

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1069 of 2017

Kamal Markandey S/o Shri Shyam Ratan Markandey, Aged About 45 Years Occupation Labourer, R/o Village Odka, Police Station Arang, District Raipur Chhattisgarh.

---- Appellant

Versus

1. Gourishanker S/o Late N. Ramu Aged About 26 Years R/o Village Indra Nagar Ambedkar Chowk, Bhilai, District Durg Chhattisgarh.
2. Sweta Agrawal, W/o Vinod Agrawal, Aged About 30 Years R/o Sadar Bazar Raigarh, District Raigarh Chhattisgarh.
3. Divisional Branch Manager, Through National Insurance Company Limited, G. E. Road Raipur Chhattisgarh.

---Respondents

For Appellant	:	Mr. C.R. Sahu, Advocate
For Respondent No.3	:	Mr. Goutam Khetrapal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/09/2017

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act assailing the award dated 22.04.2017, passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No. 433/2015. Vide the said impugned award, the Tribunal has granted a compensation of Rs.1,68,200/- with interest @ 9% per annum from the date of application. The challenge to the impugned award is on the ground that the Court below has not granted just and reasonable compensation and that the amount awarded is on a lower side and the same deserves enhancement.
2. According to the counsel for the appellant, it is a case where the appellant had met with an accident on 20.03.2015, while he was travelling on a motor cycle bearing registration No. CG-04-KD-5608 as a pillion rider when he was hit by a Maruti Swift Car bearing registration No. CG-13-UC-0934 resulting in multiple injuries sustained by the appellant. According to the appellant, as a consequence of the accident he sustained multiple fractures on his

left leg and he had to undergo surgery and also steel rod had to be inserted as a part of the treatment for the fractured left leg. He further submits that he was hospitalized for a considerable period and the treatment also went on for quite some time, but still the Court below has not taken into consideration the gravity of the injury while granting the compensation. He further submits that the appellant had to bare much more medical expenses than what has been awarded by the Tribunal. Further even pending the claim petition as also subsequently it continued and in the process he has still incurred medical expenses, which has not been taken care of by the Tribunal while quantifying the compensation. He further submits that the compensation under the other heads like pain and suffering, loss of income during the period of treatment, the compensation for special diet are all on the lower side. No compensation for the engaging the attendant during the course of the treatment as also towards the incidental traveling expenses incurred during the course of the treatment has been awarded and thus prayed for the suitable amendment.

3. Shri Goutam Khetrapal, present in the Court and a Panel Lawyer of the National Insurance Company Limited was directed to assist the Court for the disposal the case at motion stage as the issue involve was neither complicated nor was it a case, which would have a grave implication.
4. The counsel for the Insurance Company however opposes the appeal on the ground that the claimants have not substantiated their claim by leading additional medical evidence to corroborate their evidence and therefore the award passed by the Tribunal is just and reasonable and does not warrant any interference and prayed for rejection of the appeal.
5. Having heard the rival contentions put forth, this Court is of the opinion that of the total amount of compensation of Rs.1,68,200/- awarded by the Tribunal, Rs.1,35,700/- was only towards the medical expenses, for which the appellant could produce bills. The record does not show any compensation to have been awarded by the Tribunal towards future medical expenses.

6. Likewise, there is also no compensation awarded towards engagement of the attendant during the course of the treatment as also the incidental traveling expenses sustained by the claimants in the course of treatment. The compensation paid towards the special diet and loss of income also is on the lower side as compared to the gravity of the injuries sustained.
7. Taking into consideration the deposition of the appellant and the undisputed facts as results to the injury sustained by the appellant that of a grievous fracture on his left leg which required surgical intervention and also insertion of steel rod and plate as part of the treatment and also taking note of the fact that the bills raised by the appellant before the Tribunal showed a prima-facie medical expenses of more than Rs.1,35,000/- itself would reflect that the injury was quite severe and there would have been certain medical expenses for which the appellant may not have been able to retain the bills and certainly there would also have been further treatment and for all these, this Court is of the opinion that the ends of justice would meet if an amount of Rs.25,000/- is awarded in addition to the amount of Rs.1,35,700/- awarded by the Tribunal.
8. Likewise, the amount of compensation awarded under the head of pain and suffering of Rs.25,000/- also seems to be on the lower side particularly when we visualize the nature of injuries and the treatment provided and its duration which by itself would show the amount of pain and suffering which the appellant had to bare and for this, this Court awards an additional compensation of Rs.25,000/- in addition to what has been awarded. Similarly, the amount of Rs.2500/- awarded towards loss of income is also on the lower side, true it is that the appellant has not produced any documentary proof to show the actual income and the nature of service rendered by him, but it is anybody's guess that in the year 2015 the average monthly income of a person would have been somewhere between Rs.3,000-6,000/- a month, since the appellant had to be operated and a steel rod has been inserted, there would have been a definite restriction caused for the appellant to have performed his routine work for his livelihood for a long time and thus in the prevailing

circumstances, this Court is of the opinion that ends of justice would meet if the appellant is paid an additional amount of Rs.7,500/- in addition to Rs.2500/- awarded by the Tribunal.

9. Considering the gravity of injuries and the prolonged treatment required, it is but natural that the appellant must have also incurred some expenses towards special diet which would have required for a considerable period of time to regain the lost health and energy, this Court feels it proper to grant an additional amount of Rs.15,000/- in addition to Rs.5,000/- awarded by the Tribunal towards the special diet.
10. Further, since the nature of treatment and the surgery must have confined the appellant to bed, restricting his mobility, he must have had to engage an attendant and in the process of treatment he must have also incurred a few transportation charges and this Court considering the facts and circumstances of the case awards an amount of Rs.27,500/- under the head of engaging an attendant and for incidental transportation charges. Thus, the appellant is entitled for a total compensation of Rs.2,68,200/- instead of Rs.1,68,200/-. The appellant thus is entitled for an enhanced amount of Rs.1,00,000/- in addition to what has been awarded by the Tribunal. The said amount shall also carry interest at the same rate as awarded by the Tribunal.
11. Thus, the appeal of the appellant stands allowed.

Sd/-
(P. Sam Koshy)
Judge