

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1690 of 2008

1. Md. Mehboob S/o Md. Ijrail, aged about 32 years, R/o Adhari Navagaon, Dhamtari, Tahsil & District Dhamtari, CG

---- Appellant/Applicant

Versus

1. Partho S/o Jesender Patel, aged about 23 years, R/o village Dantrega, Post Sejbahar, Tahsil and District Raipur, CG.
2. Lalji S/o Shri Kheduram Dhruv, R/o village Dantrega, Post Sejbahar, Tahsil & District Raipur, CG
3. The Branch Manager, Oriental Insurance Company Ltd. Balak Chowk, Dhamtari, CG

---- Respondents

For Appellant	-	Shri Govind Dewangan, Advocate.
For Respondents 1 & 2	-	Shri R.K. Pali, Advocate.
For Respondent No.3	-	None appeared.

Hon'ble Shri Justice Pritinker Diwaker

Order on Board

01 /07/2016

This appeal arises out of the award dated 23.6.2007 passed by Additional Motor Accident Claims Tribunal (for short the "Tribunal") Dhamtari in Claim Case No. 110/2006 awarding a compensation of Rs. 93,120/- in favour of the appellant/claimant.

2. Facts of the case in brief are that on 14.7.2006 a claim petition was filed by the appellant/claimant stating that on 2.5.2006 when he was standing near his shop, the offending vehicle (Tata Sumo bearing registration No. CG-04-ZP 3777) owned by respondent No.2 Lalji, driven by respondent No.1 Partho in a rash and negligent manner, and insured by respondent No.3,

came there and dashed him as a result of which he sustained grievous injuries including fracture of right leg. It is stated in the claim petition that for the injuries sustained, the appellant/claimant was required to undergo surgical operation and that his right leg got shortened by 1-1.5" and thereby he suffered permanent disability to the extent of 40-60%. The appellant/claimant thus prayed for compensation of Rs. 7,00,000/- on various heads..

3. Pleadings of the claimant have, however, been denied by the respondents.

4. In support of his contention the appellant/claimant has examined himself as AW-1 and Dr. Iqbal Parvej as AW-2 whereas driver of the offending vehicle namely Partho (Respondent No.1 herein) has examined himself as NAW-1. According to the driver, the accident occurred on account of negligence of the appellant/claimant himself who was selling the bags by standing on the road, and that he was having a valid driving licence and the vehicle in question was duly insured.

5. After evaluating the evidence available on record, the Tribunal awarded Rs. 93,120/- to the appellant/claimant as compensation as a whole and it is this award which is under challenge in this appeal.

6. Counsel for the appellant/claimant submits that the amount of compensation awarded by the Tribunal under all the heads is very less and therefore the same is required to be enhanced.

7. On the other hand, counsel for the respondents 1 and 2 has supported the award impugned and submitted that the accident occurred on account of the negligence of the appellant/claimant himself and therefore he is not entitled for any enhancement in the awarded sum.

8. Heard counsel for the parties and perused the documents on record.

9. From the pleadings of the respective parties and the overall evidence on record it is clear that the accident occurred with the offending vehicle

which was insured with respondent No.3 and was being driven by respondent No. 1. Evidence further goes to show that the injured remained in the hospital for 17 days and underwent surgical operation of his right leg which ultimately got shortened by 1-1.5” and thereby he suffered permanent disability to the extent of 15% as assessed by the Tribunal itself. Thus keeping all these factors in mind the amount awarded by the Tribunal under the heads such as special diet, loss of income, pain and suffering being insufficient is required to be enhanced in the following manner:

Head	Amount awarded	Amount enhanced
Special diet	Rs. 1,200/-	Rs. 10,000/-
Loss of Income during treatment	Rs.4,000/-	Rs. 6,000/-
Pain and suffering	Rs. 8,000/-	Rs. 20,000/-

As regards the amount of Rs. 69,120/- awarded by the Tribunal for total loss of income on account of permanent disability and medical expenses amounting to Rs. 8,400/-, the same being based on appreciation of the oral and medical evidence on record, does not need any alteration and it is hereby maintained. This apart, considering the nature and extent of injuries suffered by the appellant and the resultant difficulty in leading a normal life, this Court awards an additional sum of Rs. 20,000/- putting it under the head of loss of expectation of life. In other words, the appellant would be entitled for a total sum of Rs. 1,33,520/-. Since the Tribunal has already awarded a sum of Rs. 93,120/-, the amount enhanced comes to Rs. 40,400/- which shall carry interest at the rate of 7.5% per annum from the date of application till realization thereof.

10. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-
(Pritinker Diwaker)
Judge