

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 210 of 2015**

Laxman S/o Bijendra Biyar Aged About 20 Years R/o Katkona, Police Station And Tahsil Khadgawa, Distt. Korea C.G.

---- Appellants**Versus**

1. Balwant Singh S/o Dalpratap Singh R/o Amanala Godripara, Chirmiri, District Korea C.G.
2. Vijay Mishra S/o Shri A.K. Mishra Aged About 42 Years R/o 20 Number Domanhil Post Sanawani, Police Station Chirmiri, tahsil Khadgawa, District Korea C.G.
3. The Oriental Insurance Company Limited Bilaspur Bus Stand Road, Bilaspur C.G.

---- Respondents

For Appellant	:	Shri Anil Gulati, Advocate.
For respondent No.3	:	Shri Sudhir Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****17/07/2017**

1. Present is an appeal under Section 173 of the Motor Vehicles Act filed by the claimant seeking for enhancement of compensation against the award dated 26.09.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Manendragarh (for short, the Tribunal), in Claim Case No.67/2014.
2. As against the compensation claimed by the claimant under Section 166 of the Motor Vehicles Act for the injuries sustained by him in motor accident on 08.07.2009, the Tribunal on a close scrutiny of evidence led, material placed and submissions made by the parties, awarded a compensation of Rs.1,17,000/-.
3. The appellant, working as Khalasi in the Bus, met with an accident on

08.07.2009 when the driver of a Truck bearing registration No.CG-16-A-1241 dashed him which was owned by the respondent No.2, driven by respondent No.1 and insured by respondent No.3.

4. The tribunal considering the nature of injuries sustained and also considering the fact that appellant was a Khalasi reached to the conclusion that he must have been earning Rs.3000/- per month in the year, 2009 and taking Rs.3000/- as income of the appellant, an amount of Rs. 65000/-was granted as compensation assessing the permanent disability of 10 percent. Likewise, the compensation paid to the appellant for pain and suffering was Rs.10,000/- and Rs.5000/- towards special diet.
5. The grievance of the appellant is that, the appellant was on treatment for three months and during this period he could not work and was denied any income for this period which should also have been calculated by the Tribunal. Therefore, the amount deserves to be enhanced on these heads. The disability of the appellant was also much more than the 10 percent assessed by the Tribunal.
6. On the other hand, learned counsel for the respondent No.3- insurance company opposes the appeal and submits that the award is just and proper and needs no interference. It is also argued that the Tribunal has taken into consideration the evidence which have come on record while awarding the compensation under the different heads.
7. Having considered the rival contentions put forth on either side and on perusal of record, the accident, the vehicle involved and the appellant sustaining injuries are not in dispute. The only thing now is

to be considered is that whether the amount of award is just and proper or not. In the accident the appellant received injuries on his left leg resulting in permanent disability. The district Medical Board had examined the claimant and had assessed the physical disability of his injury to be at 42 percent. Dr. Rajendra, AW-2, who was a member of medical board has deposed before the Tribunal that the appellant suffers from permanent disability and the certificate Ex.A/5 was issued wherein the disability was assessed at 42 percent. This fact is not disputed.

8. The contention of insurance company that there was no permanent disability caused to the appellant is concerned, if we look at the deposition of AW-2 as also the medical certificate Ex. A/5, it clearly reflects that due to said disability the appellant's left leg was shortened which stands proved from the medical certificate assessing the disability to the extent of 42 percent. Whether it was permanent or temporary in nature, the insurance company while cross examining the doctor had given a suggestion that it was a temporary disability and therefore certificate was issued for three years which was categorically denied by the doctor. Thus, proved the disability being of permanent in nature as is clearly reflected from his evidence.
9. In the given facts and circumstances of the case, if we take into consideration the certificate and also the nature and gravity of injury assessed at 10 percent disability by the Tribunal it seems to be on lower side. Thus, in the opinion of this court, the disability of the appellant should had been assessed at at-least 20 percent in place of 10 percent. If we apply the same, the appellant would be entitled for

an additional amount of Rs.65,000/- under the head of disability. Likewise, amount of Rs.10000/- awarded towards pain and suffering deserves to be enhanced to Rs.25,000/-. Looking to injuries that the appellant was sustained on his thigh bone which definitely requires some time to fully recover and also needs special diet, Rs.5000/- awarded towards special diet also deserves enhancement to Rs.10,000/-. Accepting the income of appellant at Rs.3000/- per month, the appellant is entitled for Rs.9000/- as loss of income during treatment for three months. Rest of the award seems to be just and reasonable and does not warrant interference.

10. The appeal is thus allowed. The appellant shall be entitled for an amount of Rs.1,30,000/- as compensation for disablement part instead of Rs.65000/-; Rs. 25,000/- instead of Rs.10,000/- towards pain and suffering; Rs.10,000/- instead of Rs.5000/- under special diet and further Rs.9000/- towards loss on income for three months. In all, the appellants shall be entitled for Rs.94,000/- over and above the amount already awarded by the Tribunal.
11. The above enhanced amount of compensation of Rs.94,000/- 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 enhanced amount of compensation of Rs. 94,000/- before the concerned claims Tribunal.

Sd/-

(P. Sam Koshy)
Judge

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