

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MA No. 43 of 2006**

Om Prakash Rajput, S/o. Madan Lal Rajput, aged about 24 years, R/o. Jalampur Ward Dhamtari, Tahsil and District Dhamtari (CG)

---- Appellant**Versus**

1. K. Adinarayan S/o. K. Pedisalli, Aged about 26 years, R/o. 7/38 Annand Puram, Vishakapattanam, (A.P.) Present Address Shri Venkateshwar Mills, Transport, Andhra Pradesh.
2. N. Subba Rao, S/o. Aappa Naidu, Aged about 40 years, R/o. Doar No. 7/63 Chintalapalem.
(V. Jarugumali (M) Distt. Prakasham, Present Address-Vikas Colony, Banam.
3. Rayal Sundram Allied Insurance Co. Ltd. Southern Regional Office-46 Whites Road Cheeni.

----Respondents

For Appellants	:	Shri P. Dutta, Advocate
For Respondents	:	Shri S.S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****23/08/2017**

1. The present is an appeal under Section 173 of the Motor Vehicle Act filed by the claimants seeking enhancement of the compensation awarded. The appellant is said to have met with an accident on 20.08.2003 while traveling in Swaraj Majda bearing registration No. CG-05-ZC-0258 was hit by a vehicle coming from opposite direction bearing registration No. AP-27-U-5099. As a result of the accident appellant sustained multiple combined fracture. He later on filed a claim application under Section 166 which stood decided vide order dated 07.10.2005 and the Tribunal vide impugned award has awarded compensation of Rs.78,500/- of which Rs.40,000/- was assessed towards loss of earning capacity, Rs.10,000/- towards pain and suffering and Rs.28,500/- towards medical expenses. It is this award which is under challenge by the claimants seeking enhancement.
2. According to Shri Dutta, compensation awarded under the loss of earning capacity is too meager an amount considering the nature of

injuries sustained by the appellant. He further submits that it is a case where pleading of the claimants itself is that he was earning Rs.3,000/- per month and which has not perhaps been accepted by the Court below and has awarded lump sum compensation of Rs.40,000/- under the head of loss of earning capacity. He submitted that calculation ought to have been done considering salary of Rs.3,000/- per month as the accident was of the year 2003 and the appellant was aged around 24 years and even an unskilled labour during those days would earn more than Rs.100/- per day. He further submits that amount of compensation awarded under the head of pain and suffering also is on the lower side and in addition the Tribunal has not given any compensation for engaging attendant during treatment as also no compensation for special diet or incidental transportation also was awarded. Thus prayed for the award being suitably enhanced.

3. Counsel for the respondent-Insurance Company however opposing the appeal submits that plain reading of the award shows that award was fair, just and reasonable and does not warrant any interference as award was based on the evidence which has come on record.
4. Having considered the contention on either side this Court is inclined to accept the argument put forth by the counsel for the appellant accepting appellant to be earning at least Rs. 100/- per day which makes Rs.3,000/- per month as the accident was of the year 2003 and also considering the age of the appellant.
5. Further, the amount of compensation under pain and suffering for the multiple fracture which has been caused to the appellant is also on lower side. So, appellant ought to have been got some compensation towards special diet, incidental transportation and for engaging attendant during the course of the treatment.
6. When we consider the nature of injury and disability certificate which the Doctor has given it reflects that, he was suffering disability at around 35%. Considering the disability of 35% for the multiple fracture this Court assesses total loss of earning capacity caused by the injury sustained to be at around 25%.
7. Thus accepting Rs.3,000/- as a monthly income, the yearly income of the appellant would be Rs.36,000/- and if Rs.36,000/- is multiplied by applying multiplier of 18, the figure would come to Rs.6,48,000/- of

which if loss of earning capacity which is 25% assessed by this Court would make appellant entitled for 25% of the said amount i.e. Rs.1,62,000/-.

8. Likewise for the pain and suffering which the appellant underwent during the course of treatment also this Court feels that compensation of Rs.50,000/- would meet ends of justice instead of Rs.10,000/- as awarded by the Tribunal. Likewise compensation under the head of special diet, transportation and engaging of attendant, this Court quantifies compensation at a lump-sum amount of Rs.25,000/-. Thus total amount payable to the claimant would become Rs.2,37,000/- instead of Rs.78,500/- as awarded by the Tribunal.
9. Therefore, appellant is entitled for enhanced additional compensation of Rs.1,58,500/- in addition to what amount is awarded by the tribunal. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.
10. Thus appeal is allowed to the aforesaid extent.

Sd/-
(P. Sam Koshy)
Judge

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