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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 963 2015

- Jeevan son of Dhur Kanware, aged about 25 years, R/o Village Bakarkatta, P.S. Bakarkatta, Tahsil Chuikhadan, District Rajnandgaon (C.G.)

---- Appellant/Claimant

Versus

1. Trilok son of Keshar Gond, aged about 25 years, R/o Amgaon, Tahsil Chuikhadan, District Rajnandgaon (C.G.)
2. Suruj Ram son of Bisram Gond, R/o Tendubhatha, Tahsil Chuikhadan, District Rajnandgaon (C.G.)
3. The Oriental Insurance Company Limited, Through: The Branch Office, Shivnath Complex, G.E. Road, Supela, Bhilai, District Durg (C.G.)

---- Respondents

For Appellant	:	Ms. Pushpalata Khalkho, Advocate appears on behalf of the Shri Raghvendra Pradhan, Advocate
For Respondents 1 & 2	:	None
For Respondent No. 3	:	Shri Arvind Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant, seeking enhancement of the compensation awarded by Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon (C.G.) vide award dated 27.04.2015 passed in Claim Case No. 58 of 2012.
2. The claimant/Appellant claimed compensation of Rs.51,50,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injury sustained by him in the motor accident.
3. The brief facts of the case are that on the date of accident i.e. 03.03.2012 when the Claimant/Appellant was going towards Bakarkatta in the motorcycle of Vijay Gendre (since deceased) as a pillion rider, Respondent No.1/driver of the offending vehicle Tractor bearing registration No. CG-08/P/1357 driving the said vehicle in a rash and negligent manner dashed the motorcycle. Due to the said

accident Vijay Gendre died and the Appellant sustained grievous injuries and bone of his right side of head was broken, above the right side of face bone was fractured and the Appellant had suffered 25% permanent disability as per Ex.-P/110. At the time of accident the Appellant/Claimant was about 24 years of age.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.1,18,307/- to Appellant/Claimant with interest @ 6% per annum from the date of filing of the application till realization.

5. Learned counsel for the Appellant/Claimant submits as under:-

- (i) that income of the Claimant has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas it should have been Rs.4,500/-;
- (ii) that multiplier of 17 has wrongly been applied and considering the age of the deceased i.e. 24 years, it should have been 18; and
- (iii) that no amount towards future prospects and pain & suffering has been granted to the Claimant.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** and **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**.

6. On the other hand, learned counsel for the Respondent No.3/Insurance Company, however, opposes the appeal and submits that the learned Tribunal has rightly assessed the income of the injured/Claimant, therefore, it is just and reasonable, which does not call for any interference in the instant claim petition.

7. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

8. So far as argument relating to income of the Appellant is concerned, considering the facts and circumstances of the case, the evidence available on

record and evidence adduced by Appellant/Claimant that he was doing job of Labour, the minimum wages of the skilled labour is Rs.4,500/- per month at the relevant time, this Court is of the opinion that the income considered by the learned Tribunal as Rs.3,000/- per month is on lower side and it can safely be taken as Rs.4,500/- per month.

9. So far as argument relating to multiplier is concerned, considering the facts and circumstances of the case, particularly considering the age of the Appellant i.e. 24 years of age, the multiplier of 17 has wrongly been applied by the Tribunal, therefore, in view of the decision in the matter of *Smt. Sarla Verma* (supra), it can be taken as 18 in the instant matter.

10. 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 *Pranay Sethi* (supra), considering the age of the Appellant and nature of his job, there should be 40% addition to the annual income of the Appellant towards future prospect.

11. So far as argument relating to non-grant of any amount towards pain and suffering is concerned, the Appellant was hospitalized in Sayush Hospital from 04.03.2012 to 12.03.2012, he sustained grievous injury on his head, other parts of the body, bone of his head was broken and bone of above the left face was also fractured, therefore, in the opinion of this Court, the Appellant is entitled to Rs.10,000/- for pain and suffering.

12. As regards the assessment of functional disability of the Claimant/Appellant to the extent of 5% by the Tribunal, as per Ex.-P/110, a certificate of permanent disability issued by the Medical Board, the Appellant had suffered 25% 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 5% functional disability of the Appellant.

13. On the basis of aforesaid discussions, 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.4,500/- per month i.e. Rs.54,000/- per annum
2	40% towards future prospects added to annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/- per annum
3	Loss due to 5% physical disability	Rs.3,780/-
4	Multiplier of 18 applied	Rs.3,780/- x 18 = Rs.68,040/-
5	For medical treatment	Rs.87,107/- (as awarded by the Tribunal)
6	For special diet	Rs.2,000/- (as awarded by the Tribunal)
7	For conveyance	Rs.2,000/- (as awarded by the Tribunal)
8	For pain and suffering	Rs.10,000/-
	Total	Rs.1,69,147/-

Since the Tribunal has already awarded Rs.1,18,307/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.50,840/-.

14. 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.50,840/- 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.

15. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge