

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1055 of 2013

- Krishna Kumar Netam S/o Samaru Ram Netam Aged About 22 Years R/o Amli Para, Khairagarh, P.S. And Tah. Khairagarh, Distt. Rajnandgaon C.G.

---- Appellant

Versus

1. Chandmal Jain Parakh S/o Amolchand Jain Aged About 60 Years (Driver of the offending vehicle CG 08 H 6339)
2. Santosh Parakh S/o Chandmal Parakh Aged About 25 Years (Owner of the offending vehicle CG 08 H 6339)

Respondents No. 1 & 2 are R/o Bazar Atriya, Tah. And P.S. Khairagarh, Distt. Rajnandgaon C.G.

3. The Oriental Insurance Co. Ltd. Kamthi Line, Rajnandgaon, P.S. Rajnandgaon, Distt. Rajnandgaon C.G. (Insurance Co. of the offending vehicle CG 08 H 6339)

---- Respondents

For Appellant	:	Shri PK Dhurandhar, Adv.
For Respondent Nos. 1 & 2	:	Shri Abhishek Sharma, Adv.
For Respondent No.3	:	Shri Arvind Shrivastav, Adv.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

03/05/2019

This appeal is by the injured claimant under Section 173 of the Motor Vehicles Act, 1988 against the award 26.8.2013 passed by Additional Motor Accident Claims Tribunal, Khairagarh, Distt. Rajnandgaon in Claim Case No.41/2009 awarding total compensation of 27,149/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 & 2 jointly and severally while exonerating non-applicant No.3/insurance company.

02. As per claim petition, on 8.10.2008 claimant by riding motorcycle, on which one Bhagwati Ram Sahu was pillion rider, was going from Itwari Bazar to his house at Imlipara. However, on the way, non-applicant No.1 by riding motorcycle bearing No. CG 08 H 6339 in a rash and negligent manner, dashed the motorcycle of the claimant. As a result of this accident, the claimant suffered grievous injuries.

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

04. Learned counsel for the appellant/claimant submits as under:

(i) that the Tribunal has wrongly deducted 50% from the total compensation towards contributory negligence on the part of the claimant without any evidence.

(ii) that no amount towards future prospect has been granted to the claimant.

(iii) that the claimant sustained 35% permanent disability whereas the Tribunal has considered the functional disability only 7%.

(iv) that no amount towards loss of income during the period of hospitalization has been granted.

(v) that the multiplier of 17 has wrongly been applied whereas in view of age of the claimant i.e. 22-25 years, it should have been 18.

(vi) that the amount awarded under the conventional heads is also on the lower side and needs to be enhanced suitably.

(vii) that till date no amount has been paid to the claimant, therefore, in this case direction may be issued to the insurance company to pay the compensation to the claimant and then recover the same from the owner & rider of the offending vehicle.

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, Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796 and Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762.

05. On the other hand, learned counsel for the respondents support the impugned award and submit that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

06. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

08. As regards contributory negligence of the claimant, from perusal of Ex.P/17 i.e. charge sheet and Ex.P/18 i.e. FIR, it is seen that offence under Sections 279 and 337 of IPC was registered against non-applicant No.1/rider of the offending vehicle Motorcycle bearing No. CG 08 H 6339 and after investigation charge sheet under Sections 279, 337 & 338 of IPC was filed against him. The claimant in his evidence has admitted the fact that a counter report was also lodged against him and the matter is pending before the concerned Magistrate. From the record it is noticed that there was head-on collision between these two vehicles. Thus, considering the overall facts and circumstances of the case, the oral and documentary evidence available on record, this Court is of the opinion that the Tribunal was fully justified in deducting 50% from the total compensation assessed by it towards contributory negligence on the part of the claimant.

09. So far as quantum of compensation is concerned, considering the permanent disability of 35%, the nature of injury, the nature of job of the claimant, his age i.e. 22-25 years, the period of his hospitalization i.e. about a month, the medical expenses and other miscellaneous expenses, keeping in view the decisions of the Hon'ble Supreme Court in *Sarla Verma* and *Pranay Sethi*, the claimant is held

entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.3000/-per month.	36,000/- per annum
02.	40% of (i) above to be added towards future prospects.	36,000 + 14,400 = 50,400/-
03.	10% functional disability	5,040/-
04.	Multiplier of 18 to be applied	90,720/-
05.	Towards loss of one month's income	3,000/-
06.	Towards medical expenses	6,459/-
07.	Towards attendant and special diet	8,000/-
08.	Towards conveyance	2,000/-
	Total:	1,10,179
09.	50% deduction towards contributory negligence of the claimant	55,089/-

Since the Tribunal has already awarded Rs.27,149/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.27,940/- with interest as awarded by the Tribunal.

10. Considering the fact that till date the claimant has not received any amount as compensation from the owner as has been submitted by the counsel for the appellant, the fact that the offending vehicle was duly insured with non-applicant No.3/insurance company and the claimant is the third party, keeping in view the decision of the Hon'ble Supreme Court in the matter of **Manuara Khatun** and **Shivawwa and another** (supra), this Court feels it proper to order for pay and recover in this case. Accordingly, non-applicant No.3/insurance company is directed to pay the entire amount of compensation to the claimant and

then recover the same from the non-applicants No. 1 & 2/rider & owner of the offending vehicle in accordance with law.

11. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan