

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 425 of 2014**

Basant Lal S/o Lalchand, aged about 30 years, Caste Uraon, Occupation Agriculturist & Labour (working painter) R/o Village Lakra, Kona, Kothali, Police Station & Tahsil Shanker, District Sarguja Civil Revenue & District Sarguja (C.G.).

---- Appellant/Claimant

Versus

1. Lokesh Gupta S/o Vinay Gupta, aged about 35 years, Occupation owner of the Bus, R/o Namnakala Shivpur, Ambikapur, Police Station Kotwali Ambikapur, Sarguja (C.G.) **(Owner)**
2. Alakh Niranjana S/o Late Laxman Prasad, by Caste Kalar, Occupation Driver, R/o Shikari Road, Bouripara Ambikapur, Police Station & Tahsil City Kotwali, Ambikapur Sarguja (C.G.) **(Driver)**
3. Insurance Chola Mandalam M.S. General Insurance Company Branch, Raipur through Incharge Officer, Insurance Company Chola Mandalam M.S. General Raipur (C.G.) **(Insurer)**

---- Respondents

For Appellant	:	Shri N.K. Sinha, Advocate on behalf of Shri Sakti Raj Sinha, Advocate.
For Respondent No.1 & 2	:	Shri Vishnu Muni, Advocate on behalf of Shri D.N. Prajapati, Advocate.
For Respondent No.3	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

19/02/2019

This appeal has been filed by the injured claimant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25/01/2014 passed by II Additional Motor Accident Claims Tribunal,

Ambikapur in Claim Case No. 59 of 2013, awarding compensation of Rs. 20,300/- in favour of claimant with interest @ 6% per annum from the date of claim petition till realization of the same, fastening the liability on non-applicant No. 3/Insurance Company.

02. As per averments in the claim petition, on 04/01/2010 claimant Basant Lal was traveling in Mahindra Bus bearing registration No. CG-15-A/5044. On the way the said vehicle was stopped at the instance of the passengers for attending the call of nature. While Basant Lal was boarding the Bus, non-applicant No. 2 Alakh Niranjana drove the vehicle in a rash and negligent manner, as a result of which Basant Lal fell off the Bus, his right hand got crushed under the rear wheel of the Bus and he suffered fracture and other injuries on his body. The claimant was under treatment from 04/01/2010 to 08/12/2010. At the time of accident, the claimant was 30 years of age, was earning Rs. 7000/- per month as a painter and through agricultural work and therefore by filing claim petition under Section 166 of the Motor Vehicles Act, he claimed compensation of Rs. 20 lakh with interest @ 12% per annum from the non-applicants.

03. The Tribunal considering the pleadings of the respective parties and the evidence adduced by them, by the impugned award granted compensation in favour of claimant as mentioned above.

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

- (i) That due to injuries suffered by the claimant, he remained bedridden for the whole year. As per photograph of the claimant attached with his deposition and the observation of the Tribunal in

para 16 in the deposition, it is evident that the fingers of the claimant upto wrist are bandaged and there is stiffness below the elbow of his right hand.

(ii) As per Ex.-28 i.e., the disability certificate, the claimant suffered 44% temporary disability. In this certificate it is mentioned that re-assessment is recommended after a period of 1 year. He submits that for about a year the claimant was not able to perform his work of painting and he was under treatment as is evident from the medical documents filed and proved by the claimant i.e., Ex.- P/3 to P/11.

(iii) Further, as per Ex.-D-22 to 27 the claimant incurred expenses towards conveyance but the Tribunal did not allow any amount under this head. The claimant is a painter by profession and his earning has been pleaded as Rs. 7,000/- per month. The claimant also filed a certificate issued by the Gram Panchayat in this regard.

(iv) Due to injuries suffered by the claimant, his livelihood is badly affected but the Tribunal did not consider this aspect. He submits that though the Tribunal calculated the compensation as Rs. 20,000/- towards pain suffering and Rs. 3000/- towards medical expenses, but while granting compensation it has miscalculated and awarded Rs. 20,300/- in favour of claimant.

05. On the other hand, learned counsel for the respondent/ Insurance Company supports the impugned award and submits that the claimant has failed to prove that he is a painter by profession because the certificate of Ex.-P-29 cannot be taken into consideration for the purpose of deciding the issue of employment of the claimant as it has been issued by Gram Panchayat which has no authority to issue such certificate. Further, the injury suffered by the claimant is temporary in nature. As per Ex.-28 reassessment of injury is required to be done

after 1 year but no evidence has been adduced by the claimant that after 1 year there is no improvement in the disability sustained by him. Even otherwise, the injury sustained by the claimant is not in relation to whole body but it is confined to a particular limb i.e. right hand. In these circumstances, the compensation awarded by the Tribunal being just and proper needs no interference by this Court.

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

07. AW-4 Doctor J.K.Bhutani has specifically stated in para 11 in his deposition that even after operation the disability suffered by the claimant cannot be cured completely. As per Ex.-P-28 which has been duly proved by the claimant and the evidence of AW-4 Doctor J.K. Bhutani, the claimant sustained 44 % disability. A photograph has been attached with the deposition of the claimant wherein the fingers of right hand of the claimant up to his wrist region are bandaged. In the said deposition in para 16, the Tribunal has also personally observed the disability of the claimant in his right hand. As per Ex.-P-29 issued by Gram Panchayat, the claimant is a painter by profession and earning Rs. 7,000/- per month thereby. As per Ex.-P-31 issued by Manager, Primary Forest Produce Cooperative Society Limited, Kusmi, the claimant was working as a Munsif in the said society and thereby earning Rs. 10,000/- per month but due to injuries suffered by him in his hand, he has been removed from the said job. Thus, looking to the contrary documents regarding income of the claimant, without there being any specific evidence in this regard, it would be appropriate to

consider the income of the claimant as per minimum wages of skilled labour at the relevant time, which is Rs.3,500/- per month.

08. Thus considering the nature and extent of injuries, the nature of job of the claimant, the oral and documentary evidence adduced by him, the fact that the claimant is a resident of village Kotli and his treatment was done at Ambikapur, the minimum wages of skilled labour at the relevant time, i.e., Rs. 3,500/- and the fact that in future the claimant would also require medical treatment for the injuries sustained by him, this Court of the opinion that the claimant is entitled for compensation in the following manner:-

Sl. No.	Heads	Calculation (in rupees)
01.	Loss of income @ Rs.3,500/- per month for one year.	Rs.41,000/-
02	Towards pain and suffering.	Rs.30,000/-
03.	Towards medical expenses.	Rs.25,000/-
04.	Towards conveyance	Rs.7,000/-
05.	Towards future treatment	Rs.30,000/-
06.	Special diet	Rs.5,000/-
07.	Attendant	Rs.3,000/-
	Total Compensation	Rs.1,41,000/-

Since the Tribunal has already awarded Rs. 20,300/- after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs. 1,20,700/- with interest @ 6% per annum from the date of application till realization.

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

(Gautam Chourdiya)
Judge