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NAFRHIGH COURT OF CHHATTISGARH, BILASPURMisc. Appeal No. 1101 of 2005

1. Sidhant S/o S. R. Gawade (legal guardian) aged about 4 years (minor through legal guardian, Ad - litem father S. R. Gawade) ...

2. S. R. Gawade S/o late B. S. Gawade, aged about 45 years

Both are resident of village Mulla, Tahsil Bhanupratap pur, District Kanker (CG)

---- Appellants

Versus

1. Dwarika Prasad Yadav S/o Mansharam Yadav, R/o Old Market Dalli Rajhara, Tah. Balod, District Durg (CG) (Motor Driver)

2. National Insurance Co. Ltd., Gill Complex Station Road near Gurudwara Durg, Dist. Durg (CG) Mandal Office, P. B. No. 123, Korba -495678 (CG)

3. Taj Md. S/o Md. Ibrahim aged about 45 years R/o behind Santoshi Mandir, Bhanupratappur, Tah. Bhanupur, Dist. Kanker (CG) (Motor Driver)

4. Dashrath Rao Shinde S/o B. R. Shinde, R/o Thakur Rroad Jagdalpur Hal Ganjpara, Dist. Durg (Motor Driver)

5. National Insurance Co. Ltd Branch No.2, Raipur (CG)

---- Respondents

For Appellants
For Respondent no.2

: Smt. Renu Kocher, Advocate
: Shri Qumrul Aziz, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

10/07/2017

The instant appeal under Section 173 of the motor Vehicles Act has been preferred by the Claimants seeking enhancement of the compensation awarded by the 1st Additional Motor Accident Claims Tribunal, Kanker in Claim Case No. 68/2003 in its award dated 24.01.2005.

2. The fact in nutshell is that the claimants have filed a claim application under Section 166 of the Motor Vehicles Act before the Claims Tribunal seeking for compensation of Rs.1,05,000/-. According to the claimants, on 16.06.2002 when claimant no.1 minor Sidhant along with his family members was travelling in a Marshal jeep bearing registration no. CO/04/ZD1164 to Bhilai, it was dashed with a truck bearing registration no. CG 07 ZC 0653 which was being driven by respondent no.1 as a result of the accident the minor claimant no.1 received multiple injuries. A report in this regard was also lodged before the Police Station Bhanupratappur in Crime No.109/2002 for the offence under Sections 279 and 337 of IPC.

3. After the pleadings were complete and the evidences were led on behalf of the parties, the Tribunal vide impugned award dated 24.01.2005 allowed the claim application granting Rs.30,220/- as total compensation to the claimants. Out of the said amount, Rs.10,220/- towards medical expenses and only Rs.20,000/- towards compensation for disability has been granted.

4. It is this award dated 24.01.2005 which is under challenge by the claimants seeking enhancement of the compensation.

5. Counsel for the appellants took the Court through the evidence which has come on record particularly in respect of the nature of injuries which were sustained by the minor. Paragraph-8 of the impugned judgment itself discusses the nature of injuries, reading of which would reflect that the injured had sustained fracture of his nose and had also received cut injury on the left eye lid. It is also reflected that the minor child was hospitalized for a period of 11 days and the Medical Board which had examined the child gave a report of the child getting 15% permanent disability. This evidence which has been led by the claimants side has not been controverted or rebutted by the respondents in any manner. In the absence of any rebuttal, the evidence so led by the claimants has to be accepted.

6. If we take into consideration the nature of injury sustained by the 4 years old child at the time of accident, apparently the nature of injury sustained must have definitely caused sever pain, anxiety and suffering to the minor. Moreover, the child admittedly, was hospitalized for more than 11 days which again must have given a feeling of trauma to the family members as well as to the minor. If we take into consideration all these facts and circumstances and coupled with the fact that there is a permanent disability of 15% to the minor child, the compensation of Rs.20,000/- which has been awarded by the Tribunal is definitely on the lower side and the same thus needs enhancement.

7. Considering the entire evidence which has come on record particularly the nature of injury sustained by the child and the fact that the child was hospitalized for 11 days and he has sustained 15% of permanent disability, this Court is of the opinion that ends of justice would meet if the compensation is compositely enhanced from Rs.20,000/- to Rs.90,000/- and it is ordered accordingly.

8. The claimants would be entitled for the total compensation of Rs.1,00,220/- of which the Tribunal has already awarded Rs.30,220/-. Thus, they would be entitled for the balance enhanced amount of Rs.70,000/-.

9. Accordingly, the respondent Insurance Company is directed to deposit the difference of compensation in the light of the order of this Court to the tune of Rs.70,000/- within a period of two months from the date of receipt of the certified copy of this order. The other conditions which have been directed by the Tribunal shall remain intact inclusive that of interest.

10. With the aforesaid modification to the impugned award, the appeal stands allowed.

Sd/-
P.Sam Koshy
Judge