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**HIGH COURT of CHHATTISGARH, BILASPUR****MAC No. 131 of 2012**

Babli D/o Sunder Singh Gond, aged about 22 years, Through Jhaniya Bai W/o Sunder Singh Gond, R/o Ramnagar Lingiyadih, Police Station Sarkanda Distt. Bilaspur C.G.

**---- Appellant****Versus**

1. Anil Singh S/o Heera Singh Gond, aged about 25 years, R/o village Chhobgarh, PS Beniberi, District Anuppur (MP).
2. Lakshaman Prasad Gupta S/o B.P.Gupta , R/o In Front Of Police Station Rajendra Gram, Anuppur Distt. Anuppur M.P.
3. Branch Manager Bajaj Alliage General Insurance Company Limited Shiv Mohan Bhavan, Vidhan Sabha Road, Near Railway Crossing, Pandari, Raipur, Through Branch Manager, Bajaj Alliage General Insurance Company Limited, Bilaspur (CG).

**---- Respondents**


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| For Appellant      | : | Ms. Neeta Choubey, Advocate.    |
| For Insurance Co.: | : | Shri Ghanshyam Patel, Advocate. |

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**Hon'ble Shri Justice P. Sam Koshy****Judgment On Board****20.02.2018**

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 30.08.2011 passed by the 4th Additional Motor Accident Claims Tribunal, Bilaspur (in short, the Tribunal) in Claim Case No.80/2011. Vide the impugned award, the Tribunal in a case of amputation of right leg has awarded compensation of Rs.4,81,000/- along with interest @ 6 percent per annum from the date of application.
2. The contention of the appellant is that the compensation awarded by the Tribunal is unreasonably low. The income assessed is on lower

side. Considering the date of accident, the income should have been assessed much more than what has been assessed. Likewise, the contention of the claimant is that from the nature of injuries it is established that the claimant has suffered 100 percent disability and she is not able to even stand straight and walk because of the injuries that she has suffered on the amputation of the right leg. Further, no sufficient compensation has been awarded for pain and suffering, loss of amenities, incidental expenses and also for fixing artificial limb. Therefore, the amount awarded deserves to be suitably enhanced.

3. The insurance company on the contrary submits that the compensation awarded seems to be fair and reasonable and does not warrant any interference as there is not much material produced before the Tribunal to prove the income of the claimant with which the compensation could have been assessed. He further submits that considering the judgment of Supreme Court in *Raj Kumar Vs. Ajay Kumar & Anr.* 2011 (1) SCC 343, the disability part has to be suitably assessed and it cannot be 100 percent. So far as injuries are concerned, there is an amputation of one leg and therefore the disability cannot be assessed at 100 percent. Further, considering the fact that it is a case of amputation, for the purpose of ascertaining the disability, the provisions of Schedule-I of the Workmen Compensation Act should be taken into consideration and where the disability part is shown as 50 percent.
4. Having heard the counsel on either side and on perusal of records,

what is admitted is the date of accident to be 26.12.2009. What is also not in dispute is the vehicle involved in the accident and the same being duly insured with the respondent No.3-insurance company. The claimant received grievous injuries in the said accident is also not in dispute. Now, what is left to be considered by this court is whether the compensation awarded is fair and reasonable or not?

5. The nature of injuries sustained by the claimant is discussed by the Tribunal in its judgment paragraph 10 which reflects to the statement of the claimant Babli, AW-1 and Dr.S.S. Bhatia, AW-2, who was a member of the medical board at the relevant point of time and who has deposed before the Tribunal proving the disability certificate where the disability assessed was 90 percent vide Ex. A/11. A perusal of statement of the claimant as well as by the doctor would clearly reflect that apart from the injuries on the other parts of the body, two major injuries suffered by the claimant was amputation of right leg above knee and the left leg also has received complete crush injury resulting in a bend of the left leg. Because of the injuries, the claimant is unable to stand straight. Neither is she able to move freely without aid of the wheel chair or an attendant. Under such circumstances, this court has no hesitation in holding that the disability which the claimants suffered is 100 percent instead of 90 percent as assessed by the Tribunal. Further, the claimant was not married and her marriage prospects also has been adversely affected and thus, there is a great loss of amenities also.
6. Given the facts and circumstances of the case, particularly looking at

the condition of the claimant who otherwise is a lady aged around 32 years as per the medical document, with the nature of injuries she must have undergone great element of trauma, pain and suffering and also has suffered loss of amenities as well. It is not just a case where there was an amputation of one leg. It is a case where infact the left leg though has not been amputated, but the said leg has become totally weak and had sustained grievous crush injuries and has also got bend as is evident from the findings of the Tribunal in paragraph 10.

7. Under such circumstances, this court is of the opinion that the compensation awarded by the Tribunal is unreasonably low and the same deserves to be suitably enhanced.
8. Counsel for the appellant submits that the Tribunal has made an assessment of income at Rs.100/- per day and the calculation has been made taking income payable for 25 days i.e. Rs.2500/- a month.
9. Considering the fact that the accident had occurred in December, 2009, this court has no hesitation in reaching to the conclusion that during the relevant time even an unskilled labour would had been earning more than Rs.100-150/- a day i.e. Rs.3000-4500/- in a month. Thus, this court assesses the monthly income of the claimant at Rs.4000/- and proceeds to decide the compensation. In addition, the claimant would also be entitled for 40 percent of the said income towards future prospects to make the monthly income at Rs.5600/- and Rs.67,200/- yearly. Considering the age of the claimant as

assessed by the Tribunal at 32 years, the multiplier that would be applicable would be 16 which would bring the amount of compensation towards loss of earning capacity at Rs.10,75,200/-. Thus, it is ordered that the claimant is entitled for Rs.10,75,200/- towards loss of earning capacity.

10. In addition, considering the fact that right leg of the claimant had been amputated above the knee, she must have suffered great element of pain and suffering, so also mental agony and therefore, this court assesses the compensation towards pain and suffering at Rs.1,00,000/- instead of Rs.5,000/-. So also considering the age of the claimant and the fact that she was not married, for loss of amenities this court assesses a lump sum compensation of Rs.1,00,000/-. Further, for special diet and other incidental expenses, this court quantifies an amount of Rs.50,000/- instead of Rs.7,000/-. Likewise, the compensation towards affixing of artificial limb also this court assesses compensation at Rs.1,00,000/- to make the total compensation payable at Rs.14,25,200/- instead of Rs.4,81,000/- as awarded by the Tribunal.
11. The above enhanced amount of compensation shall also carry interest at the same rate as has been awarded by the Tribunal.
12. Accordingly, the claimant's appeal stands allowed and disposed of.

**Sd/-**

(P.Sam Koshy)  
**Judge**