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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 580 of 2013

Girendra Kumar Verma S/o late Sukhnandan Verma, aged about 24 years, R/o Kotra, Post- Udaypur, P.S. Chhuikhadan, Distt. Rajnandgaon C.G.

---- Appellant

Versus

1. Mohd. Akhlak S/o Aseem Ali, R/o Habeeb Nagar, Nai Basti, Panch Pavli Tekanaka, Nagpur, Distt. Nagpur (M.H.)
2. Paramshakti Distributor Pvt. Ltd. Plot No. 1448, Steel Yard, near Ganesh Ganpati Karkanna, Kalyan Thene (Maharashtra) at present Verdhman Nagar, Nagpur (M.H.) (Owner of truck trailer No. M.H. 06 AC 3425)
3. Policy Insurance Authority, Office I.C.I.C.I. Lombard, Janith House, Keshav Rao Khadyamarg, Mahalaxmi, Mumbai (M.H.), 400034 Through the Branch Manager, ICICI Lombard General Insurance Company, tear Tarun Talkies, Railway Station Road, Durg C.G.

---- Respondents

For Appellant	:	Shri Avinash Chand Sahu, Advocate
For Respondent no. 3	:	Shri P. Acharya, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

06/11/2017

Present is an appeal by the claimant under Section 173 of the Motor Vehicles Act assailing the award dated 29.10.2011 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon in Claim Case No. 81 of 2008. Vide the impugned award, the Tribunal in an injury case has awarded a compensation of Rs.2,80,000/- with interest @ 6% per annum.

2. Counsel for the appellant submits that the disability compensation awarded by the Tribunal is on the lower side and the same deserves to be suitably enhanced. According to the counsel for the appellant, as a result of the accident which is not in dispute, the claimant had suffered injury to the extent of his right hand getting senseless and his right leg got fractured for which he had to be operated and steel rod/plate was inserted. The doctor has assessed permanent disability of 90% and therefore the compensation should have been awarded accordingly. He submits that the compensation awarded under other heads is also on the lower side which deserves to be suitably enhanced.

3. Counsel for the Insurance Company opposing the appeal submits that the Tribunal has given specific reasons and findings while reaching to the said computation of compensation. Therefore, the impugned award being just and reasonable does not warrant any interference.

4. Having heard the counsel appearing for the parties and on perusal of the record what is reflected is that the date of accident and the resultant injury sustained by the claimant is not in dispute. The vehicle owned by respondent no.2 so also the vehicle duly insured is not under challenge. What is further reflected from the record is that two doctors were examined before the Tribunal on behalf of the claimant. Dr. Prakash Bhale Rao AW-3 and Dr. Kedar Agrawal AW-4 both of whom have proved and established the injury and the treatment which the injured undertook after the accident. The doctors, however, have opined that the injured has suffered disability of 90%. The Tribunal has assessed the disability at 20% considering the overall disability which occurred because of the injuries and also keeping in view the fact that the claimant in the instant case was running a Kirana shop, as such he could still manage his business sitting in the counter of the said shop. This finding of the Tribunal seems to be too harsh for the reason that the injured at the time of accident was a young boy of 23 years and from the doctors' deposition it appears that his right hand had got senseless and there were grievous fracture injuries on his right leg which had to be operated and steel rod/plate to be inserted. This undoubtedly must have curtailed free movement of his body and his physical condition, which he was doing prior to the accident.

This would also adversely affect the future prospects of the claimant like marriage etc and he would also find it difficulty to participate in games and sports activities.

5. Considering the aforesaid factual matrix of the case, this Court is of the opinion that the assessment of disability at 20% seems to be on the lower side. The overall physical disability which the injured must have incurred would be around 45% in stead of 20% as assessed by the Tribunal and it is ordered accordingly. Accepting the income of the claimant to be Rs.36,000/- yearly, if 40% of the said amount is added towards future prospects, it reaches to Rs.50,400/- of which if 45% disability is assessed, the amount comes to Rs.22,680/-. If the said amount is multiplied by applying the multiplier of 18, the amount comes to Rs.4,08,240. It is ordered that the claimant shall be entitled for loss of earning capacity of Rs.4,08,240/-. In addition, the compensation awarded by the Tribunal towards medical expenses of Rs.1,53,790/- is ordered to remain intact. So far as the other incidental expenses are concerned, this Court is of the opinion that a lump sum compensation of Rs.37,970/- would meet the ends of justice in stead of Rs.8,585/- as awarded by the Tribunal making the total compensation payable at Rs.6,00,000/-. Thus, the claimant shall be entitled for a total compensation of Rs.6,00,000/- in stead of Rs.2,80,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

6. The appeal thus stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola