

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 578 of 2007

1. Rama S/o Biharu Patel, aged about 55 years, R/o Khatiyapati, P.S. & Tahsil-Balodabazar, District-Raipur (C.G),

---- Petitioner

Versus

1. Kanhaiya Lal, Son of Dukhiram Sonwani, R/o Datankhera, P.S. Palari, District Raipur (C.G).
2. The New India Insurance Company Ltd. Branch No. 451801, Civil Line, Baloda Bazar, Tahsil-Balodabazar, District-Raipur,

---- Respondent

For Appellant	: Mr. Goutam Khetrapal & Avinash Chand Sahu, Advocates.
For Respondent no.2	: Mr. Deepak Gupta, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

30/06/2015

1. This appeal is by the claimants seeking enhancement of the award passed on 23.2.2007 by the First Additional Motor Accident Claims Tribunal, Balodabazar, Distt. Raipur in claim case No.93/2006 whereby as against the claim made for Rs.8,96,000/-, a total compensation of Rs.70,000/- was awarded with interest @ 7% per annum.
2. The brief facts of the case as pleaded by the claimants are that on 13.06.2005 at about 10.00 a.m., the applicant was going on bicycle alongwith his son and at that time a Jeep bearing No.C.G.04ZA/2006 driven by Non-applicant No.1 in a

rash and negligent manner dashed the appellant whereby the he sustained injuries on his leg & shoulder and as a result of such impact, fracture was sustained. The matter was reported to the Police and the appellant was further treated and was operated upon. It was stated that after the accident, he could not walk and perform his daily routine work of agriculture, therefore, he has sustained the loss of income.

3. Non-applicant No.1, owner and driver of the Jeep denied the accident and it is stated that the accident took place due to rash and negligent driving of applicant himself and he is not liable to make good payment of compensation.
4. The Insurance Company has stated that at the time of accident breach of insurance policy was committed by the owner and driver and therefore, the Insurance Company is not liable to pay compensation.
5. After evaluating the pleadings and evidence, the learned Tribunal has held that at the relevant time, the offending Jeep was driven in rash and negligent manner and therefore, the accident took place. The said finding is not under challenge either by the owner & driver of the offending Jeep or by the Insurance Company. Therefore, in absence of challenge to the same, the finding that at the relevant time, the offending Jeep driven by non-applicant No.1 in rash and negligent manner dashed the applicant is affirmed.
6. Now coming to the quantum of compensation, the learned counsel for appellant has submitted that the Tribunal has disbelieved the permanent disability certificate which is marked as Ex.P-23 and as such it has failed to grant just compensation as against permanent disability sustained by

the claimant due to the injury caused to him in the accident. He further stated that according to Ex.P-23, the applicant has sustained permanent disability to the extent of 68% and therefore proportionally the compensation should have been awarded. He, therefore, prays for grant of just compensation according to the documents and evidence on record and prayed that accordingly the compensation may suitably be enhanced.

7. I have heard learned counsel for the appellant and have also gone through the records of the Tribunal.
8. Reading of the award would show that the applicant has submitted the certificate of disablement which is marked as Ex.P-23. Ex.P-23 purports that the applicant sustained 68% of permanent disability. In order to prove the document, Dr. Gurucharan Singh Bachhu was examined as A.W.3. A perusal of statement of this witness would show that the Doctor has not treated the claimant. He stated that the discharge ticket was placed before him by the applicant and according to it, a rod was inserted in the right leg and the X-Ray report also shows that the joint was replaced. He further stated that without support, he could not walk and climb the stairs and could not sit on the floor. Consequently, 68% of disablement was assessed. A perusal of the statement of the applicant shows that he was admitted for 20 days in hospital wherein regularly dressing was carried out. The claimant has stated that a total expenditure of Rs.50,000/- was incurred for treatment. He has further stated that he used to work as an agriculturist and after the accident, he was not able to perform the job of agriculturist and now he is doing the

agricultural works with the help of labourers and therefore, a compensation of Rs.1,00,000/- was claimed.

9. On perusal of the statements of both the applicant and doctor, it shows that nothing has come on record that how much functional disability has been caused. Ex.P-23 is issued by a private doctor and he has not treated the patient. The doctor has given his opinion on the basis of discharge certificate which was placed before him. Therefore, the authenticity of Ex.P-23 cannot be accepted in its entirety. However, perusal of the documents would show that the applicant had sustained injury for which he had undergone treatment. The learned Tribunal has granted Rs.35,000/- towards pain and suffering considering the injury sustained by the appellant. Taking into consideration the documents and X-ray report as also the discharge certificate Ex.A-9, I am of the opinion that operation was performed to the appellant and a rod was inserted in his right leg. Therefore, taking the fact into consideration, it can be assumed that the applicant must have sustained the injury due to the accident which reduced the earning capacity as he was unable to discharge his job of agriculturist. Consequently, taking into account the statement of the appellant and documents placed on record, the amount of Rs.35,000/- granted for pain and suffering is further enhanced to Rs.60,000/-. The further amounts granted by the Tribunal under the other heads i.e. Rs.20,000/- for medical expenses, Rs.5000/- for future treatment expenses, Rs.5000/- for special diet, Rs.5000/- for transportation and Rs.1000/- for damages caused to the cycle are maintained. Thus the claimant will be entitled to total

compensation of Rs.96,000/-. After deducting Rs.71,000/-- awarded by the tribunal, the enhancement will be Rs. 25,000/-.

10. In the result, the appeal is partly allowed. The claimant will be entitled to Rs. 25,000/- in addition to what is already awarded by the tribunal, with interest at the rate of 6% per annum from the date of filing of the claim petition till the date of realization. No order as to costs.

11. The Registry is further directed to communicate the claimant in writing the “amount of award enhanced in this appeal” as against the award made by the Tribunal below. The said communication be made in *Hindi Deonagari* language.

Sd/-
GOUTAM BHADURI
JUDGE