

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 90 of 2010**

Usha Jangde W/o Ashok Jangde, R/o Vill.-Dharsiwa, Post-Dondekala,
Police Station Dharsiwa, Distt.-Raipur (CG)

---- Appellant**Versus**

1. Baijram Jogi S/o Baluram Jogi, R/o Village Aalesur, Post Office Gurra, District Raipur (CG)
2. The Oriental Insurance Co. Ltd. through divisional Manager, Mandal No.1, Jail Road, Raipur (CG)
3. Daulatram S/o Preetram Dhruw, through Usha Jangde W/o Preetram Dhruw, R/o Vill.-Dharsiwa, Post-Dondekala, Police Station Dharsiwa, Distt.-Raipur (CG)

---- Respondents

For Appellant : Shri Manoj Paranjpe along with Shri Vikram Dixit, Advocates

For Respondent no.2 : Shri Sudhir Agrawal, Advocate

For Respondents 1 & 3: None appears through served

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28/06/2016**

Present is an appeal under Section 173 of the Motor Vehicles Act challenging the award dated 29.08.2008 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.76/2007.

2. The present appeal was admitted for hearing on 13.08.2010 only on the ground of question of compensation which means that all other claims raised by the appellant in the present appeal would not be considered while hearing the appeal finally.

3. Counsel for the appellant while arguing on the quantum of compensation submits that it is a case where the compensation awarded by the Tribunal is on the higher side in as much as the disability certificate issued cannot be admissible for the reason that it has not been

issued by the competent medical Board of the district. It is in fact a disability certificate provided by one of the Govt. doctors. He argues that the said medical evidence would not be of much relevance for the reason that the said doctor PW-2 G. S. Bachhu was not the doctor who in fact had treated the injured after the accident and that he has only issued the disability certificate after more than 1 ½ years from the date of accident and therefore the same cannot be taken into consideration for quantifying the compensation. It was also argued that the amount quantified is also on the higher side for the reason that the multiplier of 15 adopted by the Court below for granting compensation is not proper whereas in view of the case of Sarla Verma and others v. Delhi Transport Corporation and Others reported in 2009 A.C.J. 1298 and as per the schedule of Act it would be 13 looking to the age of the injured to be 45-50 years.

4. On these grounds counsel for the appellant submits that the compensation of Rs.2,82,200/- awarded by the Tribunal is on the higher side and deserves to be reduced substantially and the award has to be modified to that extent.

5. Counsel appearing for respondent no.2/Insurance Company makes a submission that since the appeal itself was admitted only on the question of quantum of compensation which clearly indicates that the challenge to the liability part has already been rejected by this Court while admitting the appeal and as such he does not have anything to add further.

6. Having considered the submissions made by the counsel for the appellant and on going through the record what is evident is that the respondent no.1 Baijram Jogi while traveling on a motorcycle on 03.11.2006 was dashed by a Bolero Jeep registered as CG 04 ZP 1728 driven by respondent no.3 Daulatram and owned by the appellant

resulting in the injuries on the right leg below the knee of the respondent no.1.

7. Statement of PW-2 Dr. G. S. Bachhu clearly indicates that there are grievous multiple injuries sustained by respondent no.1 on his right leg below the knee though he was given a disability certificate after about 1 ½ years but it was after taking fresh X-rays wherein it is reflected that one of the bones which got fractured is not still healed up and therefore respondent no.1 is finding difficulty to stand straight. The injured at the time of giving his statement made a categorical statement before the Court below that he was working as a mason prior to the accident but after the incident he has not been able to stand straight and therefore he is not able to do the work of mason. In addition, he has also stated that he had already incurred an amount of rupees 1.5 Lakhs for his treatment including the operation that he had undergone for the injuries sustained by him.

8. Another aspect which has to be borne in mind is that the claim petition by the respondent no.1 was under Section 163 of Motor Vehicles Act and therefore, multiplier as per the case of Sarala Verma (supra) would not be applicable in the facts of the present case.

9. So far as the contention of the counsel for the appellant that the medical certificate produced by the claimant is not proper and the same ought to have been issued by a competent medical Board is concerned, it is trite to refer to Rule 220 (3) of the CG Motor Vehicle Rules, 1994 which only envisages that the injury certificate should be in the prescribed format under the Act for deciding the disability part of the injury sustained by the injured.

10. Taking into consideration the overall facts and circumstances of the case more particularly the grievous injuries sustained by the respondent

no.1, this Court is of the opinion that the amount of compensation granted by the Tribunal is not on the higher side nor can it be said to be exorbitant keeping in view the fact that the claimant was a mason at the relevant point of time and he has lost his livelihood because of the injuries sustained by him on account of the accident.

11. Thus, the instant M.A.(C) being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE