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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 02 of 2015

- Suraj Kumar Nishad S/o Muchhu Nishad, Aged 30 years, Occupation Welder & Agriculture, R/o Singharpur, P.S. Sarangarh, Tahsil Sarangarh, District Raigarh (C.G.)

---- Appellant/Claimant

Versus

1. Surjeet Singh Gil S/o Roop Singh Piyara Singh, R/o Compound Thakkar Para Mumbai, Nasik Hiway, Sarawali Bhivdi, District Thane (Maharashtra)
(Owner)
2. Surendra Chaudhari S/o Tuntun, R/o Raipura/Raipur, P.S. Haldi, District Baliya (Uttar Pradesh) at present R/o Piyara Singh, Compound Thakkar Para Mumbai, Nasik Hiway, Sarawali Bhivdi, District Thane (Maharashtra)
(Driver)
3. Branch Manager, Through Branch Office Bajaj Allianz General Insurance Company Limited, First Floor Shivmohan Bhawan, Vidhan Sabha Marg Pandri, Raipur, District Raipur (C.G.)
(Insurer)

---- Respondents/Non-applicants

For Claimant/Appellant	:	Shri Hemant Kumar Patel, Advocate
For Respondents No. 1 & 2/ Driver & Owner	:	None
For Non-applicant No. 3	:	Shri Rohitashava Singh, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

17.05.2019

1. This is Claimant's appeal filed under Section 173 of the Motor Vehicles Act for enhancement of compensation awarded by the Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh (C.G.) in Claim Case No. 21 of 2012 vide award dated 09.07.2014.
2. As against compensation of Rs.5,20,000/- claimed by Claimant Suraj Kumar Nishad by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for the injury sustained by him in the motor accident, the Tribunal awarded a total sum of Rs.1,59,700/- along with interest @ 6% per annum from the date of application till realization, fastening liability upon Respondent No.3/non-applicant No.3 Insurance Company along with non-applicants No. 1 & 2 jointly and severally.
3. Brief facts of the case are that on 16.10.2010, Claimant Suraj Kumar Nishad

was going from Kharasiya to Chandrapur by his motorcycle bearing registration No. CG-13/F/3904. When Suraj Kumar Nishad reached near village Sero, non-applicant No.2, driver of the offending vehicle Truck bearing registration No. MH-04/DD/0562, owned by non-applicant No.1 and insured with non-applicant No.3, driving the said Truck in a rash and negligent manner, dashed the motorcycle of Suraj Kumar Nishad. As a result thereof, Suraj Kumar Nishad sustained injury on his right leg and he suffered 30% permanent disability.

4. Though, learned counsel for the Appellant/Claimant raises various grounds in the instant appeal, but at present, he raises only one ground that the learned Tribunal has wrongly considered the income of the Claimant as Rs.3,000/- per month as unskilled labour. He further submits that at the time accident, the Claimant was aged 30 years and he was a skilled labour as he was doing the work of welding in Lathe-Machine and was earning Rs.8,000/- per month. Therefore, the income of the Claimant considered by the Tribunal as Rs.3,000/- per month being on the lower side deserves to be enhanced suitably.

5. On the other hand, learned counsel for Respondent No.3/Insurance Company opposes the contention made by learned counsel for the Appellant and submits that looking to the age of the Claimant i.e. 30 years at the time of accident, the Tribunal was not justified in granting 50% towards future prospects to the Claimant. In support of his contention reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

6. As submitted by the parties, no counter appeal has been filed by the Respondents/non-applicants.

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

8. As regards income of the Claimant, the Claimant has pleaded that at the time of accident, he was doing the work of welding in Lathe-Machine and was earning Rs.8,000/- per month, 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 Claimant is considered as Rs.4,500/- per month as per minimum wages at the relevant time of skilled labour.

9. Further, considering the age of Claimant i.e. 30 years, the nature of his job, functional disability i.e. 15% in future as assessed by the Tribunal 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** and *Pranay Sethi* (supra), the Appellant/Claimant is held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the Claimant @ Rs.4,500/- per month	Rs.54,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/-
3.	Loss due to 15% functional disability (as assessed by the Tribunal)	Rs.11,340/-
4.	Multiplier of 17 applied	Rs.11,340/- x 17= Rs.1,92,780/-
5.	Medical expenses	Rs.10,000/- (as awarded by the Tribunal)
6.	For pain & suffering	Rs.10,000/- (as awarded by the Tribunal)
7.	For special diet	Rs.2,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.2,14,780/-

Since the Tribunal has already awarded Rs.1,59,700/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.55,080/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge