

(2019) 02 CHH CK 0016

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (Civil) No. 164 Of 2016

Ashutosh Tiwari

APPELLANT

Vs

Pannalal @ Ajay Banjare & Others

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 02 CHH CK 0016

Hon'ble Judges : Gautam Chourdiya, J

Bench : Single Bench

Advocate : N.K. Shukla, Shailendra Shukla, Ajay Lakra, N.K. Malviya

Final Decision : Allowed

Judgement

Gautam Chourdiya, J

1. This appeal is by the injured claimant under Section 173 of the Motor Vehicles Act against the award 29.10.2015 passed by IX Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No.620/2014 awarding total compensation of Rs.10,37,668/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant No.3 jointly and severally along with non-applicants No.1 & 2/driver & owner.

2. As per claim petition, on 18.2.2014 at about 11 pm while the claimant by riding motorcycle bearing No. CG 10 EB 8481 with a moderate speed on the correct side of the road was coming back to his house, non-applicant No.1 Pannalal @ Ajay Banjare by driving Truck (Capsul) bearing No. CG 10 C 6241 in a rash and negligent manner dashed his motorcycle. As a result thereof, the claimant suffered grievous injuries on various parts of his body, his left leg above the knee joint was amputated rendering him permanent disabled to the extent of 80%. The claimant was working as Finance Consultant and thereby earning Rs.3,05,620/- per annum and due to injuries suffered by him he is not able to perform his duties. Hence by filing claim petition under Section 166 of the Motor

Vehicles Act, he claimed a total compensation of Rs.1,28,66,160/- under various heads from the non-applicants. However, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

3. Learned counsel for the appellant/claimant submits as under:

(i) that the Tribunal has not assessed compensation by applying multiplier whereas looking to the age of the claimant, his nature of job, the fact that his left leg above knee has been amputated, his loss of earning is 100% and therefore, the Tribunal should have assessed compensation by applying proper multiplier and further by granting amount towards loss of future prospects.

(ii) that only Rs.20,000/- has been granted towards pain and suffering and Rs.2.50 lacs towards permanent disability, which is very much on the lower side.

(iii) that no amount for future treatment, attendant, artificial limb, conveyance, loss of amenities in future life etc. has been awarded by the Tribunal.

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.

4. 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.

5. No counter appeal has been filed by the insurance company as submitted by learned counsel for the parties.

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

7. As regards permanent disability of 80% and amputation of left leg above knee joint, the claimant has duly proved the same from Ex.A/1 to A/32. As per disability certificate Ex.P/32, it is evident that the claimant suffered 80% permanent disability. As per the statement of the claimant in para 7, he is working as Finance Consultant and this statement remained uncontroverted in his cross-examination. AW-7 Dr. J. Roy Chaudhary has proved amputation of claimant's left leg above knee. In cross-examination, he was only given suggestion that amputation of claimant's leg was not necessary, which was categorically denied by this witness. Thus, as per evidence adduced by the claimant, oral and documentary, it is proved that the claimant suffered 80% permanent disability on account of the injury sustained by him in the above accident.

8. Though income tax returns for the assessment year 2011-12 and 2012-13 have been filed by the claimant to show his income, however, he has not examined any person from the institutions where he is claiming to be working as

Finance Consultant to prove that actually he was working as such and drawing a particular amount as a salary. However, considering the age of the claimant i.e. 30 years, his pleadings and the documents filed in support thereof, even if he is treated as skilled labour, his income can safely be taken as Rs.6000/-per month keeping in view the minimum wages and the price index at the relevant time. This apart, the claimant is also entitled for 40% addition to his annual income towards future prospect in view of decision of Hon'ble Supreme Court in Pranay Sethi (supra).

9. As regards the functional disability, considering the facts and circumstances of the case, the medical evidence adduced by the claimants which remains un rebutted, the fact that left leg above the knee joint of the claimant has been amputated, his functional disability can safely be taken 50%.

10. In para-8 of his statement, the claimant has stated that due to this disability, his marital prospects have badly been affected. This statement of the claimant has not been controverted by the non-applicants in the cross-examination. Further, counsel for the appellant/claimant submits that the claimant is required to have artificial limb, for which he has to incur Rs.5.50 lacs. He has shown certain medical documents in this regard. However, he does not dispute the amount awarded by the Tribunal towards medical bills. Hence, taking into consideration the facts and circumstances of the case, the fact that the claimant has to suffer long life on account of the said injury, he is unmarried and has to face certain problems in his marriage due to this injury, he is also required to have artificial limb in future, keeping in view decisions of the Hon'ble Supreme Court in Sarla Verma and Pranay Sethi (supra), the claimant is held entitled for compensation in the following manner:

Sl. No.

Heads

Calculation (in rupees)

01.

Income of the claimant @ Rs.6000/- per month.

72,000/- per annum

02.

40% towards future prospect

72,000/- + 28,800/- = 1,00,800/- per annum.

03.

Loss of earning @ 50%.

50,400/-

04.

Multiplier of 17 to be applied

8,56,800/-

05.

Towards medical expenses

7,67,668/-

06.

For pain and suffering

50,000/-

07.

For future treatment

1,00,000/-

08.

Nutritional diet

5,000/-

09.

Towards loss of amenities in future life including loss of marital prospects

1,50,000/-

Total :

19,29,468/-

Since the Tribunal has already awarded Rs.10,37,668/- after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.8,91,800/- with interest as awarded by the Tribunal.

11. In the result, the appeal is allowed with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.