

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No.522 of 2011

Praveen Kumar Chandrakar S/o Bharatbhushan Chandrakar, aged about 18 years, R/o Ward No.5 Kurmipara, Chhuikhadan, P.S. & Tahsil Chhuikhadan, District Rajnandgaon (C.G.).

---Appellant

Versus

1. Dashrath Yadav S/o Ramcharan Yadav (Driver), R/o Jangalpur, Post Pandadah, Police Station & Tehsil Khairagarh, District Rajnandgaon (C.G.).
2. Dinesh Ranglani S/o Late Arjundas Ranglani, R/o Near old Bus Stand, Khairagarh, District Rajnandgaon (C.G.).
3. The Oriental Insurance Co.Ltd., Branch Office Kamthi Line, Rajnandgaon, District Rajnandgaon (C.G.).
4. Abdul Sahid S/o Abdul Salim, aged about 32 years, R/o Station Para, Rajnandgaon, District Rajnandgaon (C.G.).
5. Bajaj Allianz General Insurance Company Ltd. Branch Office, In front of Rajkumar College, Near ICICI Bank, G.E. Road, Raipur, District Raipur (C.G.).
6. (a) Smt.Pramila Bai W/o Late Dhan Singh Verma, aged about 54 years.
(b) Vindo Kumar S/o Late Dhan Singh Verma, aged about 35 years.
(c) Shilendra Kumar S/o Late Dhan Singh Verma, aged about 34 years.
All are R/o 71/02, Baldev Bag near Srinath STD PCO Rajnandgaon, District Rajnandgaon (C.G.).

---Respondents

For appellant	:	Shri Abhishek Sharma, Advocate.
For resp.No.3	:	Ms.Chitra Shrivastava, Advocate.
For resp.No.5	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/12/2017

1. Present is an appeal by the claimant under Section 173 of the Motor Vehicle Act, 1988 assailing the award dated 31/01/2011 passed by the

learned Additional Motor Accident Claims Tribunal, Khairagarh (C.G.) in Motor Accident Claim Case No.32/2008.

2. Vide the said impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicle Act has awarded a compensation of Rs.1,37,365/- with interest @ 6% per annum from the date of application.

3. The counsel for the appellant/claimant submits that, the Tribunal has not properly assessed the income of the injured while quantifying the compensation. Likewise it was also contended that, the Tribunal has not properly assessed the permanent disability as the injury sustained by the present appellant was grievous in nature and that he had received permanent disability to the extent of 60% which has been duly proved and established before the Tribunal by the evidence of three doctors who were examined on behalf of the claimant. He further submits that, no compensation towards pain and suffering has been awarded for the grievous injuries that the appellant had sustained and thus prayed for suitable enhancement of the award.

4. The counsels for the two Insurance Company who have been jointly and severally saddled with the responsibility of payment of compensation at the ratio of 50:50 opposing the appeal submits that, the award passed by the Tribunal was just, fair and reasonable and that there was no scope of any interference for the reason that, the award is based upon the evidence which have come on record, particularly, considering the nature of injury sustained by the claimant was only that of fracture.

5. Having considered the contentions put forth on either side and on perusal of record this Court is of the opinion that, taking note of the fact that the accident in the instant case had occurred on 25/01/2008 and the claimant himself has been able to produced sufficient proof of he being engaged as a labourer and was earning around Rs.150/- per day i.e. Rs.4,500/- monthly and considering the period of accident and the nature of employment this Court has no hesitation in holding that, the monthly wages of the claimant ought to have been assessed at Rs.4,500/- instead of Rs.3,000/- as assessed by the Tribunal.

6. Likewise, taking into consideration the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar & Anr. [2011 {1} SCC 343]**, this Court assesses the total functional disability of the injured at 40% instead of 20% as has been assessed by the Tribunal and proceeds to quantify the compensation accordingly.

7. Accepting Rs.4,500/- as the monthly income of the injured/claimant, the yearly income would become Rs.54,000/- of which if 40% is considered to be the disability towards loss of earning capacity, the amount would come to Rs.21,600/- which if multiplied by applying multiplier of 18, the amount would become Rs.3,88,800/-. It is ordered accordingly that the claimant shall be entitled for a compensation of Rs.3,88,800/- towards loss of earning capacity. In addition, the claimant shall also be entitled for compensation towards medical expenses incurred including travelling expenses of Rs.79,765/- as has been awarded by the Tribunal. Further considering the

nature of injury this Court assesses the amount of compensation towards pain and suffering and mental agony at Rs.31,435/- to make the total compensation payable to the claimant at Rs.5,00,000/-. Thus, the claimant shall be entitled for total compensation of Rs.5,00,000/- instead of Rs.1,37,365/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

8. The liability of payment of compensation shall remains the same as has been apportioned by the Tribunal.

9. The appeal thus stands allowed and disposed off.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE