AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 910 of 2014

- Surjoo S/o Ramnarayan Lodhi Aged About 23 Years R/o Village Khamtarai, Tah. Khairagarh, Distt. Rajnandgaon C.G.

---- Appellant

Versus

1. Branch Manager, The Oriental Insurance Co. Ltd. Near L.I.C. Office, Railway Station Road, Rajnandgaon C.G.

2. Nagesh Nishad S/o Panchnaam Nishad Aged About 20 Years R/o Village Revadih, P.S. Lalbagh, Rajnandgaon, Distt. Rajnandgaon C.G. (Driver)

3. Manoj Kumar Gond S/o Manmohan Thakur Aged About 38 Years R/o Village Revadih, Ward No. 18, Rajnandgaon, P.S. Lalbagh, Rajnandgaon, Distt. Rajnandgaon C.G.

4. Panchram Nishad S/o Manglu Ram Nishad Aged About 50 Years R/o Village Revadih, P.S. Lalbagh, Rajnandgaon, Distt. Rajnandgaon C.G.

---- Respondents

For Appellant	:	Shri P.K. Dhurandhar, Advocate.
For Respondent No.1	:	Shri Sudhir Agrawal, Advocate.
For Respondent No.2	:	Shri H.K. Patel, Advocate.
For Respondent Nos.3 & 4	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

26.02.2019

This appeal is by the injured/claimant under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) against the award 24.6.2014 passed by Additional Motor Accident Claims Tribunal, Khairagarh, Distt. Rajnandgaon in Claim Case No. 50/2010 awarding total compensation of Rs.1,25,849/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.1/insurance company jointly and severally along with non-applicant No. 2 & 3/driver & owner.

02. As per claim petition, 7.12.2009 claimant was sitting as a pillion rider in the motorcycle of Hemant Kumar Sinha. However, when he reached near bus stand, non-applicant No.2 Nagesh Nishad by driving vehicle Tata 207 D.I. bearing No.CG 08 B 1655 in a rash and negligent manner, dashed the motorcycle. As a result of this, the claimant suffered injuries on his hand, leg, nose, face and head. Crime was registered against non-applicant No.2 under Crime No.308/09 by the police.

03. On claim petition being filed by the injured claimant under Section 166 of the Motor Vehicles Act claiming compensation to the tune of Rs.16,80,200/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above. Aggrieved by the said award, the claimant has filed the instant appeal seeking enhancement of the compensation and the insurance company has also filed cross-objection challenging its liability as well as quantum of compensation and also filed an application (IA No.01) under Order 41 Rule 27 of CPC for taking on record the registration certificate of the offending vehicle as additional evidence.

04. Learned counsel for the appellant/claimant submits that the claimant suffered 25% permanent disability as per Ex.P/1 which has been duly proved by AW-1 Dr. Prakash Bhalero, one of the members of the District Medical Board issuing the said certificate. However, the Tribunal did not consider the permanent disability or the functional disability merely on the ground that treating doctor has not been examined. He submits that the claimant is a mechanic, on account of injury suffered by him he is unable to move easily and perform his work with the same efficiency as he was doing earlier. Therefore, considering the income of the claimant as Rs.4,000/- per month, the loss of future prospects, loss of functional ability to the extent of at least 10%, the age of the claimant i.e. 23 years and other relevant factors, the amount of compensation is required to be reassessed suitably.

05. On the other hand, learned counsel for the respondent/insurance company opposing the contention of the appellant and reiterating the grounds mentioned in his cross-appeal submits that as in the insurance policy was not issued in the name of Panchram, who was subsequent owner of the offending vehicle, the insurance company is not liable to pay compensation to the claimant. He further submits that considering the evidence on record, the quantum of compensation awarded by the Tribunal being on the higher side deserves to be reduced suitably.

06. Learned counsel appearing for respondent No.2 supports the award impugned.

07. Considering the fact that ground raised by the insurance company before this Court that the policy was not issued in the name of non-applicant 4 Panchram, subsequent owner of the offending vehicle, was not raised before the Tribunal, the same was also not pleaded and it is being raised for the first time before this Court and further considering that admittedly, on the date of accident, the offending vehicle was duly insured with the insurance company, this Court is of the opinion that the Tribunal was justified in fastening liability upon the insurance company. Consequently, IA No.01 stands rejected.

08. As regards the quantum of compensation, as per certificate of Ex.P/1, the claimant suffered 25% permanent disability due to injuries on right shoulder and right knee, which has been duly proved by Dr. Prakash Bhalerao (AW-1), who was one of the members of the District Medical Board, therefore, the Tribunal was not justified in disbelieving the evidence of the said doctor merely on the ground that treating doctor has not been examined. The claimant has pleaded that he is a mechanic by profession earning Rs.4000/- per month, however, no documentary evidence in support thereof has been adduced. Therefore, considering the minimum wages at the relevant time, his income can safely be considered as Rs.3000/- per month. Further, in view of decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** considering the age of the claimant i.e. 23 years and nature of his job, claimant is also entitled

for 40% addition towards future prospect. Looking to the nature of injury, the part of the body where the injury has been caused, his functional disability can be considered as 10%. As regards the amount awarded by the Tribunal towards medical expenses, transportation, special diet and pain & suffering, the same being just and proper and based on correct appreciation of material available on record needs no interference by this Court. Thus, considering the facts and circumstances of the case, in view of decisions in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121*** and *Pranay Sethi* (supra), the claimant is 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.	Loss of earning @ 10%	5040/-
04.	Multiplier of 18 to be applied for assessing total loss of earning.	90,720/-
05.	Towards medical expenses	90,849/-
06.	Towards transportation	3,000/-
07.	Towards special diet	2,000/-
08.	Towards pain & suffering	10,000/-
	Total:	**1,96,569/-**

Since the Tribunal has already awarded Rs.1,25,849/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.70,720/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

09. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. Consequently, the cross-appeal of the insurance company is dismissed.

Sd/

(Gautam Chourdiya)

Judge

Khan