

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 533 of 2012**

Ganesh Ram Dhruv S/o Janak Ram Dhruv, Aged about 35 years,
R/o Village Maroud, Tahsil Kurud, District Dhamtari, Chhattisgarh

---- Appellant**Versus**

1. Keshav Ram Sahu S/o. Kriparam Sahu, Aged about 40 years, R/o. Village Uparwara, Tahsil Abhanpur, District Raipur Chhattisgarh
2. Prabhashankar Mishra S/o Housla Prasad Mishra, Aged about 49 years, R/o Devpuri, Dhamtari Road, Raipur, Tahsil and District Raipur, Chhattisgarh
3. National Insurance Company Ltd., Mobin Mahal, G.E. Road, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Kaushal Yadav, Advocate under instructions of Mr. R.S. Patel, Advocate
For Respondent No.3	:	Mr. R.N. Pusty, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09/02/2018**

1. The present is an appeal by the Claimant under Section 173 of the Motor Vehicles Act seeking for enhance of the compensation. The challenge is to the award dated 10.02.2012, passed by the Motor Accident Claims Tribunal, Dhamtari, Chhattisgarh, in Claim Case No.108/2010.
2. Vide the impugned award, the Tribunal in an injury case has awarded a compensation of Rs.96,500/- with interest @6% per annum from the date of application.
3. The contention of the counsel for the appellant is that though the private Doctor who had treated had assessed the disability of the appellant at 90%, but the District Medical Board when they had examined the Claimant, assessed the disability at 55%. The counsel for the appellant has also during the course of arguments produced

photographs of the Claimant, which reflects that subsequently both his feet below the knee had to be amputated. The said photographs are taken on record. He submits that now by virtue of amputation of both the feet, there is a total loss of earning capacity of the appellant and as such the disability assessed should be 100% instead of 55% as assessed by the Doctor and the compensation should be suitably quantified. He submits that the appellant had deposed before the Tribunal that he was working as a Rajmistri (mason) and was earning an amount of Rs.200/- a day at the relevant point of time and thus prayed for the amount of compensation to be awarded suitably.

4. The counsel appearing for the respondent No.3-Insurance Company however opposing the appeal submits that the photographs have been brought on record only today and there is no evidence led by the Claimant before the Tribunal to substantiate that there was a 100% of loss of earning capacity. He further submits that the requirement would be that the matter be remitted back so that the Claimant can get the opportunity to prove the disability part, so also the Insurance Company would get an opportunity to cross-examine the Claimant so also the Doctor, who would certify the disability part.
5. Having heard the contentions put forth on either side and on perusal of record, the present is an appeal of year 2012, the impugned award is of February, 2012, it is more than 6 years from the date of award. This Court at this belated stage is not inclined to accept the argument of the Insurance Company for remitting the matter back to the Tribunal, as it may further consume time and the Claimant would be deprived of his rightful claim, which he otherwise is entitled.

6. So far as the injury on the medical evidence, which has already come on record and subsequently, if we take into account the photographs of the appellant brought before this Court today, it stands corroborated and correlated that the amputation has been done subsequent to the filing of the claim application and the award having being passed.
7. Considering the period of accident, the nature of injury sustained , the Doctor's report and the subsequent amputation, it can be safely inferred that the amputation has been by virtue of the accidental injury that he suffered on 05.08.2009.
8. Further, what is also evident is that by virtue of the amputation of both his feet the Claimant has totally become handicapped and finds difficult in his movement and thus he has been rendered jobless leading to total loss of earning capacity. Thus this Court in the peculiar facts and circumstances of the case, instead of remitting it back to the Tribunal assesses the disability part of the Claimant at 100% in view of amputation of both his feet. This Court proceeds to quantify the compensation accordingly.
9. Taking into consideration the period of accident i.e. August, 2009. It is anybody is guessed that during the said period a mason would had been easily earning Rs.200/- a day, which makes it Rs.6000/- a month. Under any circumstances, even he was not a mason, even then he would had been an unskilled labour, he would have been getting an amount of Rs.150/- a day that brings the monthly income of Rs.4500/-. This Court assesses the monthly income of the appellant at Rs.4500/- @ Rs.150/- a day and the yearly income would be Rs.54,000/-. To the said amount, the Claimant shall be

entitled for 40% of his income towards future prospects, which makes it Rs.75,600/- as his yearly income. The said amount if multiplied applying the multiplier of 16, the amount would come to Rs.12,09,600/-. In addition, considering the nature of injury and the subsequent amputation of both his feet, Claimant is awarded an additional amount of Rs.1,00,000/- towards pain and suffering, Rs.1,00,000/- towards loss of amenities and in addition, the Claimant would also be entitled for an amount of Rs.2,00,000/- @ Rs.1,00,000/- for each feet for affixing artificial limbs. Thus, making the total compensation payable at Rs.16,09,600/- which is rounded off at Rs.16,00,000/-. It is ordered that the Claimant shall be entitled for a compensation of Rs.16,00,000/- instead of Rs.96,500/- as awarded by the Tribunal.

10. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.
11. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved