

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1571 of 2015**

- Gitesh Kumar S/o Madanlal Patodi, Aged About 21 Years R/o Village Haldi, Police Station Gunderdehi, Tehsil Gunderdehi, District Balod, Chhattisgarh.

---Appellant**Versus**

1. Ghanshyam Towari S/o Shri Laxminarayan Towari, Aged About 34 Years R/o Bazar Chowk Gurur, Police Station Gurur, Tehsil Gurur, District- Balod, Chhattisgarh.
2. Branch Manager, The Oriental Insurance Company Parmanand Building, Near Rajendra Park Chowk, Durg, District Durg, Chhattisgarh.

---- Respondents

For Appellant

Shri Amit Kumar Sahu, Advocate.

For Respondent No.2

Shri Arvind Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

18/02/2019

01. This appeal is by the claimant/injured against the award dated 16.10.2015 passed by the Motor Accident Claims Tribunal, Balod, District Balod, C.G. in Claim Case No.1200157/14 assessed total compensation of Rs.1,38,670/- and after deducting 50% contributory negligence on the part of the claimant awarded a compensation of Rs.69,335/- with interest @ 8% per annum from the date of application till realization, fastening liability on the non-applicant nos. 1 & 2 jointly and severally.

02. As per claim petition, on 24.02.2012, claimant/injured Gitesh Kumar,

aged about 21 years, earning Rs.1,00,000/- per annum through agriculture, riding motorcycle bearing no.CG05-H-2852 and was going towards Gugur from Balod, however, on the way non-applicant no.1 riding the motorcycle bearing no. CG07-LM-4553 in a rash and negligent manner dashed the motorcycle of the appellant, as a result of which appellant sustained grievous injuries on his body, resulting into 30% permanent disability. At the time of accident, offending vehicle was owned by non-applicant no.1/respondent no.1 and insured with non-applicant no.2/respondent no.2.

03. On claim petition being filed by the claimant/injured under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.8,07,670/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant submits that the Tribunal was not justified in ignoring the 30% permanent disability suffered by the claimant which has been duly proved by the claimant and AW-3 Dr. R.R. Mandle. Further, the Tribunal has wrongly held that the appellant was equally liable for the accident whereas there is nothing on record to show that the appellant was in any manner responsible for the accident. Lastly, he submits that the amount awarded under conventional heads are also not inconsonance with the gravity of the injuries suffered by the claimant and as such liable to be enhanced suitably.

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 matters has rightly awarded compensation which needs no interference by this Court.

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

07. So far as contributory negligence is concerned, it is admitted fact that on the date of accident appellant/claimant was riding the motorcycle bearing no.CG05-H-2852 in which Likeshwar AW-2 was the pillion rider. In para 7 of his deposition the appellant has admitted that he was charge sheeted by the police under Sections 279, 337 and 338 of IPC and on account of there being compromise between the parties, he was acquitted of the charges under Sections 337 and 338 of IPC and sentence of fine was imposed upon him by the Court under Section 279 of IPC only. The appellant has also admitted that on the date of accident he was not having licence to drive the motorcycle in question. Thus, considering the facts and circumstances of the case, the manner in which the accident occurred, the admission of the claimant, the fact that counter report was also lodged against the claimant for the offence under Sections 279, 337 and 338 of IPC and after compromise he was sentence of fine under Section 279 of IPC, this Court is of the opinion that the Tribunal was fully justified in holding 50% contributory negligence on the part of the deceased.

08. So far as the quantum of compensation is concerned, as per Ex.P-16 issued by AW-3 Dr. R.R. Mandle, the claimant suffered 30% disability. The Doctor has admitted that there is possibility of improvement in the disability and the said disability is to be reassessed

after three years. Thus, considering the nature of injuries, the part where the injury was suffered i.e. leg, the age of the claimant, this Court is of the opinion that the functional disability of the claimant can safely be considered as 10%.

Though the claimant has pleaded that he was earning Rs.1,00,000/- per annum through agriculture but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the injured is considered as Rs.4,000/- per month on notional basis. Further, considering the age of the deceased, the nature of his job and the decisions of the Hon'ble Supreme Court in **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121**, the claimant is held entitled for compensation in the following manner:

S.No.	Heads	Calculation
1.	Notional Income of the claimant @ Rs.4,000/- per month	Rs. 4,000 x 12 = Rs.48,000/-
2.	Loss of earning capacity @ 10%	Rs.4,800/-
3.	Multiplier of 18 applied	Rs.86,400/-
4.	Towards medicine and treatment	Rs.75,000/- (as awarded by the Tribunal)
5.	Towards special diet, conveyance and attendant	Rs.20,000/- (as awarded by the Tribunal)
6.	Towards physical and mental pain	Rs.10,000/- (as awarded by the Tribunal)

7.	Towards future inconvenience and medical expenses	Rs.20,000/- (as awarded by the Tribunal)
8.	Towards repairing of motorcycle	Rs.7,670/- (as awarded by the Tribunal)
	Total Compensation	Rs.2,19,070/-

After deducting 50% from the above amount, the total compensation comes to Rs.1,09,535/-. Since, the Tribunal has already awarded Rs.69,335/- after deducting the same from the Rs.1,09,535/-, the claimant is held entitled for additional compensation of **Rs.40,200/-** with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-
Gautam Chourdiya
Judge

Akhilesh