

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1542 of 2016

- Vivek Shrivastava S/o Suresh Shrivastava, Aged About 33 Years R/o Mamta Nagar,
Gali No. 3, Ward No.16, Police Station & District- Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. D. R. Kori S/o M.R.Kori, Aged About 47 Years R/o Shantipura, Camp-2, Steel Nagar,
Bhilai, Police Station- Chhavani, District- Durg, Chhattisgarh
2. Iffco Tokio General Insurance Company Limited, 29 Gudgaon, Through: Branch Office,
Contractor Colony, Bhilai, District Durg, Chhattisgarh

---- Respondent

For Petitioner	:	Shri Abhishek Sharma, Advocate.
For respondent No.2	:	Shri K. Rohan and Amrito Das, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

13/09/2017

1. Heard.
2. This appeal has been brought by the appellant for enhancement of the quantum of compensation given in award dated 21.06.2016 by the learned Motor Accident Claims Tribunal, Rajnandgaon, Chhattisgarh in Claim Case No.92/2014.
3. Appellant met with an accident on 05.012.2013 when he was dashed by a vehicle bearing registration No.07/M/0821 driven by respondent No.1, the registered owner of the said vehicle. Grievous injury were caused to the appellant by way of fracture on his left hip and femur bone. After getting treatment from the hospitals, appellant could not become normal and he was certified to have 60 per cent permanent disability. Respondent No.2 is the

insurer of the offending vehicle. Claim was filed before the learned tribunal below which was contested by the respondents and impugned award has been passed in which total compensation of Rs.2,41,535/- was granted to the appellant.

4. The grounds in this appeal are these that the learned tribunal below has erred in making assessment of the compensation. It was proved by the appellant that he had suffered 60 per cent permanent disability, despite that findings has been given that appellant has not suffered any permanent disability. Similarly, the learned tribunal has also not awarded compensation under the heads of future medical expenses. Income of appellant was also not taken into consideration. Hence, prayed that the compensation awarded by the tribunal below be suitably enhanced.
5. Learned counsel for respondent No.2 submits that no issue was framed by the tribunal on the basis of pleadings of the appellant that he is permanently disabled and appellant never moved any application before the tribunal praying for framing of additional issue. Although, certificate Ex.P41 is produced before the Court but that has not been proved, hence, there is no finding given by the learned tribunal on the point of disablement of the appellant. It is also submitted that learned tribunal has graciously awarded compensation to the appellant and there is no need of any enhancement.
6. Question for determination in this case is whether the appellant is entitled for enhancement as prayed for?
7. In the inquiry before the learned tribunal below, no issue was framed on the point of disablement of the appellant. This is a fact. In the evidence the appellant it has come that because of the injury suffered by him in the accident he has sustained 60 per cent permanent disability and due to which he has become

disabled and unable to do his work normally. In cross-examination, he has stated that prior to the accident, he was working as Property Dealer and also doing the work of General Insurance, which are the field work and for which he had to go out, but after the disability he is unable to move on motorcycle.

8. Dr. Y.K. Tiwari (AW-2) has been examined who has stated that certificate was issued by the Medical Board, Rajnandgaon in favour of appellant certifying that he has suffered 60% permanent disability which is of progressive in nature. The certificate Ex.P-41 has been proved. In cross-examination, he has admitted that no reference has been made to the documents produced by the appellant when he was examined for disability. This is a fact which has not been taken into consideration by the Tribunal.

Anyhow, it appears that the assessment made by the tribunal regarding loss of income of the appellant need no interference because there was no documentary proof on record. However, the compensation granted under the head of pain and suffering is on the lower side and therefore it is enhanced to Rs.50,000/-. The assessment under the loss of amenity is also on the lower side which is enhanced to Rs.50,000/-. No assessment has been made under the head of future expenses as it was a finding of the doctor that the disability caused to the appellant was progressive in nature which implies that he would require future treatment for the accidental injury as well. Hence, under that head the compensation of Rs.1 lakh is awarded to the appellant. There is no need to interfere with the compensation awarded under the other heads by the learned tribunal below. Hence, after the enhancement in heads and additional compensation and taking in calculation all the other compensation awarded by the Tribunal a total of 3,91,535.00/- is the compensation for which appellant is entitled accordingly.

9. On the basis of the finding arrived at in this appeal, this appeal is allowed. The compensation awarded of the appellant is enhanced to Rs.3,91,535.00/- which shall be paid by the respondents jointly and severally within a period of 90 days from the date of this judgment. On failure of respondents in payment of compensation awarded, interest @ 9% shall be chargeable from the date of this judgment till its realization.

10. In the result, the appeal is allowed. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE

Nisha.