

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 204 of 2016**

Rameshwar Dhiwar S/o Mangaluram Dhiwar, Aged About 21 Years
R/o Village Karra, Sub Tahsil, Sipat, Tahsil Masturi, District (Revenue
And Civil) Bilaspur (Chhattisgarh).

---- Appellant**Versus**

1. Bharat Lal Sooryavanhi S/o Panchram Sooryavanshi, Aged About 27 Years R/o Village Saragaon, Police Station Saragaon, District (Revenue And Civil) Janjgir Champa (Chhattisgarh).
2. Ankit Kumar Jain S/o N. Jain, R/o Laluram Colony, Transport Nagar, Korba, Tahsil & District (Revenue And Civil) Korba (Chhattisgarh).
3. National Insurance Company Limited Through Branch Manager, Transport Nagar Korba, Tahsil & District (Revenue And Civil) Korba (Chhattisgarh) (Insurer Of The Truck No. C G 12 C 2069).

---- Respondents

For Appellant	:	Shri Anand Kesharwani, Advocate.
For respondent No.3		Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****11.12.2017**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimant seeking enhancement of compensation against the award dated 27.10.2015 passed by the 8th Additional Motor Accident Claims Tribunal, Bilaspur (in short, the Tribunal) in Claim Case No.397/2015. Vide the said impugned award, the Tribunal in an amputation case has awarded a compensation of Rs.7,11,700/- to the claimant along with interest @ 6 percent per annum from the date of application. In addition, there was also penal interest of 7.5 percent, in case, the award amount is not deposited within stipulated period.

2. Counsel for the appellant-claimant submits that the amount of compensation awarded by the Tribunal is unreasonably low taking into consideration the nature of injuries suffered and the treatment which has been incurred by the appellant. According to appellant, it is a case where the right leg of the appellant had been amputated below knee and as such he has been rendered with total loss of earning capacity and the amount of compensation should have been accordingly assessed by the Tribunal. Further, the monthly income assessed by the Tribunal is also on the lower side taking into consideration the period of accident. In addition, the compensation awarded towards pain and suffering and transportation also is unreasonably low keeping in view the fact that it is a case of amputation of the right leg. It was also contended that no compensation has been paid for affixing of an artificial limb which would be necessary for the appellant or else he would not be able to move around independently without assistance of an attendant. Thus, prayed for amount to be suitably enhanced.
3. The counsel for the insurance company, however opposing the appeal submits that the award seems to be fair and reasonable and there is no scope of interference. Therefore, the appeal does not have any merit and the same deserves to be rejected.
4. Considering the submissions put forth on either side, the undisputed facts are that the date of accident being 06.12.2009; as a result of the said accident the claimant suffered amputation below the knee; the vehicle involved in the accident and it being duly insured with the

respondent No.3-National Insurance Co.Ltd. is also not in dispute.

There is no dispute so far as liability which has been fastened upon the respondent-insurance company.

5. The only issue left for consideration is whether in a case of amputation of right leg below knee, the compensation awarded is just or not?
6. Indisputably the date of accident being December, 2009, the minimum income of an unskilled labour would have been more than Rs.150/- a day i.e. 4500/- per month. This court therefore, assesses the income of the claimant at Rs.4500/- instead of Rs.3000/- as assessed by the Tribunal and proceeds to quantify the compensation.
7. Accepting Rs.4500/- as monthly income, the yearly income would be Rs.54,000/-. As permanent disability of the claimant assessed by the Tribunal was 70 percent, therefore, 70 percent of Rs.54,000/- would be Rs.37,800/-, which if multiplied by applying the multiplier of 18, the amount would become Rs.6,80,400/-. It is ordered accordingly that the claimant shall be entitled for loss of earning capacity at Rs.6,80,400/- instead of Rs.4,53,600/- as assessed by the Tribunal. Further, so far as medical bills are concerned, this court quantifies the medical bills as assessed by the Tribunal at Rs.43,103/-. Further, taking into consideration the facts that it was a case of amputation and there would have been frequent requirement of the appellant to go to the Hospital and consult the Doctor and as such the cost of transportation and engagement of attendant, the amount of Rs.5000/- awarded by the Tribunal is unreasonably low and this court quantifies

the same at Rs.25,000/-.

8. So far as pain and suffering is concerned, again considering the amount of mental agony which the claimant must have undergone because of amputation of his right leg and getting dependent upon someone else for the rest of his life particularly when he is a young boy of 21 years, this court quantifies the compensation under pain and suffering and mental agony at Rs.1,00,000/- instead of Rs.10,000/- as awarded by the Tribunal. Lastly, this court also awards an amount of Rs.2,00,000/- towards the cost which the claimant shall incur in affixing an artificial limb which he would be requiring so as to enable him to move independently without the help of an attendant or wheelchair. In addition, an amount of Rs.2,00,000/- as awarded by the Tribunal for dilation shall remain intact.
9. Thus, it is ordered that the claimant shall now be entitled for a total compensation of Rs.12,48,503/- instead of Rs.7,11,700/- as awarded by the Tribunal.
10. The above enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal. However, given the entire facts and circumstances of the case, the penal interest awarded by the Tribunal stands set aside/quashed.
11. Accordingly, the appeal of the appellant-claimant stands allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge