

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1115 of 2013**

- Shubham Baghel S/o Chaitan Baghel Aged About 7 Years R/o Dharampur No. 2, H-7/8 Jagdalpur, District Bastar (C.G.), Through- Natural Father Chaitan Baghel (C.G.)

----Appellant/Claimant**Versus**

1. Lucky Vishwakarma S/o Krishan Chand Vishwakarma Aged About 25 Years R/o Shanti Nagar, Jagdalpur, District Bastar (C.G.).
2. Branch Manager The Iffco Tokiyo General Insurance Co. Ltd., Branch Office Lalganga Shopping Mall, Third Floor, G.E. Road, Raipur, District Raipur (C.G.).

---- Respondents

For Appellant - Shri P.K. Tulsyan, Advocate.
 For Respondent No. 2 - Shri Amrito Das, Advocate along with Ms. Pratibha Das, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****09/05/2019**

1. This is claimant's appeal seeking enhancement of compensation awarded by the Additional Motor Accidents Claims Tribunal, (FTC) Bastar place Jagdalpur, District Bastar (C.G) (for short 'the Tribunal') in Claim Case No. 140 of 2012 vide award dated 12.09.2013.
2. As against the compensation of Rs. 2,65,000/- claimed by the appellant/claimant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the grievous injuries sustained by him in the road accident on 08/04/2007, the Tribunal awarded a total sum of Rs. 5,000/- along with interest @ 6% per annum from the date of application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led by the parties, held that the accident had occurred due to rash and negligent driving of offending Hero Honda CD-Deluxe bearing registration No. CG17-E-2689 by its driver i.e., respondent No.1 herein appellant/claimant sustained grievous multiple injuries on his leg and other parts of the body and suffered 45% permanent disability. Respondent No.2/Insurance Insurance Company was held liable for payment of compensation as it could not establish any violation of policy conditions and the Tribunal assessed and awarded the aforesaid sum as compensation.
4. Learned counsel for the appellant submits that Tribunal has erred in not assessing the notional income of the claimant whereas the time of accident claimant/injured was a minor aged about 7 years had not started earning but learned Tribunal not considered his income as per minimum wages. He submits that as per Doctor certificates the claimant suffered 45% permanent disability, on account of which his work was restricted. He also submits that no amount towards future prospect has been granted to the claimant and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. Therefore, the appellant prays for enhancement of the compensation suitably.
5. Counsel for the respondents opposed the arguments advanced by the appellant's counsel and stated that as per Doctor certificate permanent disability was not in respect of the whole body but it was in respect of a particular limb. Further, he submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.

7. Considering the facts and circumstances of the case, particularly the fact that it is not disputed by both the parties that claimant- Subham Baghel was a minor aged about 7 years at the time of accident, in future he would certainly have contributed substantially to his family and himself by working hard, in the opinion of this Court, ends of justice would be served, if the income of the injured/claimant is considered as Rs. 15,000/- per annum on notional basis. However, the Tribunal has committed an error in not considering the permanent disability. Considering the pleading of the claimant, the disability certificate Ex. P-8 which shows that the claimant suffered 45% disability, in the facts and circumstances of the case it can be held that on account of the injuries the claimant suffered 15% functional disability. Further, the Tribunal was also not justified in ignoring the future prospect to the claimant which should have been 40% in the present case as the injured was 07 years of age. Further, considering the age i.e. 7 years, as per Second Schedule of the Motor Vehicles Act, 1988, the multiplier of 15 will apply. Thus, the claimant is entitled for compensation in the following manner:-

S.No	Head	Calculation
1.	Notional Income of the claimant	Rs. 15,000/- per annum
2.	Future prospect 40%	Rs. 6,000/- Rs. 15,000 + Rs. 6,000 = Rs. 21,000/-
3.	Loss of functional disability @ 15%	Rs. 3,150/-
4.	Multiplier of 15 applied	Rs. 47,250/-
5.	For pain and suffering	Rs. 10,000/-
6.	For special diet	Rs. 2,000/-
7.	For conveyance	Rs. 2,000/-
Total		Rs. 61,250/-

In the result, the appeal is allowed in part. Since, the Tribunal has already awarded Rs. 5,000/-, after deducting the same the claimant is held entitled for an additional compensation of Rs. 56,250/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

8. No order as to costs.

**-Sd/-
Gautam Chourdiya
Judge**

Akhilesh