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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1244 of 2015

Ramesh Nath Jogi S/o Ramji Nath Jogi, Aged About 35 Years R/o Village - Bagharrea, Post - Pondi, P. S. Bodla, Tahsil - Kabirdham, District - Kabirdham (Chhattisgarh).........(Claimant)

---- Appellant

Versus

1. Raju Singh S/o Gandu Singh Thakur, R/o Village - Thakur Para, Ward No. 14, Kawardha, District - Kawardha (Kabirdham) (Chhattisgarh)
2. Premchand Nihar, through Dhiraj Jain, R/o Rishabh Chowk, Kawardha, District - Kawardha (Chhattisgarh)
3. National Insurance Company Limited, Gill Complex, Near Gurudwara, Station Road, Durg, District - Durg (Chhattisgarh)

---- Respondents

For Appellant	:	Shri Sanjay Agrawal, Advocate
For Respondent no.3	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

20/09/2017

Heard on I.A. No.01/2015 under Section 5 of limitation Act.

2. For the reasons assigned in the said application and finding them to be satisfactory, I.A. No.01 is allowed and the delay of 181 days in filing the appeal stands condoned.

3. The appeal is under Section 173 of the Motor Vehicles Act assailing the award dated 24.12.2014 passed by the Additional Motor Accident Claims Tribunal, khairagarh, District Rajnandgaon (CG) in Claim Case No. 77 of 2013. Vide the impugned award the Tribunal in a case under Section 166 of the MV Act where the appellant's right hand has been amputated has awarded a compensation of Rs.2,92,892 with interest @ 6% per annum from the date of application.

4. Counsel for the appellant submits that the compensation awarded by the Tribunal is on the lower side considering the gravity of injury sustained by the appellant. He submits that the Tribunal ought to have assessed the disability of the appellant to be 100% instead of 50%. He further submits that the monthly income assessed by the Tribunal as Rs.3,000/- a month is also on the lower side as the date of accident is 22.08.2012 where even the minimum wages of an unskilled labour would have been Rs.4,500/- i.e. Rs.150/- a day. Therefore, the amount of monthly income assessed by the Tribunal ought to have been much more than what has been assessed. He further submits that the appellant would also be entitled for compensation under the head of future prospects. Thus, prayed for enhancement of the compensation suitably.

5. Counsel appearing for the Insurance Company however submits that the impugned award does not warrant interference as the same is just and reasonable considering the fact that the evidence itself shows that the appellant was suffering from 50% of permanent disability. Thus, prayed for rejection of the appeal.

6. Having heard the contentions put forth by the counsel appearing on either side, so far as the first ground as to whether the disability of the appellant would be 50% or 100% is concerned, since it was a case of amputation of hand and that there is no evidence to show that the appellant was a technically skilled person where he used his right hand alone for his sustenance, this Court is of the opinion that the disability certificate issued by the District Medical Board has to be accepted and the Tribunal has rightly assessed the permanent disability of 50%.

7. Now going on the issue of whether the salary part has been rightly assessed by the Tribunal or not, undisputedly the accident is of the year 2012 where the minimum wage of a worker would have been more than Rs.150/- a day and the monthly income under no circumstances could have been less than 4,500/- a month, this Court is inclined to accept the monthly wage of the appellant at Rs.4,500/- a month instead of Rs.3,000/- as has been assessed by the Tribunal. Likewise, the appellant's income under future prospects also ought to have been considered for quantifying the loss of income. Considering the age of the deceased who was 35 years, the future prospects to be added would be 50% of his monthly income i.e. Rs.2,250/- which would make the monthly income of the appellant Rs.6,750/- and the yearly income Rs.81,000/-. If the said amount is multiplied by applying the multiplier of 16, the total loss of income would be Rs. Rs.12,96,000/- . Considering the fact that as per the disability certificate itself there is a loss of earning capacity of 50%, the appellant would be entitled for 50% of the aforesaid amount i.e. Rs.6,48,000/-. It is ordered accordingly. So far as the amount of compensation payable under the head of pain and suffering as also for the incidental expenses towards special diet, transportation and for engaging an attendant is concerned, this Court is of the opinion that an amount of Rs.1,892/- and Rs.3,000/- awarded by the Tribunal under these two heads are unreasonably low. This Court is inclined to grant compensation of Rs.50,000/- each under both these heads. The appellant shall be entitled for an amount of Rs.50,000/- for pain and suffering and Rs.50,000/- towards miscellaneous expenses. Thus, the appellant shall be entitled for the total compensation of Rs.7,48,000/- instead of Rs.2,92,892/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal

8. The appeal thus stands allowed.

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

Bhola