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**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 232 of 2015**

Vijay Kumar Kashyap S/o Samelal Kashyap, Aged About 20 Years, R/o- Dindayal Awas Colony Bahtarai, Police Station- Sarkanda, Tahsil and District (Revenue & Civil). Bilaspur C.G.

**---- Appellant****Versus**

1. Bodhan Prasad Chauhan S/o Raghunath Singh Chauhan, R/o- Khamhariyapara, Naila, Police Station and Tahsil-Janjgir, District (Revenue & Civil) Janjgir-Champa C.G. (Driver).
2. Naresh Paigwar S/o Bhagirathi Paigwar, R/o -Shrda Chowk Janjgir, Police Station and Tahsil -Janjgir District (Revenue and Civil) Janjgir-Champa C.G. (Owner).
3. Shri Ram General Insurance Company Limited, Through Branch Office - E-08, E.P.I.P. Ricco Industrial Area, Sitapur, District : Jaipur, Rajasthan.

**--- Respondents**


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| For Appellant           | : Mr. Anand Kesharwani, Advocate. |
| For Respondent No.1 & 2 | : None.                           |
| For Respondent No.3     | : Mr. S.S. Rajput, Advocate.      |

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**Hon'ble Shri Justice Parth Prateem Sahu**  
**Order on Board**

**27/10/2020**

1. Claimant/appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned 3rd Additional Member to 1<sup>st</sup> Upper Motor Accident Claims Tribunal, Bilaspur, (CG) (for short, 'the Tribunal') vide award dated 02.12.2014 passed in Claim Case No.07/2012, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded Rs.1,18,800/- as compensation in injury case.
2. Facts relevant for disposal of this appeal are that on 16.01.2010 claimant (injured) alongwith his friend was going to Shivrinarayan from village -Rogda on motorcycle bearing registration No.CG-11-BA-0279 which was driven by claimant himself. On the way near Nawagarh Chowk at village- Rachabhandra, one Truck bearing registration No.CG10/C/0738 (for short

'offending vehicle') driven by non-applicant No.1 rashly and negligently dashed the motorcycle and caused accident. In the aforesaid accident, claimant and his friend suffered grievous injuries over their person and motorcycle was also damaged. Accident was reported to concerned police station based upon which crime was registered against non-applicant No.1. After conclusion of investigation charge-sheet was filed before the Court of Jurisdictional Magistrate

3. Appellant/claimant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.3,00,000/- pleading therein that on the date of accident, he was working as 'Plumber' and earning Rs.100 – 150 per day. On account of motor-accidental injuries suffered by him he became permanently disabled and unable to earn his livelihood.
4. Non-applicant No.1 & 2, driver & owner of offending vehicle, submitted reply to application denying pleading made therein. It was further pleaded that accident was not result of rash and negligent driving of offending vehicle by non-applicant No.1 but accident occurred due to rash and negligent driving of motorcycle by claimant himself. FIR was lodged against non-applicant No.1 on false and fabricated grounds. Amount of compensation claimed is highly exaggerated. On the date of accident, offending vehicle was insured with non-applicant No.3-Insurance Company, hence, liability to satisfy the amount of compensation would be of Insurance Company.
5. Non-applicant No.3/Insurance Company submitted its reply to application, while denying the pleadings made therein pleaded that accident was result of negligent driving of claimant himself. Claimant has not suffered any grievous injuries, he was not doing any work prior to the

date of accident. On the date of accident, offending vehicle was plied in breach of policy condition by non-applicant No.1 & 2. Hence, Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that claimant suffered 10% functional disability on account of rash and negligent driving of offending vehicle by non-applicant No.1. Breach of policy condition was not found to be proved. Tribunal allowed application in part, awarded a sum of Rs.1,18,800/- as compensation along with interest @ 6% p.a, fastened liability upon non-applicants to pay the amount of compensation, jointly and severally.
7. Learned counsel for the appellant/claimant submits that the Tribunal erred in awarding very meager amount of compensation in the facts of the case. Doctor who examined the claimant has issued disability certificate to the extent of 40% but the Tribunal has erroneously held that claimant suffered disability to the extent of 10% only. He further submits that the Tribunal erred in assessing income of appellant as Rs.3,000/- per month only, overlooking the date of accident and specific pleading and oral statement of claimant that on the date of accident, he was working as 'Plumber' and earning Rs.100-150 per day. The Tribunal has awarded very meager amount on other pecuniary damages and erred in not awarding appropriate amount of compensation towards non-pecuniary damages. He prays that amount of compensation be suitably enhanced.
8. Learned counsel for respondent No.3/Insurance Company submits that the Tribunal while assessing amount of compensation towards permanent disability has taken into consideration disability certificate

placed on record as Ex.P-8, evidence of Doctor AW-3 wherein he has stated that disability certificate is with regard to hand only not for the whole body and assessed functional disability/loss of earning capacity to the extent of 10%. He further submits that claimant has not placed on record any clinching and admissible piece of evidence to prove his income, therefore, Tribunal has assessed income of claimant on notional basis and awarded just amount of compensation which does not call for any interference.

9. I have heard learned counsel for the respective parties and perused the record of claim case.
10. Finding recorded by the Tribunal with regard to accident and liability is not under challenge, appeal is by claimant seeking enhancement of amount of compensation.
11. So far as submission with regard to assessment of disability/loss of earning capacity to the extent of 10% is concerned. In Ex.P-8 issued by the Medical Board it is mentioned that claimant suffered disability to the extent of 40% on his left elbow. To prove disability certificate claimant examined Dr. H. S. Chandel as AW-3. This witness in Para No.4 of his cross-examination has very specifically stated that disability certificate issued by the Medical Board was with regard to hand only and not for the whole body. In para No.5 this witness has denied the suggestion given by counsel that disability suffered by claimant can be recovered through Physiotherapy or exercise.
12. In view of aforesaid documentary and oral evidence it is apparent that disability suffered by claimant could not be fully cured. Tribunal while assessing loss of earning capacity has discussed the evidence and

disability certificate in Para No.11 of impugned award in detail. Claimant in his application has pleaded that he was working as 'plumber helper'. Though he was examined the doctor to prove disability but no specific question has been put to him that which type of work claimant could not able to do with said disability, but then uncontroverted statement of doctor would show that doctor has found lack of movement of his left elbow joint, he stated that his joint was stuck. Looking to the nature of employment of claimant to be of 'labourer' for which he needs fitness of every part of body. More so when it comes to disability suffered by any of the labourer on his hand, in view of disability suffered by claimant on his left hand he may not able to use his hand with same efficiency as of his right hand and definitely he may not able to do all nature of work. Tribunal has not assigned any reason for arriving at a conclusion that claimant suffered loss of earning capacity to the extent of 10% only. In view of above discussion, in the considered opinion of this Court Tribunal erred in assessing loss of earning capacity on lower side, which is not sustainable. Though the Courts cannot be said to be an expert in the field to assess the loss of earning capacity but in view of documentary evidence, oral statement of doctor as well as nature of occupation of appellant and part of the body left hand affected with disability, I find it appropriate to assess loss of earning capacity of claimant to the extent of 20%. It is order accordingly.

13. Now I will consider quantum of compensation awarded by Tribunal. The Tribunal has assessed income of claimant as Rs.3,000/- per month. Accident took place on 16.01.2010 claimant has been shown to be working as 'plumber-helper', there is no specific evidence to prove his income as Rs.100 – 150 per day. Hence, income of claimant is to be

assessed on notional basis keeping in mind wage structure, cost of living and price index prevailing at the time of accident in the year 2010. Accordingly, I find it appropriate to assess income of claimant as Rs.4,000/- per month.

14. Apart from the award of medical expenses and loss of income due to earning capacity. Tribunal has awarded Rs. Rs.5,000/- towards pains and suffering, Rs.10,000/- towards attendant, transportation and special diet, Rs.9,000/- towards loss of income in the considered opinion of this Court are on lower side.

15. For the foregoing reasons, I propose to recompute the amount of compensation awarded by the Tribunal.

16. Income of claimant is taken as Rs.4,000/- as held above. As per decision of Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**<sup>1</sup>, there will be addition of 40% towards future prospects as claimant being 20 years of age on the date of accident, which brings total income of claimant to Rs.5600/- per month (4000 + 40% of 4000) and accordingly yearly income of claimant comes to Rs.67,200/- (5600X12). In view of the guidelines of the Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**<sup>2</sup>, appropriate multiplier would be '18'. By applying multiplier of 18 total income of claimant would come to Rs.12,09,600/- (67200 X18). As this Court has assessed 20% loss of earning capacity, loss of income of claimant comes to Rs.2,41,920/- (20% of Rs.12,09,600/-).

17. In addition to loss of income, claimant is also entitled for a sum of Rs.30,000/- towards medical expenses as awarded by the Tribunal,

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1 (2017) 16 SCC 680

2 (2009) 6 SCC 121

Rs.20,000/- towards pains and suffering, Rs.20,000/- loss of amenities and joy in life, Rs.15,000/- towards attendant, transportation & special diet and Rs.16,000/- towards loss of income during period of treatment for four months.

18. Now claimant shall be entitled for a total sum of **Rs.3,42,920/-** (Rs.2,41,920/- + Rs.30,000/- + Rs.20,000/- + Rs.20,000/- + Rs.15,000/- + Rs.16,000/- instead of **Rs.1,18,800/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

19. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

**Sd/-**

**( Parth Prateem Sahu)**  
Judge

Jamal/-