

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 457 OF 2014

Mangluram Nag, S/o Kosiram Nag, aged about 38 years, R/o Village Bhaiggaon, Chowki Ghotiya, District Bastar (C.G.)

... Appellant

versus

1. Sagar Pandey, S/o Tulsiram Pandey, aged about 23 years, R/o Kumharpara Narayanpur, Post Narayanpur, District Narayanpur (C.G.)
2. Smt. Ragini Korram, W/o Kamal Korram, aged about 45 years, R/o Village Muriyapara, Narayanpur, District Narayanpur (C.G.)
3. The Oriental Insurance Co. Ltd., Laxman Avenue, Medical College Road, Jagdalpur, District Bastar (C.G.)

... Respondents

For Appellant	:	Mr. P.K. Tulsyan, Advocate.
For Respondent No.3	:	Mr. Arvind Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/12/2017

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the First Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur, vide its award dated 19.12.2013, passed in Claim Case No. 18/2013.
2. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.32,200/- to appellant-claimant with interest thereon at the rate of 6% per annum. While passing the award, the learned Tribunal has fastened the liability for payment of compensation upon respondent no.3-insurance company indemnifying respondents no. 1 and 2 i.e. the driver and the owner of the offending vehicle i.e. a Indica Car, bearing temporary registration no. CG04-4535-2012.
3. Learned counsel for the appellant-claimant submits that the claimant in the instant case is a Teacher by profession and that the injury sustained to him was a fracture of his hip bone and for which he was hospitalized for

about one month period in Maharani Hospital at Jagdalpur and that in support of his evidence, Dr. L.L. Thakur (AW-2) was also examined who had issued with a disability certificate from the District Medical Board, assessing the disability at 53%, vide Exhibit P-1. He further submits that considering all these facts and circumstances, the learned Tribunal should have awarded more compensation than what has been awarded, particularly towards pain and suffering and for the other incidental expenses incurred. Learned counsel for the claimant next submits that because of the injury on his hip bone, he is still not able to move freely as he was prior to the accident and that he also finds it difficult while taking classes as he has to move around frequently while writing on the black-board. He thus prayed for a suitable enhancement of the compensation awarded.

4. Learned counsel for respondent no.3-insurance company however opposing the appeal submits that it is a case where the amount of compensation awarded was fair and reasonable taking into consideration the evidence which have been adduced by the claimant and since the award is just and reasonable, there is no scope of any enhancement of compensation awarded by the learned Tribunal. He further submits that there is also no loss of earning capacity, as is clear from the finding of the learned Tribunal wherein it has been found that the claimant was getting same salary what he had been getting prior to the accident and since there is a finding of the claimant having resumed his employment, it shows that there is also no difficulty so far as his employment is concerned. He thus prayed for the rejection of the appeal.

5. Be that as it may, considering the entire facts and circumstances of the case, particularly the evidence which says that the claimant is forced to use clutches for walking and that the Doctor (AW-2) also has been examined assessing the disability at 53%, moreover the nature of injury as is also clearly reflected in paragraph 11 of the award wherein it has been said that there were multiple fractures on the right side of his hip, all these clubbed together, this Court is of the opinion that ends of justice would meet if the claimant is awarded an additional compensation of Rs.67,800/- in addition to what has already been awarded by the learned Tribunal. Thus, making the total compensation payable to the claimant at Rs.1,00,000/-, instead of Rs.32,200/- as awarded by the learned Tribunal.

6. As a consequence, the appeal is allowed and the impugned award stands modified to the extent that the appellant-claimant shall be entitled to get an additional compensation of Rs.67,800/-, making the total compensation payable at Rs.1,00,000/-, instead of Rs.32,200/- as awarded by the learned Tribunal. The said enhanced amount shall also carry interest at the same rate as has been fixed by the learned Tribunal and the same shall be payable from the date of presentation of the claim application i.e. 24.9.2012. Rest of the award shall remain intact.

Sd/-
(P. Sam Koshy)
Judge