

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 527 of 2015

- Narad Thakur, S/o Late Prajaram Thakur, aged about 46 years, R/o Q.No.25-E Road No. Avenue 'A' Sector-7, Bhilai Nagar, P.S. Kotwali Sector-6, Bhilai, District Durg (C.G.)

---- Appellant

Versus

1. Rupak Dutta S/o Late Shubhash Dutta, aged about 39 years, R/o Q.No. M.I.G.-1/564, Hudko Bhilai, Tahsil and District Durg (C.G.)
(Maruti Omni No. C.G. 07-MB/0757 Vehicle Driver)
2. K. Shreekumar, S/o Shri R.K. Pallai, R/o M.I.G.-1/864, Hudko Bhilai, Tahsil and District Durg (C.G.)
(Maruti Omni No. C.G. 07-MB/0757 Vehicle Driver Owner)
3. The New India Assurance Company Ltd. Divisional Office Power House, Near Bus stand, Bhilai, Tahsil and District Durg (C.G.)
(Insurer of Maruti Omni No. C.G. 07-MB/0757)

---- Respondents

For Appellant	: Shri Arvind Dubey, Advocate
For Respondents 1 to 2	: None
For Respondent No.3/ Insurance Company	: Shri Anil Gulati, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.12.2018

1. The present in an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the injured- Claimant/Appellant, seeking enhancement of the compensation awarded by the Third Additional Motor Accident Claims Tribunal, Durg (C.G.) vide award dated 18.12.2014 passed in Claim Case No. 88 of 2012.
2. The Appellant/Claimant claimed compensation of Rs.13,22,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injuries sustained by him in the motor accident.
3. Facts of the case, in brief, are that on 24.12.2011 at about 05:45 pm the

Appellant was returning to his home by his Motorcycle bearing registration No. CG-07/F/3715, at that time, in front of Janta School, while he was crossing Bhilai-3 crossing, Respondent No.1 driver of the offending vehicle Maruti Omni bearing registration No. CG-07/MB/0757 driving the said vehicle in a rash and negligent manner dashed the Appellant. Due to the said accident, the Appellant sustained injuries on his head, ankle and other parts of the body. Left tibia-fibula bone of the Appellant was also fractured. He was hospitalized in Pt. Jawaharlal Nehru Hospital, Sector-9, Bhilai from 24.12.2011 to 11.01.2012.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.68,120/- in favour of the Appellant/Claimant and also directed that Respondent No.3/the Insurance Company shall pay the said compensation of amount with simple interest @ 6% per annum from the date of application till its realization within one month from the date of award.

5. Learned counsel for the Appellant/Claimant submits that the Tribunal has awarded Rs.10,000/- towards pain and suffering which is on the lower side. He also submits that the Tribunal has not awarded any amount towards future prospects. He further submits that due to accident, the Appellant sustained grievous injuries on the various part of the body as his left tibia-fibula bone were also fractured and he suffered 26% permanent disability, therefore, he requires physiotherapy in future, but no amount for physiotherapy was granted by the Tribunal. Therefore, he prays for enhancement of compensation by this Court.

6. Learned counsel for the Respondent No.3/Insurance Company, however, opposes the appeal and submits that the learned Tribunal has rightly awarded the amount of compensation, therefore, it is just and reasonable, which does not call for any interference in the instant appeal.

7. I have heard the learned counsel for the parties and perused the impugned award including the records of the Claims Tribunal.

8. So far as argument regarding grant of low amount of Rs.10,000/- by the Tribunal towards pain and suffering to Appellant is concerned, considering the

nature and extent of injury, the period of hospitalization, this Court is of the opinion that it can safely be enhanced to Rs.40,000/-.

9. So far as argument relating to non-grant of any amount towards future prospect is concerned, the Appellant stated himself that he is the permanent employee as mechanical technician in Bhilai Steel Plant (BSP) and also stated that in Sector-9 Hospital, treatment of the employee of BSP is free, therefore, the Tribunal has not erred in not awarding any amount towards future prospect.

10. So far as argument relating to non-grant of any amount towards physiotherapy in future is concerned, as per Ex.-P/3 MLC of the Claimant, he sustained lacerated wounds on his left occipital region, left leg, left foot and right knee of left leg. AW-3 Dr. Akhilesh Yadav stated that left tibia-fibula bone and left femur bone of the Appellant were fractured. Doctor further stated that after examination, he found 26% permanent disability and issued certificate (Ex.-P/38) in his personal capacity. He also stated that the permanent disability would be cured in future through physiotherapy and exercise. Therefore, looking the injuries sustained by the Appellant and as per Ex.-P/5 to Ex.-P/32, the Appellant was admitted in the hospital for a long time, this Court is of the opinion that the Appellant is entitled to an amount of Rs.25,000/- toward physiotherapy required to be done in future.

11. When the matter is examined in the above broad features of the case, in the considered opinion of this Court, the Claimant/Appellant is entitled for compensation in the following manner:-

Sl.No.	Head	Calculation
1	Two months income of Appellant/Claimant	Rs.33,120/-
2	For medical expenses	Rs.5,000/-
3	Expenses for attendant (for two months)	Rs.10,000/-

4	For pain and suffering	Rs.40,000/-
5	For special diet	Rs.5,000/-
6	For conveyance	Rs.5,000/-
7	For physiotherapy	Rs.25,000/-
	Total	Rs.1,23,120/-

Since the Tribunal has already awarded Rs.68,120/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.55,000/-.

12. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimant/Appellant shall be entitled to a total enhanced amount of compensation of Rs.55,000/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment. However, rest of the conditions of the impugned award shall remain intact.

13. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge