

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 826 OF 2015

Barsuram Kola, aged about 45 years, By Caste Gond, R/o Village Jholin, Thana and Tahsil Bhanupratappur, District Uttar Bastar Kanker.

... Appellant

Versus

1. Prabhunath Yadav, aged about 51 years, S/o Baleshwar Prasad Yadav, R/o Ghoti Bishar, Thana Khursipar, District Baliya (U.P.) at present Sursipara, Minimata Mandir Ward No.35, Bhilai, District Durg.
2. Gulab Rabbani @ Rahmani, aged about 31 years, S/o Gulam Mustafa, R/o Sadak No.1, Kasardih, Thana City Kotwali, Durg.
3. National Insurance Company Limited, through Branch Manager, Branch No.1, Bhutani Complex, G.E. Road, Power House, Bhilai, District Durg (C.G.)

... Respondents

For Appellant	:	Mr. Parag Kotecha, Advocate.
For Respondent No.3	:	Mr. GV.K. Rao, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/09/2017

1. The present is a claimant's appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar Kanker, in Claim Case No. 16/2014.
2. Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, has granted a compensation of Rs.69,320/- to the claimant with interest thereon at the rate of 6% per annum.
3. It is case a where on 29.1.2014 the appellant-claimant was hit by a Crain No.CG07-ZH/0418, driven by respondent no.1, owned by respondent no.2 and insured with respondent no.3, resulting in sustaining of grievous injuries on the different parts of his body.

4. Assailing the impugned award, Shri Parag Kotecha, learned Counsel appearing for the appellant-claimant, submits that considering the nature of injury and the disability caused, the amount awarded by the Tribunal is unreasonably low. He further submits that Dr. Vijay Shukla (AW-2) has specifically deposed that the claimant has suffered 50% of permanent disability on account of fracture on his right thigh and by virtue of the said injury he was under treatment initially for a period of about one month during which he lost his earning and subsequent to the injury he has not been able to perform with the strength that he was having prior to the accident and there is a great element of discomfort on the part of the claimant when he performs his daily routine work. Thus the compensation towards the disability, i.e., Rs.40,000/-, as awarded by the Tribunal being on the lower side the same deserves enhancement. He also submits that the amount awarded by the Tribunal under the other heads also is on the lower side when compared to the gravity of the injury sustained by the claimant. He thus prayed for the suitable enhancement of the compensation awarded.

5. Opposing the appeal, Shri G.V.K. Rao, learned Counsel appearing for respondent no.3-insurance company, submits that it is a case where the injuries sustained by the claimant were simple in nature and which have been subsequently healed up and recovered and there was no loss of earning capacity of the claimant nor is there any evidence in this regard. He thus submits that award passed by the Tribunal is just and reasonable and the appeal deserves to be rejected.

6. Having heard the contentions put forth on either side and on perusal of the record, true it is that the claimant has been able to adduce the evidence of the Doctor (AW-2) who had issued a disability certificate and who was a member of the District Medical Board, wherein the permanent

disability was assessed at 50%. From the record, the undisputed facts which are culled out are that, the accident in the instant case being of 29.1.2014, the resultant injuries sustained by the claimant having fracture on his right thigh and the Doctor certifying the disability at 50%.

7. From the aforesaid factual matrix of the case, what really strikes to the mind of this Court is that though 50% of disability which has been assessed is said to have got improved in course of time by at least 10% yet there would have been some permanent functional disability sustained by the claimant and which has not been borne in mind by the Tribunal while quantifying the compensation. This Court assesses the said functional disability at 20%. Thus the claimant must have suffered 20% of his earning capacity which he would have otherwise earned had he not sustained the injuries. Further, what is also reflected is that the accident in the instant case is of January, 2014 where even an unskilled labour would have got wages of at least Rs.200/- a day that would be Rs.6000/- a month. Whereas, the Tribunal in the instant case has taken the wages of the claimant as only Rs.3000/- which is unreasonably low considering the time of accident. This Court thus assesses the monthly wage of the claimant at Rs.6000/- instead of Rs.3000/- as has been assessed by the Tribunal.

8. For assessing the compensation for the 20% of functional disability, if we take Rs.6000/- as monthly income, the yearly income would be Rs.72,000/- of which 20% would be Rs.14,400/- which if multiplied by applying the multiplier of 14 the same would reach to Rs. 2,01,600/-. It is thus ordered that appellant-claimant shall be entitled for an amount of Rs.2,01,600/- instead of Rs.40,000/- as awarded by the Tribunal.

9. The amount awarded towards medical expenses, i.e. Rs.14,320/-, remains intact. So far as pain and suffering is concerned, this Court is of the opinion that the amount of Rs.5000/- given by the Tribunal is on the lower side and this Court enhances the same to Rs.20,000/-. So far as the incidental transportation charges is concerned, the said amount is enhanced to Rs.5000/- instead of Rs.2000/- as awarded by the Tribunal. Likewise, the loss of income of a month's period is enhanced to Rs.6000/- instead of Rs.3000/- as awarded by the Tribunal. So far as the amount of Rs.5000/- awarded by the Tribunal for the special diet is concerned, the same remains intact. Thus, the total compensation payable to the appellant-claimant would be Rs.2,51,920/- (rounded off to Rs.2,52,000/-) instead of Rs.69,320/- as awarded by the Tribunal.

10. The appeal is accordingly allowed and the impugned award stands modified to the extent that the appellant-claimant shall be entitled to receive a total compensation of Rs.2.52,000/- with interest thereon at the same rate as has been awarded by the Tribunal.

Sd/-
(P. Sam Koshy)
Judge