

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 893 of 2014

- Shambhunath Ramawater Yadav S/o Ramawatar Yadav Aged About 52 Years R/o
Street No. 07, Plot No. 280, Shanti Nagar, Bhilai, P.S. Supela, Distt. Durg C.G.

---- Petitioner

Versus

1. Shatruhan Lal & Ors. S/o Ganesh Ram Lodhi Aged About 33 Years R/o Nandani
Khundani, P.S. Nandani Ahiwara, Distt. Durg C.G.
2. Ashutosh Singh S/o Ashok Singh R/o Smriti Nagar, Situated At Main Road, Rana
Transport Nehru Nagar, Bhilai, Distt. Durg C.G.
3. The National Insu.Co.Ltd. Thru- Branch Manager, Branch Bhilai Nagar, Office Address-
Akash Ganga Campus Supela, Bhilai Nagar, Tah. And Distt. Durg C.G.

---- Respondent

For Petitioner	:	Shri Ratan Pusty, Advocate.
For respondent No.3	:	Shri S.P. Sahu, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

12/09/2017

1. Heard.
2. This appeal has been preferred against the award dated 29.03.2010 passed by
the learned 8th Additional Motor Accident Claims Tribunal (FTC), Durg in Claim
Case No.88 of 2009 seeking enhancement of compensation awarded in favour
of the appellant.
3. The appellant has filed an application under Section 166 of the Motor Vehicles
Act, 1988 seeking compensation to the tune of Rs.17,33,500/- stating therein
that on 4.3.2008 at 5.10 p.m. the appellant met with an accident caused by

dumper bearing registration No.C.G.-07C 6592, driven rashly and negligently by respondent No.1, which collided with appellant and he sustained grievous injury. Respondent No.2 is the registered owner of the dumper, whereas it was insured with the Insurance Company i.e. respondent No.3. After undergoing treatment, the permanent disability of the appellant was determined at 20%. Claim was contested by the respondents and the issues framed were determined in the award. It was held that the driver of the dumper bearing registration No.C.G. No.07-C-6592 respondent No.1 was negligent because of which the accident occurred. It was also held that appellant has suffered 20% permanent disability because of the injury caused to him in this accident. Respondent No.1, 2 and 3 were jointly and severally held liable and after doing calculation, an award of compensation of Rs.2,27,150/- under the head of loss of earning etc. was passed in favour of the appellant.

4. The grounds in this appeal are these that the compensation assessed by the learned tribunal is on the lower side because the tribunal while assessing the compensation has not taken into consideration the reduction of income of the appellant. Hence, prayed that the assessment be made accordingly and the compensation awarded by the learned tribunal below be enhanced suitably.
5. It is submitted by learned counsel for the petitioner that the petitioner was in the service of Railways and his carrier was not affected on account of the injury suffered by him. Though the permanent disability had been caused to him but he is entitled for loss of amenity looking to the grievous injury caused to him and permanent disability suffered by him. It is also submitted that Rs.5,000/- only was assessed by the Tribunal for pain and suffering which is on the lower side. The appellant had to remain on leave during his treatment and the same has also caused loss of his earning because the leave in his credit could have been encashed by him. Hence, prayed that the compensation be enhanced suitably.

There is also a finding of contributory negligence according to which appellant has been held 10% liable to the cause of accident.

6. Learned counsel for the respondent No.3 opposed the grounds in this appeal and the arguments submitted in support of enhancement of compensation. It is submitted that the learned tribunal below has correctly assessed and awarded the compensation in favour of the appellant. There is no scope for interference in the impugned award.
7. Question for determination in this appeal is whether the compensation granted to the appellant is just and proper.
8. Perused the record of the claim case. It is apparent that the compensation awarded for pain and suffering is on the lower side and that loss of leave which could have been encashed has not been counted for while assessing the compensation. It is not disputed at this stage that appellant has suffered 20% permanent disability which has affected his quality of life for the rest of the period which he is going to live. Hence, the loss of amenity which has been granted by the learned tribunal also needs some enhancement. Taking into consideration all these factors, the enhancement of Rs.1 lakhs appears to be just and proper which shall be in addition to the compensation already awarded by the learned tribunal below.
9. Thus, the appeal is partly allowed. The total compensation for which appellant is entitled for Rs.3,27,150/- (2,27,150+1,00,000). If the award of the Claims Tribunal has already been satisfied, deducting the amount of compensation already paid, the remaining amount of compensation shall be paid to the appellant/claimant by respondents No.1, 2 and 3, jointly and severally, within a period of 60 days from the date of this judgment. On failure of respondents in making payment of compensation awarded, interest @ 9% shall be chargeable

from the date of this judgment till its realization.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE

Nisha.