

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 197 of 2014**

Kushalchand Jain S/o Mohanlal Jain Aged About 43 Years R/o Nagri,
Tah. Nagri, P.S. Arjuni, Distt. Dhamtari C.G.

---- Appellant

Versus

1. Shekh Sameer @ Gudda S/o Shekh Bashir Aged About 30 Years R/o Adhari, Nawagaon, Tah. And Distt. Dhamtari C.G.
2. Smt. Jamila Begum W/o Shekh Bashir Aged About 50 Years R/o Adhari, Nawagaon, Tah. And Distt. Dhamtari C.G.
3. The Oriental Insurance Co. Ltd. M.B. Trade House, Near Balak Chowk, Dhamtari, Distt. Dhamtari C.G.

---- Respondent

For Appellant	:	Shri Kunal Das, Advocate.
For respondent No.3	:	Shri Pankaj Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

17/07/2017

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act seeking for enhancement of compensation against the award dated 20.12.2013 passed by the Chief Motor Accident Claims Tribunal, Dhamtari (for short, the Tribunal), in Claim Case No.89/2011.
2. As against the compensation claimed by the claimant under Section 166 of Motor Vehicles Act for the injury sustained by him in motor accident on 05.01.2010, the Tribunal, on a close scrutiny of evidence led, material placed and submissions made by the parties, allowed the claim application and awarded Rs.78,305/- as compensation holding that the accident to have occurred due to rash and negligent driving of driver of Jeep bearing registration No.CG-05-ZA-2092,

driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Of the said amount of Rs.78,305/-, Rs.38,305/- was towards medical expenses, loss of two months income during treatment was assessed at Rs.6000/-by taking notional income of Rs.3000/- per month, Rs. 30,000/- towards pain and suffering and Rs.4000/- for special diet. It is this award which is under challenge seeking for enhancement.

3. Learned counsel for the appellant submits that as a result of accident the appellant's right hand had got damaged permanently as there was total damage caused on his right shoulder which have also been proved by the doctor before the Tribunal and the doctor has assessed his permanent disability to the extent of 20 percent. Because of accident, the appellant who was working as clerk with one Auto Centre, lost his employment as he was not able to write with the hand. Thus, there is total loss of income. It was also argued that the Tribunal has not granted any compensation for the disability part. Therefore, the award be enhanced suitably.
4. Per contra, the counsel for the insurance company opposes the appeal and submits that the award is just, proper and reasonable and does not warrant interference.
5. Having considered the rival contentions put forth on either side and on perusal of records, the accident, date of accident, appellant sustaining injuries and the offending vehicle belonging to respondent No.1 i.e. Jeep bearing registration No. CG-05-ZA-2092 involved in the accident are not in dispute. The only issue which is left to be

decided is whether the compensation awarded is just and proper or not.

6. It is undisputed that the appellant was working as a clerk at one Auto Centre. He has produced certificate showing his monthly income to be Rs.8000/-, however, the Tribunal has assessed his notional income at Rs.3000/-. The date of accident is 05.01.2010. The minimum wages which the appellant would have received during the course of accident would have been Rs.4500/- per month as at that point of time even the minimum wages of a labourer was somewhere around Rs.150-200 per day i.e. Rs.4500-6000 per month. Thus, the assessment of monthly wages of the appellant at Rs.3000/- was not proper. It ought to have been at-least Rs.4500/- per month. The amount of compensation needs re computation by taking monthly wages of the appellant at Rs. 4500/-. It is ordered accordingly.
7. Doctor VK Pandey, AW-2, has deposed that the appellant on being examined by the district medical board was found to be permanently disabled on account of his shoulder injury to the extent of 20 percent and certificate in this regard was also issued which has been proved before the Tribunal.
8. If we take monthly wages of the appellant at Rs.4500/-, the annual income would be Rs.54000/- and if multiplier of 15 is applied as per IInd Schedule, the amount comes to Rs.8,10,000/- of which, if 1/3rd is deducted towards his personal expenses, it reaches to Rs.5,40,000/-. If 20 percent of said amount 5,40,000/- is taken, the amount reaches at Rs.1,08,000/-. Therefore, the appellant shall be

entitled for compensation for the disability caused of Rs.1,08,000/-. Further, by assessing the monthly income at Rs.4500/-, the loss of income during treatment for two months would be Rs.9000/- in place of Rs.6000/- as awarded by the Tribunal.

9. Likewise, considering the gravity of injury sustained and the permanent disability on his right shoulder, the amount of compensation under special diet also deserves to be and is enhanced to Rs.25,000/-instead of Rs.4,000/- as awarded by the Tribunal.
10. Thus, the appeal is allowed. The appellant is entitled for enhanced compensation of Rs.1,32,000/- in addition to the amount already awarded by the Tribunal.
11. The above enhanced amount of compensation of Rs.1,32,000/- shall carry interest at the rate quantified in the award. Rest of the conditions mentioned in the award shall remain intact.
12. The respondent No.3-Insurance Company is granted two months time to deposit the above enhanced amount of compensation before the concerned claims Tribunal.

Sd/-
(P. Sam Koshy)
Judge

inder