

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 870 of 2010**

Ku. Saraswati Bai, aged about 19 years, D/o. Dulari, R/o. Village Khamharia, P.S. Seepat, Tahsil and District Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Santosh Kumar, S/o. Sabulal Sonfari, aged about 22 years, R/o. Ved Parsada, R/o. Village Khamharia, P.S. Seepat, Tahsil and District Bilaspur, Chhattisgarh
2. Mohanlal, S/o. Ganeshram Patanwar, R/o. Village Khamharia, P.S. Seepat, Tahsil and District Bilaspur, Chhattisgarh
3. National Insurance Company Limited, In front of P.G.B.T. College, Bilaspur, District Bilaspur, Chhattisgarh

----Respondents

For Claimant	:	Mr. P. Khichariya, Advocate
For Resp. No.2/Owner	:	Mr. Pawan Kesharwani, Advocate
For Resp. No.3/Insurance Company	:	Mr. Anand Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/09/2017**

1. Present is an appeal by the claimant seeking enhancement of the compensation awarded in Claim Case No. 02/2009, passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, dated 01.05.2010. Vide the said impugned award the Tribunal in a claim case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.2,60,400/-.
2. The claimant in the instant case has sought for the enhancement of the compensation on the ground that the Tribunal has not assessed the compensation to the extent of disability as assessed by the Doctor. Further it was contended that the amount of compensation towards the pain and suffering, medical treatment as also for loss of amenities is on the lower side.
3. The counsel for the respondents on the other hand opposing the appeal submits that considering the fact that it is a case where the

accident occurred in the March 1998, the amount of compensation awarded is just and reasonable and does not warrant interference.

4. The undisputed facts which have come on record is that the date of accident being 08.03.1998, the vehicle involved in the accident being a Tractor MP-26-E-0999 owned by the respondent No.2 and insured by the respondent No.3. At the time of the accident the driver who was driving the vehicle i.e. Santosh Kumar-respondent No.1 did not have a license to drive the vehicle.
5. Since the driver was not having a license, the Insurance Company was exonerated of its liability of payment of compensation upon the respondent No.2-owner. The aforesaid facts being undisputed; the only issue left is what would be the appropriate compensation, which ought to have been paid to the claimant.
6. This Court finds that the Tribunal has assessed the monthly income of the claimant at Rs.3,000/-. Considering the fact that it is an accident of year 1998, this Court feels that the assessment of income of the claimant at Rs.3,000/- seems to be just and reasonable.
7. The next issue is whether the percentage of disability assessed by the Tribunal of 40% is proper or not. Considering the fact that it is a case where the injury suffered by the claimant is amputation of left leg below the knee, though the Doctor has given the disability at 80%, but the Tribunal has assessed the functional disability at 40% for the purpose of quantifying the compensation. This Court is of the opinion that taking into consideration the nature of injury i.e. amputation on the left leg, it would be more proper if we take the percentage of disability as is envisaged under the schedule of injuries under the Workmen's Compensation Act which would be 50%. This Court assesses the disability of the claimant at 50% instead of 40% as assessed by the Tribunal. If we take into account the monthly income of the claimant at Rs.3,000/-, the yearly income would be Rs.36,000/-, which considering the age of the claimant is multiplied by 18 as per the decision of the Hon'ble Supreme Court in the case of **“Sarla Verma & Ors vs Delhi Transport Corp. & Anr”**

(2009) 6 SCC 121) the total amount would be Rs.6,48,000/-. Accepting 50% of as a permanent disability suffered by the claimant, the amount of compensation payable would become Rs.3,24,000/-.

8. It is ordered accordingly that the claimant shall be entitled for the compensation of loss of income of Rs.3,24,000/- instead of Rs.2,30,400/- as assessed by the Tribunal. Likewise, as regards the compensation paid under the pain and sufferings, the medical treatment as also loss of amenities, this Court finds the amount of compensations of Rs.10,000/- each awarded by the Tribunal is on lower side and the same deserves to be and is enhanced to Rs.25,000/- each instead of Rs.10,000/- each. That is to say the claimant shall be entitled for compensation of Rs.25,000/- towards pain and sufferings instead of Rs.10,000/- as awarded. Likewise, he shall also be entitled for compensation of Rs.25,000/- towards the medical treatment instead of Rs.10,000/- as awarded and for the loss of amenities also the total amount of compensation payable shall be Rs.25,000/- instead of Rs.10,000/- as awarded by the Tribunal.
9. Thus, the total amount of compensation payable to the claimant shall be Rs.4,99,000/-, which is being rounded off at Rs.5,00,000/- instead of Rs.2,60,400/- as awarded by the Tribunal. The said amount shall carry interest at the same rate as awarded by the Tribunal. The responsibility of the payment of compensation shall rest upon the owner of the vehicle as has been assessed by the Tribunal.
10. The appeal thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge