

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1689 of 2018**

1. Ritesh Verma son of Babu Lal Verma, aged about 30 years, R/o. Sheetalapara Kanker, Tahsil Kanker, District North Bastar Kanker (C.G.).

---- Appellant**Versus**

1. Ghanshyam Singh Dharmi son of Mani Ram Dharmi, aged about 43 years, R/o. Village Kopedih, Devdada, P.S. Somani, district-Rajnandgaon (C.G.), (Driver),
2. Rohit Kumar Yadav son of Somnath Yadav, aged about 27 years, R/o. Village Kopedih, Devdada, P.S. Somani, District-Rajnandgaon (C.G.), (Owner).
3. National Insurance Company Limited, Near R. M. S. Office, Upper Side of Central Bank, Jagdalpur, District Bastar (C.G.) (Insurer),

---- Respondents

For Appellant	:Shri P. Dhurandhar, Advocate.
For Respondent Nos. 1 & 2.	: Shri Samir Singh, Advocate
For Respondent No.3	:Shri Praveen Kumar Tulsyan, Advocate

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****24.04.2019**

(1) This appeal is by the claimant/injured against the award dated 01.08.2018, passed by Motor Accident Claims Tribunal, North Bastar, Kanker in Claim Case No. 92/2017 awarding total compensation of Rs.2,49,113/- along with interest @ 7.5 % per annum from the date of filing of claim petition till its actual payment, fastening liability on the

non-applicants jointly and severely.

(2) Facts of case leading to filing of the claim petition are that when on 09.06.2016 claimant was riding his motor-cycle bearing registration No. C.G. 19 B.E. 5291 and going to weekly market, at about 3.30 pm near 750 Dhaba, non-applicant No. 1, while driving the Truck (offending vehicle) bearing registration No. CG 08 L 2343, dashed the claimant injured, as a result thereof claimant sustained grievous injuries resulting into permanent disability to the extent of 30% and due to which, the Tribunal assessed functional disability to the extent of 10%.

(3) Learned counsel for the appellant submits that at the time of accident, the claimant was working as Goldsmith and earning Rs.35,000/- per month and in support of that the income tax return vide Ex. P/75 & P/76 for the financial year 2015-16 & 2016-17, respectively has already been submitted by the claimant/injured whereas the learned Claims Tribunal has fallen in error in assessing the income of the appellant/claimant as Rs. 4,500/-pm, which appears to be shockingly on lower side. He submits that claimant is a skilled labour and, therefore, looking to the minimum wages prevalent at the relevant point of time, income of the claimant/injured may be considered as Rs.7,000/- per month. He further submits that learned Claims Tribunal has erred in assessing the functional disability to the extent of 10% whereas as per disability certificate (Ex. P/77) & disability calculation certificate (Ex.P/78) and the statement of Dr. Lokesh Dev (AW-2) examined before the Claims Tribunal, the functional disability could have been assessed to the extent of 20%. He also submits that the Claims Tribunal has further erred in not granting future prospect by

ignoring the fact that claimant sustained grievous injuries resulting into permanent disability He lastly submits that no amount towards pain & suffering & attendant, etc. be granted to the claimant/injured.

(4) Learned counsel for the owner & driver as well as Insurance Company while opposing the contention made by learned counsel appearing for the claimant/injured, submits that amount awarded by the Claims Tribunal is just & proper, which does not call for any interference in the instant appeal.

(5) It is submitted by both the parties that no counter appeal is filed by the Insurance Company or driver & owner.

(6) I have heard learned counsel appearing for the parties and perused the record of Claims Tribunal.

(7) It is not disputed that due to the accident occurred on 09.06.2016, claimant sustained grievous injuries including permanent disability to the extent of 30% and the documents to this effect i.e. disability certificate (Ex.P/77) & disability calculation certificate (Ex.P/78) was proved by the Dr. Lokesh Dev (AW-2). Due to the injuries suffered by the claimant, he could not perform his work for about three months, therefore, loss of earning for three months ought to have been considered by the Claims Tribunal. Looking to the nature of work of claimant/injured as Goldsmith, the functional disability can safely be considered to the extent of 15%, instead of 10% as assessed by the Claims Tribunal. So far as income of the appellant/claimant is concerned, the learned counsel for the claimant pleaded that at the time of accident, the claimant was earning Rs.35,000/- per month by working as Goldsmith but no any evidence adduced in support thereof,

however, Rs. 6,500/-pm, the income of the claimant can safely be taken as per minimum wages as skilled labour prevailing at the relevant time.

(8) However, considering the overall facts and circumstances of the case, the period of hospitalization of the claimant, the nature of injuries suffered by him, the nature of his job and other relevant aspects of the matter, this Court is of the opinion that the claimant is entitled for compensation in the following manner:

Sl. No.	Heads	Amount awarded by the Tribunal	Calculation (in rupees)
01.	Income of the claimant @ Rs.6,500/- per month	Rs. 4,500/-	Rs.6,500x12= Rs. 78000/- per annum
02.	40% of (1) above to be added towards future prospects.		Rs. 78,000+31,200= Rs. 1,09,200/-
03	After calculating 15% functional disability the loss of earning @ 15%		Rs. 16,380/-
04	Multiplier of 17 to be applied		Rs.2,78,460/-
05.	Loss of earning for three months	Rs. 6,500/- x 3	Rs.19,500/-
06.	Towards Transport	Rs.15,000/-	Rs. 15,000/- (as awarded by the Tribunal)
07.	Towards special diet	Rs. 8,000/-	Rs. 8,000/- (as awarded by the Tribunal)
08.	Towards pain & suffering	Rs. 25,000/-	Rs. 25,000/-
09.	Towards Medical expenses	Rs. 1,20,813/-	Rs. 1,20,813/- (as awarded by the Tribunal)

10.	Total Compensation	Rs. 2,49,113/-	Rs.4,66,773/-
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Since the Tribunal has already awarded Rs.2,49,113/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.2,17,660/- with interest as awarded by the Tribunal.

(9) In the result the appeal filed by the claimant is allowed with modification in the impugned to the above extent that the claimant shall be entitled for additional compensation of Rs. 2,17,660/- along with interest @ 7.5 %. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge