

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.592 of 2013**

Khorbehra Sahu S/o Shambhu Sahu, aged 35 years, R/o village Kukda Thana, Kumhari Bhilai, District Durg.

---Appellant

Versus

1. Jameel Khan S/o Bashir Khan, R/o Village Kodia, District Durg, Patanker Colony.
2. Jitendra Bhandari S/o Shri R.S.Bhandari, R/o Ganjpara Durg, District Durg (C.G.).
3. The National Insurance Company Limited, Through Branch Manager Gill Complex Near Gurudwara District Durg.

---Respondents

For appellant	:	Shri Syed Majid Ali, Advocate.
For respondent No.3/ Insurance Company	:	Shri B.N.Nande, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act challenging the award dated 31/01/2012 passed by the learned 3rd Additional Motor Accident Claims Tribunal, Durg (C.G.) in Claim Case No.227/2011. Vide the said impugned award the Tribunal in an injury case under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.3,35,000/- along with interest @ 7.5% per annum.
2. The contention of the counsel for the appellant is that, the right leg of the appellant got amputated above the knee, but the Tribunal has not granted any compensation towards loss of earning capacity. According to the counsel for the appellant, the Doctor was duly examined before the Court below and he had assessed permanent disability at 70%. He further submits that, the compensation towards the medical expenses incurred in the course of treatment wherein his right leg has got amputated is also on

the lower side, though no medical bills have been produced to substantiate, but it is a case where the appellant had been hospitalized and had to undergo treatment for about 3-4 months before amputation and in the process he had suffered a huge amount of expenses towards medicines, accidental transport and other expenses required to meet the day to day needs and thus prayed for suitable enhancement.

3. The counsel for the Insurance Company however opposing the appeal submits that, the Tribunal has passed the award strictly taking into consideration the evidence which have come on record. That since, there was no sufficient evidence so far as the expenses incurred, the Tribunal has rightly awarded the compensation of Rs.30,000/- towards medical expenses and the award does not warrant any interference and therefore the appeal deserves to be rejected.

4. Having heard rival contentions put forth on either side and on perusal of record, undisputedly, the accident in the instant case took place on 11/01/2010. The offending vehicle involved in the accident bearing registration No.CG-07-C-0592 which is a Truck owned by the respondent No.2, driven by the respondent No.1 and duly insured with the respondent No.3. Another admitted factual position is that, as a result of the accident and the injury sustained by the appellant, his right leg has got amputated above the knee. The appellant in the instant case as a result of the accident has suffered permanent disability of 70% by virtue of the amputation.

5. The monthly income of the appellant has been assessed at Rs.3,000/- and the annual income at Rs.36,000/-. Considering the date of accident being January-2010, this court has no hesitation that, at the relevant point of time, the minimum wages of even an unskilled labour

would have been more than Rs.4,500/- per month treating daily wage at Rs.150/day.

6. Thus, this court is of the opinion that, for the purpose of quantifying the compensation, the yearly income of the appellant ought to have been taken at Rs.54,000/- instead of Rs.36,000/- as assessed by the Tribunal.

7. Further, there would have definitely also been loss of income towards future prospects which considering the age of the appellant would have been 30% of his income i.e. Rs.16,200/- which if added with the annual income i.e. Rs.54,000/-, the figure would come to Rs.70,200/- of which if 70% is taken as the loss of earning capacity, the amount would come to Rs.49,140/- which if multiplied by applying multiplier of 14, the amount of compensation towards loss of earning capacity would come to Rs.6,87,960/-.

8. So far as other expenses are concerned, since the appellant for his amputated leg would definitely have to get artificial limb installation and which would also require a substantial amount, this court quantifies the amount of Rs.1,00,000/- towards expenses for the artificial limb which the appellant would be required to install.

9. Further, so far as medical expenses are concerned, considering the fact that he had remained in hospital for a period of 3-4 months before accident and that the injury ultimately resulted in amputation, the appellant must have definitely incurred substantial amount towards treatment, special diet and conveyance for all of which this court is of the opinion that an amount of Rs.30,000/- as has been granted would be on the lower side and instead a lump sum compensation of Rs.50,000/- is awarded towards these heads.

10. Further, considering the case to be a one of amputation, the amount of compensation towards pain and suffering of Rs.10,000/- is also too

meagre an amount. Thus, this court quantifies the compensation under this head also at Rs.50,000/- instead of Rs.10,000/- as awarded by the Tribunal. Thus, the total amount of compensation payable to the appellant would become Rs.8,87,960/- which for calculating purpose is rounded at Rs.8,90,000/-. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

11. The appeal thus stands allowed and disposed off.

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

Sumit