

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1201 of 2014

- Naresh Ram Verma S/o Shri Firtu Ram Verma Aged About 37 Years R/o Village Dholiyakanhar, P.S. And Tah. Khairagarh, Distt. Rajnandgaon C.G.

---- Appellant/claimant

Versus

1. Jeevan Nishad S/o Gendu Nishad Aged About 30 Years R/o Ward No. 13, Dhaneli, Khairagarh, Distt. Rajnandgaon C.G.
2. Ganesh Patel S/o Guharam Patel Aged About 35 Years R/o Ward No. 17, Shiv Mandir Road, Khairagarh, P.S. And Tah. Khairagarh, Distt. Rajnandgaon C.G.
3. National Insurance Co. Ltd. through Divisional Manager, Bhilai, Akash Ganga Complex, 1st Floor, Supela, Distt. Durg C.G.

---- Respondents

For Appellant	:	Shri Roop Naik, Advocate,
For Respondents No. 1 & 2	:	None.
For Respondent No.3	:	Shri Gautam Khetrapal, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

19.03.2019

This appeal is by the injured/claimant under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") against the award 22.7.2014 passed by Additional Motor Accident Claims Tribunal, Khairagarh, Distt. Rajnandgaon (CG) in Claim Case No.71/2011 awarding total compensation of Rs.5,02,576/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner. It was further directed that if the said amount is not deposited with the Tribunal within a period

of two months from the date of award, it shall carry interest @ 9% per annum from the date of application till its payment.

02. As per claim petition, on 23.12.2010 claimant injured Naresh Ram Verma was riding motorcycle bearing No. CG 07 LA 3460 in which Khilawan and Moolchand were sitting as pillion riders. While he was going from Khairagarh to Dholiyakanhar, on the way near Gadadih turning, non-applicant No.1 Jeevan Nishad by driving tractor bearing No. CG 07 D 9050, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner, dashed his motorcycle as a result of which Naresh Ram suffered grievous injuries and was admitted in hospital.

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 though as per Ex.P/2 i.e. disability certificate issued by the District Medical Board, Rajnandgaon, the claimant suffered 50% permanent disability but as per evidence of AW-1 Dr. US Chandravanshi, one of the members of the Board issuing the said certificate, it is clear that the left side of body of the claimant was found paralyzed and he was also found mentally weak and therefore, considering the nature of work of the claimant i.e. driver, his functional disability can be taken as 100% whereas the Tribunal has assessed the same only 30%. Further, no amount towards future prospect has been granted by the Tribunal. Likewise, the amount awarded under the other heads, except the medical expenses, are also on the lower side and needs to be enhanced suitably. Reliance has been placed on the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

05. On the other hand, learned counsel 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 needs no enhancement by this Court. However, if

this Court enhances the compensation, then the condition of penal interest @ 9% as awarded by the Tribunal may not be imposed.

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

07. It is not in dispute that the claimant sustained injuries due to accident occurred on 23.12.2010 on account of rash and negligent driving of the offending vehicle by non-applicant No.1 who dashed the motorcycle ridden by the claimant which resulted into 50% permanent disability to the claimant vide Ex.P/2. No counter appeal has been filed by the respondents as has been submitted by counsel for the respondents.

08. As per evidence of AW-1 Dr. US Chandravanshi, who was one of the members of the District Medical Board issuing the disability certificate of Ex.P/2, after examination of the claimant he found that the left side of body of the claimant was paralyzed and he was also mentally weak. In cross-examination he states that only few persons suffering from paralysis have the chances of recovery and in most of the cases, the chances of recovery is impossible. As per Ex.P/9, the claimant suffered severe head injury with diffuse brain injury, for which he was treated at Chandulal Chandrakar Memorial Hospital, Bhilai. Thereafter, continuous treatment and surgical operations were performed by the doctors and bills (Exs.P/10, 11, 13 & 14) have been filed and proved by the claimant. These documents are unchallenged. Other evidence in support of claimant's case is the statement of his wife Manibai (AW-3). She has stated that as a result of injuries suffered by her husband/claimant in the said accident on various parts of his body including the head, he remained hospitalized for about two months and surgical operation was performed on his head, however, even after treatment he was not well. She further states that due to injuries sustained by the claimant, his left hand and leg are paralyzed, he is not able to move the same, he is bedridden, has become mentally weak, is not able to do his daily work and has been rendered totally dependent upon his family members. AW-2 Naresh Verma, younger brother of the claimant, has also supported the evidence of

AW-3 Manibai and stated that due to injuries sustained by the claimant, he is rendered totally handicapped, he is now bedridden and dependent upon his family members. The aforesaid evidence of the witnesses have not been controverted by the respondents either in cross-examination or by adducing any evidence to the contrary.

09. The claimant has pleaded that he was a driver by profession and earning Rs.8,000/- per month. The factum of the claimant being a driver has been duly proved by the claimant by adducing oral evidence and the respondents have failed to rebut the said contention. Therefore, considering the nature of job of the claimant, the gravity of the injury suffered by him, the oral and documentary evidence on record including the medical evidence, the part of the body where the injury has been caused, this Court is of the opinion that the permanent disability of 50% suffered by the claimant has resulted in 100% functional disability to him and as such, the Tribunal was not justified in assessing the same as 30%. As regards income of the claimant as Rs.3,000/- assessed by the Tribunal, in the facts and circumstances of the case, in absence of any proof regarding the same by the claimant, it has rightly been considered by the Tribunal.

10. Further, keeping in view the decision of the Hon'ble Supreme Court in Pranay Sethi (supra), the claimant is also entitled for 40% addition to his annual income towards future prospect as the claimant was 37-38 years of age at the time of accident as is evident from the pleadings of the claimant and the medical documents filed and proved by him. The amount awarded towards the medical expenses being based on proper appreciation of the evidence on record needs no interference. However, considering the nature and extent of injuries sustained by the claimant, the period of his hospitalization, the fact that he had to undergo surgical operations also and would be deprived of basic amenities in future life, this Court is of the opinion, that award of a sum of Rs.1 lac towards attendant, special diet and loss of amenities in future life would be just and proper. Likewise, the amount of Rs.15,000/- awarded by the Tribunal towards pain and suffering deserves to be enhanced to Rs.50,000/-. Thus, keeping in view the decisions of the Hon'ble Supreme Court 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.3,000/- per month	36,000/- per annum
02.	40% of (i) above to be added towards future prospects.	36,000 + 14,400 = 50,400/-
03.	100% loss of earning	50,400/-
04.	Multiplier of 15 to be applied for assessing total loss of earning.	7,56,000/-
05.	Towards medical expenses	3,15,576/- (as awarded by Tribunal)
06.	Towards pain and suffering.	50,000/-
07.	Towards attendant, special diet and loss of amenities in future life.	1,00,000/-
	Total :	12,21,576/-

Since the Tribunal has already awarded Rs.5,02,576/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.7,19,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact except the condition of penal interest as imposed by the Tribunal.

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

Sd/
(Gautam Chourdiya)
Judge