

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MA No. 44 of 2006**

Laxminarayan Netam, S/o. Chaituram, aged about 21 years, R/o. Makeswar Ward Dhamtari, Dist. Dhamtari (CG)

---- Appellant**Versus**

1. K. Adinarayan S/o. K. Pedisalli, Aged about 26 years, R/o. 7/38 Annand Puram, Vishakapattanam, (A.P.) Present Address Shri Venkateshwar Mills, Transport, Andhra Pradesh.
2. N. Subba Rao, S/o. Aappa Naidu, Aged about 40 years, R/o. Doar No. 7/63 Chintalapalem.
(V. Jarugumali (M) Distt. Prakasham, Present Address-Vikas Colony, Banam.
3. Rayal Sundram Allied Insurance Co. Ltd. Southern Regional Office-46 Whites Road Cheeni.

----Respondents

For Appellants	:	Shri P. Dutta, Advocate
For Respondents	:	Shri S.S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****23/08/2017**

1. The present is an appeal under Section 173 of the Motor Vehicle Act filed by the claimants seeking enhancement of the compensation awarded. The appellant is said to have met with an accident on 20.08.2003 while traveling in Swaraj Majda bearing registration No. CG-05-ZC-0258 was hit by a vehicle coming from opposite direction bearing registration No. AP-27-U-5099. As a result of the accident appellant sustained multiple combined fracture. He later on filed a claim application under Section 166 which stood decided vide order dated 07.10.2005 and the Tribunal vide impugned award has awarded compensation of Rs.78,500/- of which Rs.40,000/- was assessed towards loss of earning capacity, Rs.10,000/- towards pain and suffering and Rs.28,500/- towards medical expenses. It is this award which is under challenge by the claimants seeking enhancement.

2. According to Shri Dutta, compensation awarded under the loss of earning capacity is too meager an amount considering the nature of injuries sustained by the appellant. He further submits that it is a case where pleading of the claimants itself is that he was earning Rs.3,000/- per month and which not perhaps has not been accepted by the Court below and has awarded lump sum compensation of Rs.40,000/- under the head of loss of earning capacity. He submitted that calculation ought to had been done considering salary of Rs.3,000/- per month as the accident was of the year 2003 and the appellant was aged around 24 years at that point of time and even an unskilled labour during those days would have earn more than Rs.100/- per day. He further submits that amount of compensation awarded under the head of pain and suffering also is on the lower side and in addition the Tribunal has not given any compensation for engaging attendant during treatment as also no compensation for special diet or incidental transportation also was awarded. Thus prayed for the award being suitably enhanced.
3. Counsel for the respondent-Insurance Company however opposing the appeal submits that plain reading of the award shows that award was fair, just and reasonable and does not warrant any interference as award was based on the evidence which has come on record.
4. Having considered the contention on either side this Court is inclined to accept the argument put forth by the counsel for the appellant accepting appellant to be earning at least Rs. 100/- per day which makes Rs.3,000/- per month as the accident was of the year 2003 and also considering the age of the appellant.
5. Further, the amount of compensation under pain and suffering for the multiple fracture which has been caused to the appellant is also on lower side. So, appellant ought to have been got some compensation towards special diet, incidental transportation and for engaging attendant during the course of the treatment.
6. When we consider nature of injury and disability certificate which the Doctor has given it reflects that, he was suffering disability at around 60%. Considering the nature of accident i.e. amputation of the left leg of the appellant and that to at the young age of 21 years at the time of accident, this Court is of the opinion that the disability assessed by the

Doctor has to be accepted as the permanent disability for all practical purposes and amount of compensation also has to be suitably enhanced.

7. This Court considering the fact that the age of the appellant was 21 years is inclined to accept notional income of appellant to be Rs.3,000/- as undisputedly at the relevant point of time even an unskilled labour would have earned more than Rs.3,000/- per month.
8. Thus taking Rs.3,000/- as the salary of the appellant, the yearly income of the appellant would be Rs.36,000/- and if Rs.36,000/- is multiplied by applying multiplier of 18, the figure would come to Rs.6,48,000/- of which if assessing the disability of 60%, amount of loss of earning capacity suffered by the appellant would be Rs.3,88,800/-.
9. It is ordered accordingly that the petitioner shall be entitled for compensation of Rs.3,88,800/- instead of Rs.70,000/- as awarded by the Tribunal.
10. Similarly considering the fact that it is a case of amputation, the amount of compensation of Rs.10,000/- awarded by the Tribunal is too meager an amount considering the gravity of the disability this Court quantifies compensation for pain and suffering at Rs.1,00,000/- instead of Rs.10,000/- as awarded by the Tribunal.
11. In addition, the Tribunal has not granted any compensation towards the special diet, transportation, engagement of attendant, etc. and therefore this Court quantifies compensation of a lump-sum figure of Rs. 86,700/-. Likewise for the loss of amenities that the appellant shall suffer like his marital prospects, his carrier, his employment etc. this Court quantifies compensation of Rs.1,00,000/-.
12. Thus the appellant shall be entitled for total compensation of Rs.7,50,000/- instead of Rs.1,54,500/- as awarded by the Tribunal. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.
13. Thus, the appeal stands allowed.

Sd/-
(P. Sam Koshy)
Judge

