

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 507 of 2017**

Shiv Narayan Sahu S/o Banshi Lal Sahu, Aged About 13 Years Through Its Natural Guardian Father Banshi Lal Sahu S/o Sahas Ram Sahu, Aged About 35 Years, R/o Village Dhivra, Police Station Kharora, District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Chhabi Ram Kannauje S/o Ajuram Kannuje, Aged About 35 Years R/o Village Kosmanda, Police Station Palari, District Balodabazar-Bhatapara, Chhattisgarh, Present R/o Nasine Sadan, Near Station, Tilda, District Raipur, Chhattisgarh(Driver Of The Offending Vehicle)
2. Dev Prasad Devhare Through Shiv Kumar Verma S/o Tuka Ram Verma, Aged About 49 Year, R/o Ward No.18, Purani Basti, Tuka Ram Verma, Police Station Nevra, District Raipur, Chhattisgarh(Owner Of The Offending Vehicle)
3. The Oriental Insurance Co. Ltd., Through Divisional Manager, The Oriental Insurance Co. Ltd., Jail Road, Madina Building, Raipur, District Raipur, Chhattisgarh(Insurer Of The Offending Vehicle).

---- Respondents

For Appellant	:	Ms. Nandkumari Kashyap, Advocate.
For respondent No.3	:	Smt. Chitra Shrivastava, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****14/07/2017**

1. Present is an appeal under Section 173 of the Motor Vehicles Act filed by the claimant seeking for enhancement of compensation against the award dated 23.12.2016 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur (for short, the Tribunal), in Claim Case No.501/2015. Vide the said award, the Tribunal has awarded compensation of Rs.4,57,728/-.
2. Brief facts of the case is that, the appellant, a boy of aged about 9 years, (though in the application as well as in the appeal he is

referred to as 13 years) met with an accident on 11.01.2015 when he was hit with Hywa Truck bearing registration No.CG-04-JA-5309 which was being driven by the respondent No.1 and was owned by respondent No.2 and insured with the respondent No.3. As a result of the said accident, the claimant sustained grievous injuries all over his body. The claimant had filed claim application under Section 166 of the Motor Vehicles Act. The Tribunal, considering the facts and pleading which have come on record, granted compensation of Rs.4,57,728/- along with interest @ 7.5 percent per annum from the date of application. It is this award which has been challenged by the claimant seeking for compensation.

3. Learned counsel for the appellant submits that taking into consideration the gravity of injuries and also keeping in mind the tender age of the claimant at which he met with an accident, the compensation deserves to be enhanced. The tribunal has not appreciated these facts in its proper perspective while passing the award. He took the court through the evidence which have come on record which shows that the appellant was hospitalized at Krishna Hospital, Raipur, for a period of one month. During the course of treatment, there was amputation on his left feet. Similarly, the evidence shows that left hand of the appellant also had got completely crushed and though there was no amputation of hand, but it had no strength left and there was also a hole on the palm of left hand of the appellant. He has also exhibited document Ex. P/31 which is a medical certificate from the District Medical Board, Raipur,

which had assessed the permanent disability of the appellant to the extent of 40 percent. One doctor P.K. Gupta, applicant witness No.3 also had been examined and he was one of the doctor of the medical board who had issued him certificate establishing permanent disability.

4. Counsel for the appellant submits that though there is permanent disability of 40 percent, but the Tribunal in the course of awarding compensation has granted compensation accepting the overall disability to the extent of only 20 percent which according to him is bad in law and deserves interference. Likewise, it is also submitted that taking into consideration the nature of injuries sustained, the amount of compensation towards the future medical expenses has not been considered which is necessary for being considered considering his physical condition. Further, the compensation for the mental agony and comfort awarding of Rs.75000/- is on the lower side. The compensation under the head of special diet and transportation also deserves to be enhanced. Compensation for the loss which would incur under the head of adversely affecting the matrimonial prospect also deserves enhancement as the amount awarded under these heads are on the lower side. Thus, prayed for enhancement of compensation.
5. Learned counsel for the insurance company, however, opposing the appeal submits that the award seems to be fair and reasonable with no scope of interference as except for the injury on his left leg there was no grievous injury. The doctor has also given evidence that he

can venture into jobs which require mental work. Thus, the award does not warrant any interference and prays for dismissal of appeal.

6. Having considered the rival contentions put forth, some of the admitted factual position of the case is that, the appellant at the relevant point of time taking into consideration his school records, was aged about 9 years; the accident occurred on 11.01.2015. The accident occurred due to rash and negligent driving of driver of Hywa owned by respondent No.2, driven by respondent No.1 and insured by the respondent No.3. As a result of said accident the appellant sustained multiple injuries. That, so far as liability part is concerned, there is no dispute neither is there any dispute of any breach of policy conditions or there being any negligence on the part of claimant. In the aforesaid admitted factual matrix of the case, all that this court has to see is whether the compensation awarded is proper, just and legal or not.
7. If we look into the facts, the tender age of the appellant i.e. 9 years at the time of accident and the fact that as a result of accident his leg had got completely crushed and in due course, a portion of his left leg had to be amputated which makes the appellant permanently disabled. His left hand also sustained grievous injuries and if the version of father of claimant is to be believed, there is a hole made out in his left hand palm which is also permanent in nature. These two injuries are sufficient to demonstrate or visualize the amount of pain and suffering, agony and life long impact that would have left on the claimant as a result of accident.

8. The Medical Board of the district after examining the claimant had given a certificate which has been duly proved by the doctor from the said medical board assessing the claimant to be 40 percent permanent disablement. The doctor also deposed before the Tribunal that the claimant would not be in a position to do such nature of jobs which require physical activity. Further, what is also to be taking note of the fact is that the appellant was hospitalized for about one month and surgery was also taken place. If all these are taken into consideration, this court has no hesitation in reaching to the conclusion that the amount of compensation awarded deserves to be enhanced.
9. Accordingly, the compensation awarded towards loss of income which has been assessed taking 25 percent disability, is enhanced by an additional amount of Rs.72,000/- accepting the disability part to be 40 percent as assessed by the medical board. Likewise, considering the nature of injury and future medical expenses, the amount of Rs.50,000/- awarded is enhanced by another 50,000/-. Compensation of Rs.75000/- towards pain and suffering and mental agony and loss of comfort is also enhanced by another Rs.50,000/- in addition to what has been awarded.
10. Likewise, the nature of injury cause to 9 years child at such age would definitely need special diet for faster recovery and also for regaining his loss health and the amount of Rs.25,000/- which has been awarded deserves to be enhanced by another 25000/- making it Rs.50,000/- towards transportation and expenses incurred under the

head special diet. Likewise, the appellant has on account of his permanent disability suffered some dent towards his matrimonial prospect at a latter stage when he grows up. Though the said loss cannot be quantified, however, the amount of Rs.75,000/- which has been awarded by the Tribunal towards matrimonial prospects is on the lower side and it should have been taken at least Rs.1,00,000/-. Thus, the said compensation under the head for the loss that would occur in his matrimonial prospects is enhanced from Rs.75,000/- to Rs.1,00,000/-.

11. In view of the aforesaid finding arrived at by this court, the appeal is allowed and now the claimant shall be entitled for a further compensation of Rs.2,22,000/- over and above the amount of Rs.4,57,728/- as awarded by the Tribunal.
12. The above enhanced amount of compensation of Rs.2,22,000/- shall carry interest at the rate quantified in the award. Rest of the conditions mentioned in the award shall remain intact.
13. The respondent No.3-Insurance Company is granted two months time to deposit the enhanced amount of compensation of Rs. 2,22,000/- before the concerned claims Tribunal.

Sd/-
(P. Sam Koshy)
Judge

inder