

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 435 of 2017**

1. Sita Ram Yadav S/o Radheshyam Yadav, aged about 26 Years R/o Village Gailugaon, Thana and Tahsil Lormi, Distt. Mungeli, Chhattisgarh(Claimant)

---- Appellant**Versus**

1. Munna Das Manikpuri S/o Dhuruu Manikpuri, aged about 55 Years R/o Village Near Sosayti Tilak Ward Dau Para Thana and Tahsil Mungeli, Distt. Mungeli, Chhattisgarh(Driver of The offending Vehicle Bus No. C.G.10 G/0293)
2. Jasraj Tanwar S/o Paramsukh, aged about 50 Years R/o Near Padav Chowk Mungeli Thana and Tahsil Mungeli Distt. Mungeli, Chhattisgarh(Owner of The offending Vehicle Bus No. C.G.10 G/0293)
3. The Oriental Insurance Company Limited, Divisional office- Rama Tred Center First Floor Bilaspur, Chhattisgarh(Insurer)

---- Respondents

For Appellant	:	Shri A. L. Singroul, Advocate
For Respondent No.3	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****18/07/2017**

Present is an appeal under Section 173 of the Motor Vehicles Act by the claimant seeking for enhancement of the compensation. The Challenge in the present appeal is the award dated 28.01.2017 passed by the Additional Motor Accident Claims Tribunal, Mungeli (CG) in Claim Case No. 36 of 2015.

2. The fact in brief is that the appellant on 11.04.2012 while he was travelling on his motorcycle was hit by a bus bearing registration no. CG10 G

0293 owned by respondent no.2 driven by respondent no.1 and insured by respondent no.3. As a result of the said accident, the appellant received fracture on his right leg and there were other injuries on the other parts of his body. The appellant had subsequently filed a claim application seeking compensation for the injuries and disability he had sustained under Section 166 of the Motor Vehicles Act.

3. The Tribunal considering the evidences which have come on record and the pleadings of the parties, vide impugned award dated 28.01.2017 granted compensation of Rs.1,47,000/- to the claimant of which Rs.1,15,109/- was under the head of medical expenses incurred by the appellant in the course of his treatment. In addition, for the loss of income @ Rs.4,000/- per month for total three months amounting Rs.12,000/-, Rs.10,000/- for pain and suffering, Rs.5,000/- towards attendant and Rs.5,000/- for special diet were granted.

4. It is this award which is under challenge in the present appeal.

5. Counsel for the appellant submits that the compensation paid other than the clearance of medical bill is extremely on the lower side and the same deserves to be enhanced. He submits that the Tibia Fibula bone of his right leg got fractured and overlapped upon other bone and ultimately the same had to be operated at Gayatri Hospital, Bilaspur where the appellant was hospitalized from 11.04.12 to 24.04.2012. In the course of treatment, steel rod of 7 inch had to be screwed with his bone. Therefore, considering the nature and gravity of injuries sustained by the appellant, the Tribunal ought to have granted more compensation to him.

6. Counsel for the Insurance Company, however, opposing the appeal submits that the award passed by the Tribunal is fair and justified and the same does not warrant any interference as the claim of the appellant has not been proved by any doctor in as much as no doctor has been examined by the

appellant to substantiate his disability nor is there any disability certificate produced by the appellant to allege the finding of the Tribunal is bad in law.

Having considered the rival contentions put forth on either side and on perusal of the record it is not in dispute that the accident did took place on 11-04-2012 and the appellant was hit by the bus owned by respondent no.2 insured by respondent no.1. It is also not in dispute that the appellant received fracture injury on his right leg where as Febula bone got fractured and overlapped upon another bone and ultimately the same had to operated where as a part of the treatment steel rod of 7 inch was screwed at the place of fracture.

7. True it is that the appellant has not been able to produce any doctor to substantiate his disability as well as gravity of the injury but the undisputed fact is the nature of treatment undertaken by the appellant and that the Insurance Company has accepted the finding of the liability of payment of compensation for the injuries which the appellant had sustained. The impugned award has not been challenged by the Insurance Company. Therefore, the finding to the extent that there was an accident as a result of which the appellant received injuries and that the appellant is entitled for compensation stands proved, established and has attained finality.

8. Now the only issue left for consideration is whether the compensation awarded is proper, legal and justified or not. Again it is settled law that for the claim of compensation, doctor's statement is paramount and it is only on the basis of the doctor's opinion, the disability can be assessed. In the instant case, there is no evidence led by the appellant of any doctor nor is there any disability certificate. However, the gravity of the injury and the post injury treatment and surgery the appellant had undertaken definitely must have put him under great element of pain and suffering. Likewise, the nature of injury was such that the appellant must have incurred expenses towards special diet

which he had been advised to strengthen the injured leg. Admittedly, the Tribunal has granted loss of income of Rs.12,000/- for three months. During this three months period, the appellant must have taken assistance of some attendant which the Tribunal has quantified as Rs.5,000/- which in the opinion of this Court is also on the lower side.

9. In the given factual matrix of the case, ends of justice would meet if the compensation paid to the appellant under the head of pain and suffering and mental agony is enhanced from Rs.10,000/- to Rs.25,000/-. Likewise, the compensation against the head of attendant also deserves to be and is accordingly enhanced to Rs.10,000/- from that of Rs.5,000/-. So far as the special diet is concerned, under this head also the compensation is enhanced from Rs.5,000/- to Rs.10,000/-. In all the appellant would be entitled for an additional compensation of Rs.25,000/- which will be paid by the Insurance Company within a period of two months from today. The said amount shall also carry interest at the same rate as awarded by the Tribunal.

10. With the aforesaid modification to the impugned award, the appeal stands partly allowed.

Sd/-
(P. Sam Koshy)
JUDGE