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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1123 of 2014

- Adalchand Manikpuri son of Mangaldas Manikpuri, aged about 37 years, R/o Bada Ashok Nagar, Gudhiyari, Raipur, Civil and Revenue District Raipur (C.G.)

---- Appellant/Claimant

Versus

1. Virendra Kumar Yadav son of Narayan Yadav, aged about 29 years, R/o M.P. Madras Roadways, Tatibandh Chowk, Raipur, District Raipur (C.G.)
(Driver)
2. Dwarika Prasad Sahu, son of M.L. Sahu, Niranjana, R/o LIC 41, Flat No.1, Opposite Pollution Office, Tatibandh Chowk, Raipur, District Raipur (C.G.)
(Owner)
3. Chola M.S. General Insurance Company Limited, Through: Divisional Manager, Divisional Office, Sai Nagar, Devendra Nagar Road, Raipur, Tahsil and District Raipur (C.G.)
(Insurer)

---- Respondents/Non-applicants

For Appellant	:	Ms. Pushpalata Khalko, Advocate
For Respondents No. 1 & 2	:	None
For Respondent No. 3	:	Shri Ghanshyam Patel, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

20.02.2019

1. This is Claimant's appeal filed under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Seventh Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No. 46 of 2013 vide award dated 19.02.2014.
2. As against compensation of Rs.28,50,000/- claimed by Claimant- Adalchand by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for the injury sustained by him in the motor accident, the Tribunal awarded a total sum of Rs.8,64,041/- along with interest @ 6% per annum from the date of application till realization and fastened the liability upon Respondent No.3/non-applicant No.3 along with non-applicants No. 1 & 2 jointly and severally.
3. Facts of the case, in brief, are that the Appellant/Claimant, aged about 40

years, was electrician in Balaji Enterprises (Contractor), Ekta Nagar Gudhiyari, Raipur and was earning Rs.11,000/- per month. On the date of accident i.e. 02.05.2012, the Claimant was coming by his motorcycle bearing registration No. CG-04/KB/4370 alongwith his wife and child from Dodesara to Raipur, when they reached Tatibandh Chowk, the offending vehicle- Truck bearing registration No. CG-04/JA/0664 which was being driven by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3, was coming from back side in a rash and negligent manner, dashed the motorcycle of the Claimant. As a result thereof, the Claimant fell down from the motorcycle and his left hand came under front wheel of the offending vehicle and got crushed. The Claimant was firstly admitted in Medical College Hospital, Raipur and after seeing gravity of the injury, he was referred to Sayush Hospital, thereafter, he was admitted in Kalada Hospital, where the left hand of the Appellant was operated by the Doctor and was amputated from the wrist. The Claimant also suffered 50% permanent disability as per Ex.-P/35.

4. Learned counsel for the Appellant/Claimant submits that the Claimant is an electrician in Balaji Enterprises (Contractor), Ekta Nagar Gudhiyari, Raipur and was earning Rs.11,000/- per month, but the income of the Claimant has wrongly been assessed by the Tribunal as Rs.5,000/- and as per Ex.-P/35, after deducting 50% towards loss of earning capacity of the Claimant due to amputation of his left hand, the Tribunal has considered the income of the Claimant as Rs.2,500/- per month. She further submits that the left hand from wrist of the Claimant was amputated, therefore, he, being electrician, his work is affected 100%. She also submits that no amount towards future prospects has been granted to the Claimant and no amount has also been awarded to the Claimant for artificial limb.

5. On the other hand, learned counsel for Respondent No. 3/Insurance Company opposes the contention made by learned counsel for the Appellant. He submits that only left hand from the wrist of Complaint was amputated and as per Ex.-P/35, the Tribunal has rightly assessed 50% functional disability of the

Claimant, therefore, there is no need for interference by this Court.

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

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

8. So far as argument relating to income of the Appellant is concerned, it is proved by the Claimant that he is working as electrician in Balaji Enterprises (Contractor), Raipur and is earning Rs.11,000/- per month, but as per Ex.-P/36, a certificate regarding income of the Claimant, it was issued by K.V. Rama Rao (NAW-4) who is Proprietor of Balaji Enterprises on 04.03.2012 i.e. prior to date of accident. Therefore, considering the facts and circumstances of the case, the evidence available on record and evidence adduced by Appellant/Claimant that he is an electrician, the minimum wages of the skilled person is Rs.6,000/- per month at the relevant time, this Court is of the opinion that the income considered by the learned Tribunal as Rs.5,000/- per month is on lower side and it can safely be taken as Rs.6,000/- per month.

9. So far as argument relating to non-grant of any amount towards future prospect is concerned, in view of the decision in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, considering the age of the Claimant/Appellant i.e. 40 years and nature of his job as he is self employed person, there should be 25% addition to the annual income of the Appellant towards future prospect.

10. So far as argument relating to non-grant of any amount for artificial limb is concerned, the left hand of the Claimant was amputated from the wrist, he is electrician and the work of electrician is performed by hands, therefore, in the opinion of this Court, the Appellant is entitled to Rs.1,00,000/- for artificial limb.

11. As regards the assessment of permanent disability of the Claimant/Appellant to the extent of 50% by the Tribunal, as per Ex.-P/35, a certificate of permanent

disability issued by the Medical Board, Raipur, the Appellant had suffered 50% permanent disability in relation to the particular limb of the body and not in relation to the whole body, therefore, the Tribunal has rightly considered 50% towards loss of earning capacity of the Claimant or functional disability of the Appellant.

12. On the basis of aforesaid discussions and in view of the decisions of Hon'ble Supreme Court in *Pranay Sethi* (supra) and ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, this Court is of the view that the Claimant/Appellant is entitled for compensation in the following manner:-

Sl.No.	Head	Calculation
1	Income of the injured-Appellant/Claimant	Rs.6,000/- per month i.e. Rs.72,000/- per annum
2	25% towards future prospects added to annual income	(Rs.72,000/- + Rs.18,000/-) Rs.90,000/- per annum
3	50% loss of earning capacity of the Claimant	Rs.45,000/-
4	Multiplier of 15 applied	Rs.45,000/- x 15 = Rs.6,75,000/-
5	For fitting artificial limb	Rs.1,00,000/-
6	For pain & suffering	Rs.1,00,000/- (as awarded by the Tribunal)
7	For inconvenience caused to the Claimant	Rs.1,00,000/- (as awarded by the Tribunal)
8	For medical bills and treatment	Rs.1,94,041/- (as awarded by the Tribunal)
9	For attendant, special diet and conveyance	Rs.20,000/- (as awarded by the Tribunal)
	Total	Rs.11,89,041/-

Since the Tribunal has already awarded Rs.8,64,041/-, after deducting the same from the above amount, the Claimant is held entitled for additional

compensation of Rs.3,25,000/-.

13. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimant/Appellant shall be entitled to a total enhanced amount of compensation of Rs.3,25,000/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the application till realization. However, rest of the conditions of the impugned award shall remain intact.

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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