

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 274 of 2006**

Kamleshwar @ Kameshwar Singh S/o Virendra Singh, aged about 21 years, profession Heavy Vehicle Driver, R/o Supela, Bhilai, District Durg (CG)

---- Appellant**Versus**

1. Abbas Khan S/o Rahman Khan, aged about 40 years, R/o Chichola, District Rajnandgaon, C/o Rokad Road Lines, Station Raod, Rajnandgaon (CG)
2. Sayed Mobin Ahmad S/o Sayed Umar Bhai, C/o Rokad Road Lines, Rajnandgaon (CG)
3. The Oriental Insurance Co. Ltd. Kamthi Line, Rajnandgaon through the Oriental Insurance Company Limited, Malviya Nagar, Durg (CG)

---- Respondents

For Appellant	:	Shri Raghvendra Verma, Advocate
For Respondent No.3	:	Shri Arvind Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06/09/2017**

The appeal is of the year 2006. Since there was no representation on behalf of the appellant, this Court thought it fit engaging Shri Raghvendra Verma, advocate for assisting this Court for disposal of the appeal.

2. The present is an appeal preferred by the claimant under Section 173 of the Motor Vehicles Act assailing the award dated 25.01.2006 passed by the 10th Additional Motor Accident Claims Tribunal (FTC) Durg (CG) in Claim Case No. 307 of 2005.

3. The facts of the case in brief are that on 11.09.2004 the appellant who was the driver of a truck bearing registration No. CG 04 ZC 1232 met with an accident when his truck was dashed by another truck bearing registration No. CG 08 ZC 0147 coming from the opposite direction which was owned by respondent no.2 and driven by respondent no.1. As a result of the accident, the appellant sustained grievous injuries on his body and his right leg got totally crushed. During the course of treatment, the right leg of the appellant had to be amputated from the knee. The appellant subsequently filed a claim application under Section 166 of the Motor Vehicles Act.

4. The Tribunal after considering the evidences and the pleadings which have come on record passed the impugned award on 25.01.2006 holding that there appears to be a contributory negligence in the accident to have arisen. Thus, the Tribunal fastened the percentage of negligence on either side in equal ratio and quantified the compensation at Rs.4,86,000/- of which 50% was deducted for contributory negligence which comes to Rs.2,43,000/-. In addition, an amount of Rs.68,584/- was added towards medical expenditure and Rs.25,000/- for pain and suffering. Thus, the appellant was granted total compensation of Rs.3,36,584/-.

5. It is this award which is under challenge by the appellant-claimant in the present appeal.

6. The contention of the counsel for the appellant is that the award passed by the Tribunal is erroneous to the extent that there was no sufficient material available on record to fix the contributory negligence part. Counsel for the appellant submits that the injury which the appellant suffered has affected 100% of his earning capacity and therefore, the appellant should have been paid compensation for 100% disablement and not 75% as assessed by the Tribunal. It was further contended that since it was a case of amputation, the appellant should have been granted suitable compensation for affixing

artificial limb. The appellant ought to have been granted more compensation under the head of pain and suffering considering the nature of injury sustained. Further, it was found that the bills which were produced before the Tribunal pertaining to the medical expenses as also for the purchase of nutritious food and for engagement of attendant have not been fully accepted by the Tribunal and the same deserves to be reconsidered.

7. Counsel for the Insurance Company, however, opposing the appeal submits that it is a case where the doctor has deposed before the Tribunal of having suffered the appellant 75% disability. Thus, the Tribunal has rightly accepted 75% disability and quantified the compensation accordingly. Further, considering the fact that the accident is of the year 2004, the compensation awarded for pain and suffering appears to be just and reasonable and the same does not warrant any interference.

8. Having considered the contentions put forth on either side and on perusal of the record what clearly reflects is the fact that there was no material available for the Tribunal to reach to a conclusion of there being a contributory negligence. The only reason for the Court below to reach to a conclusion of contributory negligence was the fact that there was a head on collision. However, the record does not show of the appellant having crossed over the road or even parked on the center of the road which caused the accident. On the contrary, there is a deposition of the appellant and which has also been supported by AW-3 Munna, the helper of the truck in which the appellant was travelling who has categorically deposed that when they saw the offending truck coming from the opposite direction rashly and negligently, they brought their truck beside the road and halted the truck but in spite of that, the offending vehicle i.e. the truck bearing registration No. CG 08 ZC 0147 hit the vehicle which was being driven by the appellant. In the absence of any evidence in rebuttal, the said contention has to be accepted to establish the

fact that the appellant had taken all necessary precautions available to him trying to avoid the accident and it was only because of the negligence on the part of the driver of the offending truck coming from the opposite direction which caused the accident. The further reason for the Court below to reach to a conclusion of contributory negligence was pertaining to the drivers of both the vehicles involved in the accident being charged in the criminal case. The record shows that the FIR and the final report which were brought before the Court below had only the respondent no.1 as an accused person and there was no mention of the appellant being prosecuted in the criminal case. However, in his cross-examination, the appellant has admitted of having obtained bail in a criminal case but the details of which are not either available on record or clarified in the further cross-examination. Even otherwise, mere getting implicated in a criminal case by itself would not be sufficient to arrive at a conclusion of contributory negligence particularly when there is evidence from an eye witness AW-3 Munna Singh who was travelling in the truck involved in the accident.

9. Thus, the finding of the Tribunal awarding the contributory negligence is without any sufficient material on record and the same deserves to be and is accordingly set aside.

10. So far as the claim for enhancement of the compensation is concerned, considering the period of accident i.e. 2004 and that there is no evidence to prove the pay slip produced by the appellant, this Court is of the opinion that the Tribunal has rightly taken Rs.3,000/- as the monthly income of the appellant. Thus, the yearly income would be Rs.36,000/-. However, on perusal of the record it appears that the total bills which were submitted by the appellant pertaining to the medical expenditure, the engagement of an attendant and also the purchase of nutritious food were for an amount of Rs. 93,350/- of which the Tribunal has allowed only Rs.68,584/- which appears to

be only in respect of the purchase of medicines. What cannot be brushed aside is the fact that since it is a case where as a result of the accident the appellant's right leg got completely crushed which had to be amputated from knee for which he had to undergo treatment for a considerable period of time during which he must have engaged an attendant and also must have required incidental transport expenses which could not have been denied by the Tribunal. It is thus ordered that the appellant shall be entitled for an additional amount of Rs.24,766/- for which he had produced bills during the evidence before the Tribunal in addition to what has already been granted.

11. Further considering the evidences which have come on record more particularly the admitted fact that as a result of the accident the right leg of the appellant had to be amputated and also the fact that the appellant was a driver by profession and he incurred injury while discharging his duties as a driver and subsequent to the accident now he is not in a position to work as a driver any longer, this Court is of the opinion that there is a 100% loss of income. Considering the judgment of the Supreme Court in the case of **Pratap Narain Singh Deo Vs. Srinivas Sabata and another** reported in **(1976) 1 SCC 289** and also in the case of **S. Suresh Vs. Oriental Insurance Company Ltd. & Anr.** reported in **2010 AIR SCW 437** this Court has no hesitation in reaching to the conclusion that the appellant would be entitled for compensation of 100% loss of income. If the yearly income of the appellant i.e. Rs.36,000/- is multiplied by applying the multiplier of 18, it comes to Rs.6,48,000/-. Thus, the appellant shall be entitled for Rs.6,48,000/- towards loss of income.

12. As regards the compensation under the head of pain and suffering, considering the period of treatment which the appellant underwent till his amputation and till the subsequently entire wounds were healed during which the appellant undoubtedly would have suffered immense pain and suffering

and agony, this Court quantifies the compensation under this head at Rs.1,00,000/-. Likewise, for getting an artificial limb prepared, the average cost of Rs.1,00,000/- would be required and therefore, this Court quantifies Rs.1,00,000/- towards cost of getting an artificial limb. By virtue of the amputation of right leg, the appellant suffered a great loss of amenities that he would otherwise have enjoyed which would also affect his future career as he would not be able to go for any employment which otherwise requires physical nature of work. To meet the ends of justice, this Court quantifies Rs.50,000/- for the loss of amenities.

13. Thus, in all the appellant shall be entitled for an amount of Rs.9,91,350/- in stead of Rs.3,36,584/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been assessed by the Tribunal.

14. The appeal thus stands allowed.

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