

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 414 of 2015

- Jageshwar Mandle S/o Munnadas Mandle Aged About 30 Years R/o Village Litiya Post Bajrangpur, Tahsil And District Rajnandgaon Chhattisgarh

---- Petitioner

Versus

1. Kejuram Deshmukh And Ors. S/o Jhumuklal Deshmukh Aged About 38 Years R/o Niyapar (Lamni), Police Station-Parpa, District Bastar Chhattisgarh
2. Vijay Soni S/o Satya Narayan Soni Aged About 44 Years R/o Radhika Tent House, Main Market Ward No. 6, Kirandul, District Dantewada Chhattisgarh
3. Shriram General Finance Insurance Company E/8 E.P.I.P.R.R. I.C.O. Industrial Area, Sitapur, District Jaipur Rajasthan
4. Smt. Madhuri Thakur W/o Wd/o Late Chndrakant Thakur Aged About 55 Years R/o Bramhanpara, Ward No. 33, Rajnandgaon Chhattisgarh
5. The New India Insurance Company Limited Registered And Head Office, 1215, 15th Floor Navrang House, 21 Kasturba Gandhi Road, New Delhi-110091 Divisional Office Through Divisional Manager, Through Power House Bhilai, District-Durg Chhattisgarh

---- Respondents

For Petitioner	:	Shri S.K. Agrawal, Advocate.
For respondent No.3	:	Shri S.S. Rajput Advocate.
For respondent No.4		Shri C.K. Sahu, Advocate
For respondent No.5		Shri Dashrath Gupta

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

13/07/2017

1. Heard.
2. This appeal has been brought challenging the quantum of the compensation given in award dated 23.12.2014, by the learned Second Additional Motor Accident Claims Tribunal, Rajnandgaon, Chhattisgarh in Claim Case No.59 of 2013 for enhancing of the compensation, awarded in favour of the appellant.

3. Appellant met with an accident on 14.5.2012 while travelling in a Maruti Van No.C.G.-08-1018 which collided with truck No.18-H-0487. Appellant suffered a fracture on his left shoulder and palm. After undergoing treatment appellant has suffered permanent disability.
4. It was pleaded before the tribunal below that the truck No.C.G. 18-H-0487 was being driven by respondent No.1, registered owner of the truck was respondent No.2 and was insured by the Insurance Company respondent No.3. Claim was contested by these respondents and the issues framed were determined in the award. It was held that the driver of the truck bearing registration No.C.G. No.18-H-0487 respondent No.1 was negligent because of which the accident occurred. It was also held that appellant has suffered permanent disability because of the injury caused to him in this accident. Respondent No.1, 2 and 3 were jointly and severally held liable, and after calculation and assessment on the loss of earning and in the other heads award of Rs.1,66,158/- was passed in favour of the appellant.
5. The grounds in this appeal are these that learned tribunal below has reduced the loss of earning of appellant to 25% even though it was proved medically that appellant had suffered 50% permanent disability. Secondly, the learned tribunal below has committed error in assessing the monthly income of appellant on the lower side and also sufficient compensation has not been awarded in various other heads. It is prayed that the compensation awarded be enhanced suitably.
6. It is submitted by learned counsel for the appellant that appellant works as an electrician and his earning capacity has been reduced much more than what was assessed by the Court below. Hence, his loss of earning may be reassessed, accordingly. Further, the monthly income of appellant has also been assessed at the lowest, whereas as an electrician he had been capable of

earning much more than that. It is also submitted that the compensation towards pain and suffering has been awarded only Rs.3,000/-. It is prayed that compensation in this head may also be enhanced.

7. Learned counsel for the respondent No.3 has opposed the grounds in this appeal and the arguments submitted in support of enhancement of the compensation. It is submitted that the learned tribunal below has correctly assessed and awarded in favour of the appellant. There is no scope for interference in the impugned award.
8. It is not disputed that it was medically proved in evidence that appellant had suffered 50% permanent disability because of the grievous injury caused to his left shoulder joint. Appellant works as a skilled labour in which use of hands has important role. There is some scope in enhancing the percentage of loss of earning on account of the permanent disability caused to the appellant. Looking to the facts and circumstances in this case, this loss can be safely enhanced to 30% which shall be made a basis for assessing the loss of income of appellant.
9. Considering on the second ground, it is observed that this incident took place in the year, 2012 and at that point of time appellant had been working for his livelihood as an electrician, that shows that he was working as a skill labourer. The loss of income assessed by the learned tribunal below appears to be on the lower side as the income proposed and accepted appears to be of unskilled labourers. Hence, in this respect also the monthly income of appellant which has been assessed by the tribunal below to the Rs.3,000/- per month can be safely regarded as Rs.4,000/- per month.
10. On the basis of the loss of earning capacity as assessed in the aforementioned paragraph, 30% loss from the monthly income shall amount to Rs.1200/- per month and yearly loss of income comes to Rs.14,400/- per month. There is no

dispute regarding the age and the multiplier applied with respect to the appellant in this case, hence, taking the multiplier of 17 and multiplying the yearly loss of appellant, the loss of earning amounts to Rs.2,44,800/-.

11. The learned tribunal below has awarded only Rs.3000/- towards pain and suffering which definitely appears to be on lower side and it needs enhancement which is enhanced to Rs.15000/-. Further, the expenses of medical treatment Rs.5,358/- is also added in this respect and the expenses of attendant Rs.400/- is also taken as it is. Loss of income which was assessed as Rs.400/- for 4 days during which appellant could not go on work, needs to be increased looking to the increased amount determined in his monthly income. Hence, this income is increased from Rs.400/- to Rs.600/-. The compensation for special diet Rs.2000/- is also taken as it is and compensation for transportation expenses Rs.2000/- is also taken as it is, hence, Rs.1,66,158.00/- is enhanced accordingly.

12. Thus, the appeal is allowed. The total compensation for which appellant is entitled for Rs.2,70,158/-. If the award of the trial Court has been satisfied, deducting the amount of the compensation already paid the remaining amount of compensation shall be paid to the appellant/claimants by the respondents No.1, 2 and 3 jointly and severally within a period of 45 days from the date of this judgment. On failure of respondents in payment of compensation awarded, interest @ 9% shall be chargeable from the date of this judgment till its realization.

13. In the result, the appeal is allowed. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE