

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 518 of 2017**

Lalit Kumar Kanwar S/o Ratan Singh Kanwar, Aged About 35 Years
Occupation Carpenter, R/o Village Bokramuda, Tahsil Dharamjaigarh,
District Raigarh, Chhattisgarh.

---- Appellant**Versus**

1. Harvinder Singh S/o Gurudev Singh, Aged About 45 Years Occupation Driver (Vehicle) R/o Purani Basti Kharsia, Tahsil Kharsia, District Raigarh, Chhattisgarh.
2. M/s Mangal Hido Carbons Through: Proprietor Kumar Garg Occupation Owner Vehicle R/o Bamhanpali Kharsia, Tahsil Kharsia District Raigarh, Chhattisgarh
3. The New India Insurance Company Limited, Through Manager, The New India Insurance Company Limited Office: 2nd Floor, Sattigudi, Chowk, Raigarh, Tahsil & District Raigarh, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Amit Singh Chouhan, Advocate.
For respondent No.2	:	Shri Ashish Gupta, Advocate.
For respondent No.3	:	Shri Qamrul Aziz, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****23.10.2017.**

1. The present is an appeal filed by the claimant seeking enhancement of compensation under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 24.12.2016 passed by the 5th Additional Motor Accident Claims Tribunal, Raigarh (for short, the Tribunal) in Claim Case No.7 of 2016. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act have awarded compensation of Rs.5,37,290/- along with interest @ 7 percent per annum from the date of application.
2. Learned counsel appearing for the appellant submits that the compensation awarded is on lower side inasmuch as the Tribunal has

not taken into consideration the future prospects while quantifying the compensation. The Tribunal has not properly assessed the income of the claimant and that the percentage of disability also has been wrongly assessed. According to him, since the date of accident is June, 2013, under normal circumstances itself the claimant who was working as a Carpenter at the time of accident would be having a monthly income of more than Rs.6000/- accepting even Rs.200/-per day as daily income whereas, the Tribunal has assessed his per day income at Rs.100/- only. It was further argued that the percentage of disability assessed by the Tribunal also is on lower side as the left hand of the claimant has got completely damaged inasmuch as it has suffered paralysis and because of the injuries it is difficult for him to perform the nature of duties of Carpenter henceforth. Therefore, the compensation ought to have been awarded by assessing 45 percent disability.

3. Counsel for the insurance company however opposing the appeal submits that the award passed by the Tribunal seems to be fair and reasonable considering the entire facts and circumstances of the case. In addition, it was also argued that the doctor in the instant case has also not been examined to prove the actual disability.
4. Having heard the rival contentions put forth on either side and on perusal of records what cannot be lost sight is of the fact that the evidence which has come on record before the Tribunal particularly the deposition of claimant clearly reflects the injury sustained by him inasmuch as his left hand has become immobile by virtue of paralytic

attack suffered from the accident. It is also not in dispute so far as claimant being a Carpenter. The date of accident is June, 2013. Indisputably, under the normal circumstances a person would have been getting more than Rs.6000/-a month even if he was working as a daily wager. But, since there is no sufficient material brought on record, this court has no hesitation in reaching to the conclusion that under no circumstances the claimant would have been getting less than Rs.4500/- a month accepting Rs.150/- per day income i.e. Rs.54,000/-yearly. It is ordered accordingly.

5. So far as disability is concerned, true it is that no doctor has been examined before the Tribunal to prove the actual percentage of the disability, but the fact remains that his left hand has become completely immobile and therefore he must have suffered great amount of difficulties in performing his duties of Carpenter which he was performing prior to the accident and if not 45 percent, at-least 50 percent of the same ought to have been assessed by the Tribunal and thus, this court quantifies the percentage of disability suffered by the claimant at 25 percent. Thus, the loss of earning capacity would be to the extent of 25 percent by virtue of the injuries that the claimant has suffered.
6. Thus, accepting the yearly income of Rs.54,000/- of which if 50 percent is added towards future prospects, the amount would come to Rs.81,000/- of which if there is loss of earning capacity to the extent of 25 percent, 25 percent of 81,000/- would be Rs. 20,250/-. If the said amount of Rs. 20,250/- is multiplied applying the multiplier of 16, the

amount of compensation payable would become Rs.3,24,000/-. Thus, it is ordered accordingly that the claimant shall be entitled for Rs.3,24,000/-towards loss of earning capacity instead of Rs.81,000/- as awarded by the Tribunal. In addition, looking to the nature of injuries, the claimant is also entitled for Rs.25000/-towards pain and suffering instead of Rs.5000/-. Likewise, towards loss of earning for the period during which he was undergoing treatment is also enhanced to Rs.54,000/- from Rs.36,000/-. In addition, the claimant shall also be entitled for an amount of Rs.25,000/- towards loss of amenities that he has suffered because of immobility of his left hand that has resulted from the accident. In addition, the claimant is also entitled for Rs.3,89,888/-towards medical expenses as awarded by the Tribunal.

7. Thus, the total compensation payable to the claimant would become Rs.8,37,888/- instead of Rs.5,37,290/- as awarded by the Tribunal. It is ordered accordingly.
8. The said enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.
9. Accordingly, the appeal of the claimant stands allowed and disposed off.

Sd/-
(P.Sam Koshy)
Judge