On claim petition being preferred by the claimant / injured under Section 166 of the Motor Vehicles Act, 1988, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

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

5. Learned counsel for the appellant/claimant submits that at the time of accident, the claimant was earning Rs. 7,100/- per month and for the proper assessment of income the claimant/injured produced his income tax return vide Ex. P/66 for the year 2009 to 2010 & P/67 for the year 2010 to 2011 but the learned Tribunal has wrongly considered the income of the claimant as Rs. 4,000/-per month. He also submits that the claimant suffered injuries to the extent of 15% but the learned Tribunal not considered future prospect looking to the aforesaid permanent disability. He further submits that 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.

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

08. The Tribunal was not justified in assessing the income of the claimant as Rs. 4,000/- whereas it is not disputed that the income tax

return Ex. P/66 & P/67 are produced & proved by the claimant and income is mentioned in both the aforesaid documents and those documents were fake or forged was not proved by the Insurance Company by any oral or documentary evidence. In theses circumstance it would be proper to consider the monthly income of the claimant/injured as Rs. 7,100/- as per income tax return submitted by the claimant.

09. The learned Tribunal considering permanent disability to the extent of 15% assessed the functional disability to the extent of 5% the said finding need no interference by this Court. 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 as 38 years of age, therefore, the claimant 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		7,100 x12 = Rs. 85,200/- per annum
02.	40% to be added towards future prospect		85200+ 34080= Rs. 119280/-
03.	Loss of earning @ 5% per annum		Rs.5,964/-
04.	Multiplier of 16 to be applied		Rs. 95424/-
05.	Towards attendant	4,000/-	Rs. 4,000/- as awarded by the Tribunal
06.	Towards expenses on	Rs. 16,000/-	Rs. 16,000/-

	Medicine		as awarded by the Tribunal
07.	For nutritional diets	Rs. 5,000/-	Rs.5,000/- as awarded by the Tribunal
08.	Towards conveyance	Rs. 1,000/-	Rs. 1,000/- as awarded by the Tribunal
09.	Towards pain and suffering	Rs. 10,000/-	Rs. 10,000/-
10.	Total Compensation	Rs. 73,520/-	Rs. 131424/-

10. Since the Tribunal has already awarded Rs.73,520/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.57,904/- with interest @ 7.5% per annum from the date of application till realization. The Insurance Company is directed to deposit the entire amount within a period of one month from this judgment. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-
(Gautam Chourdiya)
Judge