

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 05 of 2005

1. Govind Narayan Pandey s/o Late G.L.Pandey, Age about 38 yrs, R/o Uslapur, Gokhalanala, Sakari, PS Chakarbhata, District Bilaspur(C.G).

---- Appellant

Versus

1. Ganesh Ram Sahu S/o Govind Sahu, aged about 29 yrs, Occupation- Owner & Driver, R/o Mungeli, District Bilaspur(C.G)
2. Divisional Manager, United India Insurance Company Limited, Main Road, Korba (C.G)

---Respondents

For Appellant	:	Mr. A.L.Singroul, Advocate
For Respondent No.2	:	Mr.Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/08/2017

1. Present is an appeal under section 173 of the Motor Vehicle Act preferred by the claimant assailing the award dated 26/08/2004 passed by 10th Additional Motor Accident Claims Tribunal (FTC), Bilaspur in claim case No.06/2004.
2. Vide the said impugned award, the Tribunal in a claim case under section 166 of the Motor Vehicle Act has awarded compensation of Rs.2,97,000/- to the appellant-claimant. It is this award which is under challenge by the appellant.
3. It is pertinent to mention at this juncture that the said award was also challenged by the Insurance Company vide MA No.1125/2004 and which has been dismissed by this court vide its order dated 13/07/2010.
4. The contentions of the counsel for the appellant is that the Doctor who had examined before the court below had assessed the disability which the insured had sustained being of 90% the amount of compensation awarded by the Tribunal is on the lower side. He submits that the Tribunal has not taken the loss of income of the

appellant because of the injuries. The appellant has not been able to perform his duty what he was doing earlier and as such there is a total loss of earning capacity and at the time of accident he was earning Rs.3,000/- per month of which Tribunal has only taken Rs.1,000/- as the loss of income and calculated compensation.

5. According to the appellant, the document enclosed along with claim petition as also medical document by itself speaks volumes of the gravity of the injury sustained by the appellant. He submits that applicant had sustained injuries on both his feet of which his right leg had been more severely affected and that was the reason why the Doctor has given disability certificate of 90%. Counsel for applicant submits that the Tribunal also ought to have taken into consideration future prospects also while quantifying the compensation. It was further contended that the Tribunal should taken into consideration the appropriate multiplier also for the purpose of calculating the compensation and the multiplier applied by the Tribunal was not proper considering the age of the appellant injured at the time of the accident. Thus prayed for enhancement of the amount suitably.
6. Counsel for the Insurance Company however opposing the appeal submits that, it is a case where the treating Doctor has not been examined before the Tribunal and therefore the disability and the injury sustained by the appellant cannot be said to have been proved sufficiently.
7. Likewise Doctor who had given the medical certificate and who has deposed before the court below was not member of the District Medical Board and that the said Doctor's conduct also is doubtful for the reason that he has been prosecuted at the instance of the High Court for his habit of issuance of disability certificate showing very high percentage of disability without any basis and without even treating the patient. Thus the counsel prayed for the rejection of the appeal on the ground that the award passed by the Tribunal is just and reasonable.
8. Considering submissions put forth on either side and on perusal of record what undoubtedly brought before the court's notice is that the

volume of treatment related document produced along with the claim application also contains large number of X-rays of the feet of the claimant. Documents with the record also has photographs of claimant with his right feet still in plaster.

9. Further taken into consideration the judgment of the Supreme Court in the case of **Rajkumar Vs. Ajay Kumar and Anr. (2011) 1 SCC 343**, this court taking advantage of the preposition of law laid down in the said judgment feels it fit that in the instant case, considering the percentage of disability assessed by the Doctor if we take into consideration the overall loss of earning capacity which might have been sustained by the appellant by virtue of the injury, appears to be 50% of what he was earning prior to the accident.
10. Another aspect which cannot be brushed is the fact that during the cross-examination of the claimant before the court below on a question put by the counsel for the Insurance Company he has specifically stated that because of the accidental injury he has not been able to walk without clutches (Baisakhi) and that he moves around only with the aid of Tricycle.
11. Considering the aforesaid factual matrix of the case this court is of the opinion that, it would meet the end of justice if the percentage of the overall disability and loss of income of the appellant is assessed at 50%. Further since the accident was of the year 2003 this court has no hesitation in reaching to the conclusion that monthly wage of the appellant at the relevant point of time must have been Rs.3000/- taking Rs.100/- as per day income and if 1,500/- i.e. 50% under the head of future prospect is added to it, it makes Rs.4,500/- per month and the annual income would become Rs.54,000/-. If considering age of the appellant annual income is multiplied by applying multiplier of 18 then the amount would become Rs.8,10,000/- of which if 50% is accepted to be the loss of earning capacity of the appellant would become Rs.4,05,000/- and it is ordered accordingly that the appellant shall be entitled for compensation of Rs.4,05,000/- as loss of earning capacity by virtue of the accident instead of Rs.1,50,000/- as awarded by the Tribunal under this head. Rest of the amount as awarded by

the Tribunal shall remain intact. The enhanced amount of Rs.2,49,000/- shall also carry interest at the same rate as has been awarded by the Tribunal.

12. With the aforesaid modification, the appeal stands allowed.

Sd/-
(P. Sam Koshy)
Judge

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