

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 748 OF 2010

Anil Kumar Biswal @ Malay Kumar Biswal, S/o Damodar Biswal, age 47 years, R/o Sector-6, Russian Block, Qr. No.9/B, Street 38, P.S. Sector-6, Bhilai, Tehsil and District Durg (C.G.)

... Appellant/Claimant

Versus

1. Raju Yadav @ Raj Kumar, S/o Babu Lal Yadav, age 25 years, R/o Ganj Para, near Bandha, Pond P.S. Durg, District Durg (C.G.)
2. Kuldeep Singh, S/o Balwant Singh, R/o Santra Badi, P.S. Mohan Nagar, District Durg (C.G.)
3. The New India Insurance Ltd., Branch Office Parakh Bhavan, Station Road, Durg (C.G.)

... Respondents

For Appellant	:	Mr. Uttam Pandey, Advocate.
For Respondent No.3	:	Mr. Tarkeshwar Nande, Advocate, under instructions of Mr. Sourabh Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/09/2017

1. The present is a claimant's appeal under Section 173 of the Motor Vehicles Act, 1988, seeking for enhancement of the compensation awarded by the 11th Additional Motor Accident Claims Tribunal, (F.T.C.), Durg, in Claim Case No. 209/2007.
2. Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, has granted a compensation of Rs.1,50,000/- to the claimant with interest thereon at the rate of 6% per annum from the date of filing of the claim application.
3. The undisputed facts in the instant case are that the appellant-claimant on 1.7.2007 was hit by the Truck No. CG07-ZC/0334 driven by respondent no.1-Raju Yadav, owned by respondent no.2-Kuldeep Singh and insured with respondent no.3-Insurance Company, sustaining injuries on different parts of his body.

4. Learned Counsel for the appellant-claimant challenging the quantum of compensation awarded, submits that the Tribunal has not granted compensation to the extent of disability suffered by the appellant. He further submits that it is a case where the Doctors who have been examined before the Tribunal have proved that there was a shortening of leg of the appellant and the permanent disability is to the extent of 40% but the Tribunal has granted only a lump sum compensation of Rs.80,000/- for the disability, without any basis for quantifying the said amount. It was further contended that before the Tribunal the appellant had produced medical receipts of Rs.80,700/-, the bills of which were also produced, but the Tribunal again has granted a compensation of only Rs.50,000/- under this head, with no reason assigned as to why the balance amount has not been considered for being released to the appellant. Lastly, it was contended that the compensation towards the pain and suffering and the expenses incurred in the engagement of an attendant and for the mental agony which the appellant had undergone is also on the lower side, warranting suitable enhancement.

5. Learned Counsel for respondent no.3-insurance company however opposes the appeal and submits that the impugned award is just and reasonable, warranting no interference as the same is based on evidence.

6. Considering the facts and circumstances of the case particularly the medical evidence which have been brought on record, undisputedly, as a result of the injuries, there is a finding of shortening of leg of the appellant, the permanent disability of which has been assessed by the Doctors at 40%. Though the said 40% would be the disability of shortening of leg, but the total functional disability of the appellant may not be to the extent of 40%. In the opinion of this Court, the over all functional disability which the appellant must have suffered is around 10% which is being assessed by

this Court for quantifying the compensation. The Tribunal has taken the annual income of the appellant at Rs.96,000/-. If we take 10% of the said amount as his loss of income capacity, the amount would be Rs.9600/- annually, which if multiplied by applying the multiplier of 13 which would be applicable in the case of the appellant since he was aged about 47 years at the relevant point of time, the amount would reach to Rs. 1,24,800/-. Rounding off of the said amount, this Court holds that the appellant shall be entitled for a compensation of Rs.1,25,000/- instead of Rs.80,000/- as was quantified by the Tribunal.

7. Further, considering the fact that the appellant had produced the bills, marked as Exhibits P-3 to P-155, the total amount of bills raised by the appellant is of Rs.80,698/- which is rounded off at Rs.80,700/- of which the Tribunal has granted only Rs.50,000/- and that there is no reason as to why the total bills have not been allowed by the Tribunal. This Court therefore is of the opinion that ends of justice would meet if the appellant is granted the balance of the said amount, i.e., Rs.30,700/-, towards medical expenses, instead of only Rs.50,000/- as has been accepted by the Tribunal. In addition, so far as the pain and suffering and mental agony is concerned, considering the fact that there is a finding of shortening of leg and during the course of treatment the appellant must have undergone a great amount of pain and suffering, this Court quantifies the amount at Rs.50,000/- instead of Rs.10,000/- as was awarded by the Tribunal. Likewise, the miscellaneous amount of Rs.10,000/- which has been awarded by the Tribunal, considering the long duration of treatment which the appellant had undergone and also the requirement of engaging of an attendant in between as also the incidental travelling expenses which the appellant must have incurred during the course of treatment, this Court

feels it proper for enhancing the the compensation under the miscellaneous head from Rs.10,000/- to another Rs.50,000/-.

8. Accordingly, it is ordered that the appellant-claimant shall be entitled for a total compensation of Rs.3,05,700/-, instead of Rs.1,50,000/- which was awarded by the Tribunal, along with interest thereon at the rate of 6% per annum as has been awarded by the Tribunal.

9. The appeals thus stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/