

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1296 of 2009**

Sohan Sahu @ Raj Sahu S/o Shri Munna Sahu, aged 14 years (Minor) through his mother Smt. Meena Sahu W/o Shri Munna Sahu, aged about 30 years, R/o Shivanand Vidhya Mandir, Shree Nagar, Distt. Raipur (CG).

---- Appellant**Versus**

1. Lokesh Kumar @ Lucky Sharma, S/o Subhash Sharma, aged 29 years, R/o near Naya Talab, Gudhiyari, Distt. Raipur (CG).
2. Devendra Singh S/o Babu Singh, aged 50 years, R/o Ranjit Wires, Station Road, Gandhi Nagar, Gudhiyari, Distt.-Raipur (CG).
3. Branch Manager, New India Insurance Co. Ltd., Kachahary Chouk, Distt.-Raipur (CG).

---- Respondents

For Appellant	:	Shri Ghanshyam Patel and Shri JK Gupta, Advocates.
For respondent No.3	:	Shri Deepak Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****11.10.2017.**

1. The present is an appeal under Section 173 of the Motor Vehicles Act (for short, the MV Act) filed by the claimant seeking enhancement of compensation against the award dated 11.08.2009 passed by the 9th Additional Motor Accident Claims Tribunal (FTC), Raipur (for short, the Tribunal) in Claim Case No.62 of 2009.
2. Considering the fact that it is an appeal of the year 2009, and no one appears on behalf of the appellant, this court thought it fit to proceed further and decide the case on merits with the assistance of Shri Ghanshyam Patel and Shri JK Gupta, Advocates.
3. The facts of the case is that on 16.06.2008 the appellant who was going on Scooter was hit by Wagon-R car bearing registration No.CG-

04-HA-6391 which was being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. As a result of the said accident, the appellant sustained multiple grievous injuries on his right hand and during the course of treatment his right hand had to be amputated.

4. The appellant had filed claim application under Section 163-A of the MV Act. The Tribunal vide judgment impugned awarded a compensation of only Rs.10,000/- along with interest @ 7.5 percent per annum from the date of application.
5. During the course of hearing though it was adduced that due to said accident the right hand of the claimant had to be amputated, the Tribunal has not accepted this plea on the ground that there is no evidence to establish that the amputation is as a result of the said accident. The present appeal is filed by the claimant challenging the said finding of the Tribunal as also claiming suitable compensation for loss of his right hand.
6. The contention of the appellant is that, there has been sufficient evidence led by the claimant to establish that as a result of the accident he had received multiple grievous injuries on his right hand and the said injuries had led to the amputation of his right hand at a later stage. The Doctor in the instant case has also given a disability certificate certifying that the disability of the appellant as a result of the loss of right hand is of 70 percent. It was further contended that the doctor himself was examined before the Tribunal i.e. Dr. P.K. Gupta, who had issued the certificate and who is also a member of District

Medical Board and who is also an Orthopedic specialist. Thus, the accident and amputation stand fully established and therefore, the findings of the Tribunal to that extent is said to be bad in law.

7. Learned counsel appearing for the respondent No.3-insurance company submits that it is a case where the assessment of 70 percent disability assessed by the doctor is on the higher side as functional disability on amputation of the right hand would only be around 50 percent. Thus, prayed for rejection of the appeal.
8. Considering the facts and circumstances of the case particularly the fact that factual matrix of the case is undisputed to the fact that accident occurred on 16.06.2008 and the accident was occurred from the vehicle belonging to the respondent No.2, insured by the respondent No.3 and driven by respondent No.1. As a result of the accident, the injuries sustained by the claimant was also that of multiple and grievous resulting into amputation of his right hand from below the elbow.
9. Dr. P.K. Gupta, an Orthopedic Specialist and member of the District Medical Board had deposed before the Tribunal and had also issued certificate certifying the permanent disability of the claimant at 70 percent, thus, this court has no hesitation in reaching to the conclusion that considering the evidence which have come on record and the statement of doctor examined, coupled with the fact that it was the right hand which received grievous injury and which had to be amputated later on, forces this court to draw an inference that the amputation of the right hand of the claimant was as a result of the

injuries received from the said accident that occurred on 16.06.2008. In view of the same, the finding of the Tribunal that there was no nexus between the amputation of the hand to the accident is erroneous and perverse and the same is accordingly set aside and it is held that the amputation of right hand of the appellant was on account of the accident which he had met on 16.06.2008.

10. So far as quantification of compensation is concerned, the age of the appellant at the time of accident as assessed by the Tribunal is 15 years and if the notional income is to be accepted, the safest income for the accident that took place in June, 2008, would be Rs.36000/- annually treating per month income at Rs.3000/-. Thus, this court proceeds to quantify the compensation accepting the monthly income of the appellant at Rs.3000/-.
11. What is also relevant at this juncture to consider is that the Tribunal itself in paragraph 13 of its judgment has clearly held that the claim application of the claimant have been treated to be one under Section 166 of the MV Act instead of 163-A MV Act.
12. Accepting Rs.36000/- as the annual income of the claimant if 50 percent of it i.e. Rs.18000/- is added towards future prospect, the amount would come to Rs.54,000/- which if multiplied by applying the multiplier of 15, the amount would come to Rs.8,10,000/-. If 70 percent is the disability, the loss of earning capacity would be 70 percent of 8,10,000/- which comes Rs.5,67,000/- and the same would be the loss of earning capacity. It is ordered accordingly.
13. So far as grant of compensation under other heads are concerned,

indisputably, the claimant at the time of accident was aged around 15 years. The appellant must have suffered great amount of mental agony and pain and suffering during the course of treatment which ultimately led to the amputation of his right hand. Thus, this court quantifies the compensation under pain and suffering at Rs.1,00,000/-. Likewise, there are certain areas which cannot be compensated or quantified particularly in cases of amputation like loss of amenities in life. Considering the age of the appellant and that by virtue of amputation of his right hand he would not be in a position to move freely as he was moving prior to the accident. Further, he would not be able to go in for a career which would require both his hands and there would be many such practical difficulties which he would face including that of unable to drive Car and motorcycle. For all these amenities of life, this court quantifies the compensation at Rs.1,00,000/-.

14. Likewise, the appellant is also entitled for appropriate compensation for getting an artificial limb affixed and for the same, this court quantifies the compensation at Rs.50,000/-. Further, the appellant must have also incurred considerable amount of medical expenses of which he may not have had sufficient proof or evidence. Considering the background of the appellant and the injuries suffered by him and that he must have also in the process of his medical treatment had incurred certain travel expenses and also expenses towards engagement of attendant, special diet and transportation. Thus, for all these heads, this court quantifies the compensation at Rs.25,000/-.

15. Thus, the appellant-claimant shall now be entitled for a total compensation of Rs.8,42,000/- instead of Rs. 10,000/- as awarded by the Tribunal. The said enhanced amount of compensation shall also carry interest at the same rate what has been awarded by the Tribunal.

16. The appeal thus stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

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