

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 348 of 2014**

- Manoj Kumar Sahu S/o Malikram Sahu Aged About 22 Years R/o Village Hasaud, Chowki- Hasaud, P.S. Jaijaipur, Civil and Revenue Distt. Janjgir-Champa C.G.

**---- Appellant**

**Versus**

1. Jitendra Kumar S/o Vinod Kumar Sahu Aged About 30 Years R/o Village Tanaud, P.S. Shivrinarayan, Distt. Janjgir-Champa C.G., (Driver of Vehicle Bolero Registration No. CG 11/E/0394)
2. Leela Kumar S/o Vinod Kumar Sahu Aged About 32 Years R/o Village Tanaud, P.S. Shivrinarayan, Distt. Janjgir-Champa C.G., (Owner of Vehicle Bolero Registration No. CG 11/E/0394)
3. Bajaj Allianz General Insurance Co. Ltd. Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri Raipur, Civil and Revenue Distt. Raipur C.G. (Insurer of Vehicle Bolero Registration No. CG 11/E/0394)

**---- Respondents**

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|-------------------------|---|----------------------------------------------------------------------|
| For Appellant           | : | Shri DK Singh, Advocate.                                             |
| For Respondent No.1 & 2 | : | None though served.                                                  |
| For Respondent No.3     | : | Shri Rohitashva Singh, Advocate<br>on behalf of Shri NK Thakur, Adv. |

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**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**21.02.2019**

This appeal is by the injured/claimant under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") against the award 7.1.2014 passed by II Additional Motor Accident Claims Tribunal, Sakti, Distt. Janjgir-Champa, in Claim Case No. 09/2012 awarding total compensation of Rs.2,09,368/- with interest @ 7% per annum from the date of award till realization, fastening liability on the non-applicant No.3/insurance company jointly and severally along with non-

applicants No. 1 & 2/driver & owner.

02. As per claim petition, on 16.5.2011 Manoj Kumar, aged 22 years, earning Rs.4,500/- as a mechanic in Bharat Engineering Workshops, was riding motorcycle bearing No.CG 04DF 7187. Non-applicant No.1 Jitendra Kumar by driving Bolero bearing No. CG 11 E 0394 in a rash and negligent manner dashed the said motorcycle. As a result thereof, Manoj Kumar suffered grievous injuries including fracture in his leg. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

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 that the claimant suffered 40% permanent disability in his right leg as per Ex.P/47, which has been duly proved by the claimant and AW-4 Dr. Harisingh Chandel, who issued disability certificate Ex.P/47, but the Tribunal has considered only 5% functional disability whereas it should have been considered at least 20%. The Tribunal was also erred in assessing the income of the claimant as Rs.3,000/- per month whereas the claimant was working as helper in Bharat Engineering Workshops and even as per minimum wages, it comes to Rs.4,000/- per month of skilled labour. No amount towards future prospect has been granted by the Tribunal, for which the claimant is entitled in view of decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. Lastly he submits that the Tribunal has wrongly awarded interest from the date of award whereas it should have been from the date of claim petition.

05. On the other hand, learned counsel appearing for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which requires no interference by this Court.

06. No counter appeal has been filed by the respondents as

submitted by counsel for the parties.

07. Heard learned counsel for the appellant/claimant and perused the material available on record.

08. As per Ex.P/47 i.e. disability certificate, issued by the District Medical Board, Janjgir-Chama, the claimant suffered 40% permanent disability. The said certificate has been duly proved by AW-4 Dr. Harisingh Chandel, who was one of the members of the said Board. He has stated that there is likelihood of improvement in the said disability in future through medication and further stated that the said disability is only in respect to leg and not in relation to the whole body. Though the claimant has pleaded that he was working as helper in Bharat Engineering Workshops and thereby earning Rs.4,500/- per month, but the evidence adduced by the claimant in this regard is not worth reliance. Therefore, treating him as a skilled labour, in view of minimum wages of skilled labour at the relevant time, his month income can be safely considered as Rs.4,000/-. Looking to the nature of injury, the part of the body where the injury is caused i.e. right ankle and the job of the claimant, his functional disability can be taken as 10%. The Tribunal has not granted any amount towards future prospect and therefore, considering the age of the claimant i.e. 22 years, as is evident from the claim petition, disability certificate and other medical documents on record, he is entitled for 40% addition to his income towards future prospect in view of judgment of the Hon'ble Supreme Court in Pranay Sethi (supra). As regards the amount awarded by the Tribunal towards medical expenses, conveyance, special diet, pain and suffering, the same being based on proper appreciation of oral and documentary evidence on record need no interference by this Court. Thus, the claimant is entitled for compensation in the following manner:

| Sl. No. | Heads                                        | Calculation (in rupees) |
|---------|----------------------------------------------|-------------------------|
| 01.     | Income of the claimant @ Rs.4000/- per month | 48,000/- per annum      |
| 02.     | 40% of (i) above to be added towards         | 48,000 + 19,200 =       |

|     |                                                                     |                   |
|-----|---------------------------------------------------------------------|-------------------|
|     | future prospects.                                                   | 67,200/-          |
| 03. | Loss of earning @ 10%                                               | 6,720/-           |
| 04. | Multiplier of 18 to be applied for assessing total loss of earning. | 1,20,960/-        |
| 05. | Loss of earning for six months (As assessed by the Tribunal).       | 24,000/-          |
| 06. | Towards medical expenses                                            | 1,23,978/-        |
| 07. | Towards transportation                                              | 5,000/-           |
| 08. | Towards special diet                                                | 24,990/-          |
| 09. | Towards pain & suffering                                            | 5,000/-           |
|     | <b>Total:</b>                                                       | <b>3,03,928/-</b> |

Since the Tribunal has already awarded Rs.2,09,368/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.94,560/-. Considering the facts and circumstances of the case, this additional amount of compensation as well as the amount awarded by the Tribunal shall carry interest @ 7% 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.

Sd/

**(Gautam Chourdiya)**

**Judge**