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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 115 of 2006

Deepak Kumar Janghel S/o Shri Janak Lal Janghel, R/o Shanti Para,
Adarsh Nagar, Camp No.1, Bhilai, Tahsil and District Durg (CG)

---- Appellant

Versus

1. Madhya Pradesh State Road Transport Corporation [now Chhattisgarh Infrastructure Development Corporation Limited (transport)] through its Depot Manager, Rajnandgaon (CG)
2. Mohd. Yunus S/o Mohd. Hanif, R/o behind old police line, Rajnandgaon, Tahsil & District Rajnandgaon (CG)
3. Chhattisgarh Infrastructure Development Corporation Limited, Shastri Chowk, Raipur (CG) through its Managing Director

---- Respondents

For Appellant	:	Shri Rahim Ubwani, Advocate
For Respondent no.3	:	Shri Anup Majumdar & Shri Basant Dewangan, Advocate

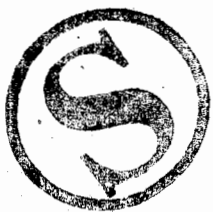
Hon'ble Shri Justice P. Sam Koshy

Order On Board

14/07/2017

The present is an appeal under Section 173 of the motor Vehicles Act by the claimants seeking enhancement of the award. The appellant is assailing the award dated 31.03.2005 passed by 8th Additional Motor Accident Claim Tribunal (FTC), Durg (CG) in Claim Case No. 314/04.

2. The fact in nutshell is that the claimant was 17-18 years old boy at the time of accident. On 06.09.1998 while the claimant was standing on the road in order to cross the road after the traffic is cleared was hit by the bus bearing registration No. MPW/1562 belonging to respondent no.1 which was being driven by respondent no.2. It was the rash and negligent driving of the respondent no.2



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which resulted in the accident. As a result of the accident, the appellant received grievous injuries and he was hospitalized for a period of approximately fortnight and had also undergone a couple of surgeries. As a result of the accidental injuries, the right kidney of the appellant had got completely damaged and the same had to be removed and after the surgery the appellant is surviving with one kidney. It is said that the appellant being a student of Class-12th standard at the time of accident, he could not study well and had to lose a year of his studies on account of the post accident treatment and recovery state. The appellant thereafter filed a claim application before the Tribunal which was registered as Claim Case No. 314 of 2004.

3. The Tribunal taking into consideration the evidences which have come on record and the pleadings awarded a compensation of Rs.79,195/- to the appellant. From the said amount, compensation of Rs.50,000/- was given towards disability, Rs.10,000/- towards special diet and Rs.19,195/- was given under the head of medical expenses.

4. It is this award which is under challenge by the appellant seeking enhancement.

5. Counsel for the appellant submits that the compensation awarded by the Tribunal considering the nature of injury is extremely on the lower side and deserves to be enhanced substantially. According to the counsel for the appellant, it is a case where at the time of accident the appellant was a 17 years old boy and lost his kidney so young in his life. According to the counsel for the appellant, the appellant because of his disability would not be able to pursue any hard work in future and would always have to be very cautious even in the diet which he shall have all through his life. He submits that because of the fact that he has lost one kidney, his future prospects would be adversely affected. It was further contended that the amount of compensation of Rs.10,000/- awarded for special diet is extremely low particularly taking note of the fact that the petitioner all through his life will have a special diet and cannot have a regular and usual



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diet which a normal man has having lost one of his kidneys. Thus, counsel for the appellant prays for enhancement of the compensation under both these heads.

6. Counsel for the respondent no.3 however opposing the appeal submits that the award does not warrant any interference as the finding is based upon the evidence which has come on record and the amount of compensation also has been justified by the Tribunal while granting the same and prayed that the appeal may be rejected. It is also submitted by the counsel for respondent no.3 that if at all if the appeal is allowed, the amount of compensation which has been ordered to be paid has to be paid by respondent no.1 for the reason that the accident took place before creation of the State of Chhattisgarh as well as the formation of respondent no.3 Corporation. Alternatively, it was also argued that the amount of compensation may be recovered in the ratio of the distribution of the assets and liability between respondent no.1 and respondent no.3.

7. Having considered the rival contention put forth on either side and on perusal of the record what is reflected is that the date of accident is 06.09.1998 and the appellant sustained injuries in the said accident. The accident arose with the bus belonging to respondent nos.1 and 3. At the time of accident respondent no.2 was the driver of the vehicle. The appellant was aged about 17-18 years studying in Class 12th at the time of accident. As a result of the accident, his right kidney had to be removed as it got damaged in the course of the accident. The appellant had to be hospitalized for a period of more than 14 days at Sector 9 hospital, Bhilai.

8. From the aforesaid undisputed factual aspect of the case when one looks into the injuries sustained by the appellant, it clearly depicts that the right kidney of the appellant had been removed as a result of the injury and damage that was caused from the accident. The nature of injury itself would clearly depict the appellant must have definitely undergone a great element of pain and suffering and also mental agony of having lost one kidney. Further the loss of kidney



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definitely has created a life long disability to the appellant from doing any sort of hard physical work which would always hamper his future career.

9. For the aforesaid reasons, this Court is of the opinion that the amount of compensation as awarded by the Tribunal to the tune of Rs.79,195/- is extremely on the lower side and the same deserves to be enhanced. Accordingly, the impugned award stands modified to the extent that the appellant shall be entitled for compensation of Rs.1,50,000/- towards disability inclusive of the amount as awarded by the Tribunal i.e. Rs.50,000/- As such there is an enhancement of Rs.1,00,000/- under the said head. Likewise, considering the fact that the appellant would always have to be cautious about the diet that he would have to have, amount of Rs.10,000/- awarded by the Tribunal under the head of diet also deserves to be enhanced and is accordingly enhanced to Rs.50,000/-. The remaining part of the award shall remain intact.

10. As regards the liability of payment of compensation is concerned, subsequent to the accident there has been a development that has taken place in as much as the State itself has bifurcated and the new State has been carved out. Further in the State of Chhattisgarh there is no State Road Transportation and the assets and liabilities of respondent no.1 has fallen in the hands of the respondent no. 3 Corporation. It has been brought to the notice of the Court that there is a ratio prescribed by the Central Govt. so far as the distribution of assets of liabilities are concerned.

11. At this juncture this Court would not like to distribute the liability of payment of compensation upon respondent no.1 and respondent no.3. It is directed that the respondent no.3 shall honour the award as also the order passed by this Court in this appeal. However, the respondent no.3 shall have a liberty of getting refund of the amount which otherwise would fall in the share of the respondent corporation or the adjustment of the same from the Respondent No. 1.

12. With the aforesaid observation of pay and recovery made in favour of the respondent no.3, the appeal stands allowed. It is ordered that the respondent



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no.3 shall make payment of the enhanced amount of Rs.1,40,000/- in addition to what has already been granted by the Tribunal. It is ordered that the said amount shall be paid within a period of three months from the date of receipt of the certified copy of this order. The enhanced amount shall also carry interest at the rate as has been granted by the Tribunal.

Sd/-
P. Sam Koshy
Judge

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