



IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 26<sup>th</sup> OF SEPTEMBER, 2024

MISC. APPEAL No. 763 of 2024

*PUSPRAJ KEWAT*

*Versus*

*LAMLAKHAN KUSHWAHA AND OTHERS*

.....  
Appearance:

*Shri Mohit Chourasiya - Proxy Counsel on behalf of Shri Arvind Singh Parihar,  
Advocate for the appellant.*

*Shri Abhinav Kherdikar - Advocate for the respondent/Insurance Company.*

*None for the respondent No.1.*  
.....

ORDER

It is submitted by learned counsel for both the parties that though as per office note dated 15.5.2024 the service of notice on respondent No.1 is awaited, however, as the liability to pay the amount of compensation is on respondent/Insurance Company therefore, presence of respondent No.1 is not necessary. It is also submitted by them since certified copy of the impugned award is already annexed with the memo of appeal, therefore, record of the concerned Tribunal is also not required.

2. Since the delay has already been condoned the appeal is heard on admission. The appeal seems arguable, therefore, admitted for hearing. With the consent of learned counsel for the parties it is finally heard.

3. This appeal under section 173 (1) of Motor Vehicles Act, 1988 has been filed by the appellant/claimant being aggrieved by the award passed



by the learned Fourth MACT, Satna in Claim Case No.438/2019 [Pushpraj Kewat Vs. Ramlakhan and another] on 08.9.2023 whereby the Tribunal has awarded total compensation of Rs.12,97,920/- to the injured/claimant for the injuries sustained by him in motor accident dated 26.11.2018. This appeal is for enhancement of compensation of Rs.5 lacs by depositing Court fee of Rs.12,500/- vide ID No.39504/2024 dated 18.2.2024.

4. Learned counsel for the appellant submitted that Tribunal while computing compensation has erroneously taken income of the injured as Rs.5500/- per month as per paragraph 41 of the impugned award whereas on the date of accident i.e. 26.11.2018 the correct income of injured was Rs.7375/- per month. It is also submitted that as per paragraph 40 of the award the permanent disability has wrongly been considered as 60% in respect of earning capacity whereas the same should have been 80% as per disability certificate which has been marked as Exhibit-P/104 as mentioned in paragraph 36 of the award.

5. Learned counsel for for the respondent/Insurance Company has supported the award passed by the Tribunal and submitted that just compensation has been granted to the injured. However, he does not dispute that on the date of accident the monthly income would be Rs.7375/-.

6. Considering the over all facts and circumstances of the case and taking into account the accident and nature of injuries sustained and treatment it appears that permanent disability has been taken on little lower side, therefore, the correct disability should have been considered as 70% instead of 60%. Hence, taking the disability in respect of earning capacity at



70% and monthly income of injured as Rs.7375/- the correct calculation of compensation would be as follows:-

- |       |                                 |                |
|-------|---------------------------------|----------------|
| (i)   | Monthly income of the injured - | Rs.7375/-      |
| (ii)  | Annual income of injured -      | Rs.88,500/-    |
|       | (Rs.7375/- X 12)                |                |
| (iii) | Future prospects of income -    | Rs.35,400/-    |
|       | @ 40% (Rs.88500 X 40%)          |                |
| (iv)  | On adding future prospects -    | Rs.1,23,900/-  |
|       | total income would be           |                |
| (v)   | Considering age of injured -    | 18             |
|       | multiplier applicable           |                |
| (vi)  | Total income of injured -       | Rs.22,30,200/- |
|       | (Rs.1,23,900 X 18)              |                |
| (vii) | Loss of income considering -    | Rs.15,61,140/- |
|       | disability @ 70%                |                |
|       | (Rs.22,30,200 X 70%)            |                |

Thus, the appellant/claimant suffered loss of income on account of accident to the extent of Rs.15,61,140/- whereas under this head the learned Tribunal has only awarded 9,97,920/-. Hence, the appellant has been granted less amount under the head of loss of income and, therefore, he would be entitled to enhancement under this head of Rs.5,63,220/- [Rs.15,61,140/- less Rs.9,97,920/-]. Since the appellant has claimed enhancement to the tune of



Rs.5 lacs only and paid court fees accordingly, therefore, enhancement is restricted to Rs.5 lacs only. The other terms and conditions of the Tribunal including regarding rate of interest shall remain intact.

7. In the result, with enhancement of Rs.5 lacs this appeal is disposed of.

**(AVANINDRA KUMAR SINGH)**  
**JUDGE**

RM