

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1259 of 2010**

Narottam Lal Varke S/o Shivprasad Varke, caste Mahar, occupation Field Officer, P.A.C.L. India Company Limited, R/o village Karamtara, Police Station Ambagarh Chowki, District Rajnandgaon (CG)

---- Appellant**Versus**

1. Tameshwar Sahu S/o late Udayram, occupation driver, R/o village Karamtar, Police Station Lalbag, District Rajnandgaon (CG)
2. Smt. Sarita Agrawal W/o Narayan Agrawal through M/s Suresh Brothers, Ganjline, Rajnandgaon (CG)
3. Branch Manager, the Oriental Insurance Company Limited, Branch Office Kamthi Line, Rajnandgaon (CG)

---- Respondents

For Appellant	:	Shri Abhishek Sharma, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****23/11/2017**

Present is a claimant's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 24.09.2010 passed by the 1st Additional Motor Accident Claims Tribunal, Rajnandgaon (CG) in Claim Case No. 29/2009. Vide the impugned award the Tribunal in an injury case under Section 166 of MV Act has awarded a compensation of Rs.2,41,000/- with interest at the rate of 6% per annum from the date of application.

2. Counsel for the appellant submits that the amount of compensation awarded by the Tribunal is unreasonably low for the reason that the doctor who has been examined has assessed the disability at 60% whereas the

Tribunal has taken the disability at 15% for calculating the compensation. The claimant had also stated before the Tribunal that his earning was Rs.10,000/- a month whereas the Tribunal has assessed the monthly income of only Rs.3,000/- which is unreasonably low considering the fact that the accident in the instant case took place on 13th October, 2008 where the minimum income of even an unskilled labour would have been rupees 4,500 to 6,000 a month. Counsel for the appellant further submits that the appellant is still undergoing treatment as in spite of all these periods and treatment, the injury has till date not healed up completely. Counsel for the appellant has produced additional documents along with the appeal to show the subsequent treatment which the appellant has undertaken including recent photographs to show the gravity of injury. Thus, prayed for the compensation to be suitably enhanced.

3. Counsel appearing for the Insurance Company opposing the appeal submits that the award of compensation seems to be just and reasonable considering the nature of injury and the age of the claimant. Thus, prayed for rejection of the appeal.

4. Having considered the contentions put forth on either side and on perusal of the record undisputed is the date of accident, the vehicle involved in the accident and the resultant injury sustained by the appellant. It is also not in dispute that the claimant in the instant case was treated at different places. He has also led the evidence of doctor Prakash AW-2 who has certified the medical certificate issued by the District Medical Board assessing the disability at 60%. If we look into the photographs and the nature of injury sustained by the claimant, it would reflect that the injury is apparently grievous in nature and it has still not completely been healed up and the claimant is still undergoing treatment. There were also multiple fractures as is evident from the deposition of the doctor who has stated that the femur bone of right thigh

got fractured. Similarly, tibia and fibula bones of right leg also got fractured. In the course of treatment, there was stiffness that has arisen on his right knee. Thus, there is definitely great amount of functional disability that has accrued by virtue of the said disability. Though the doctor has assessed the disability at 60%, this Court taking into consideration the overall disability which the injured must have suffered assesses it at 35% i.e. a little more than half what has assessed by the medical Board and proceeds to calculate the compensation accordingly.

5. Taking into consideration the period of accident which is October, 2008 this Court quantifies the notional income of the injured at Rs.4,500/- a month in stead of Rs.3,000/- as assessed by the Tribunal which would bring the yearly income at Rs.54,000/- of which if 35% is taken as the loss of earning capacity by virtue of the disability assessed at 35%, the amount would come to Rs.18,900/-. If the said amount is multiplied applying the multiplier of 15, the amount would come to Rs.2,83,500/-. The Claimant shall be entitled for the loss of earning capacity of Rs.2,83,500/- in stead of Rs.81,000/- as assessed by the Tribunal. The claimant shall also be entitled for compensation under the other heads like pain and sufferings, special diet, transportation and engagement of an attendant etc. as awarded by the Tribunal i.e. Rs.20,000/-. In addition, from the record which has been produced by the claimant in the present appeal along with the photographs there appears to be a subsequent medical expenses also incurred by the claimant which as of now stands quantified an amount of Rs.50,000/- in addition to Rs.1,40,000/- which has already been awarded by the Tribunal towards the subsequent medical expenses incurred by the claimant. Thus, the claimant shall be entitled for a total compensation of Rs.4,93,500/- in stead of Rs.2,41,000/- as awarded by the Tribunal. The enhanced amount of

compensation shall also carry interest at the same rate as has been fixed by the Tribunal.

6. The appeal thus stands allowed and disposed of.

**Sd/-
(P. Sam Koshy)
JUDGE**