

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 31 of 2012**

Pramod Kumar Baya S/o LL Baya, aged about 32 years, R/o village Karmari, Post Mahroom, Police Station Dongargaon, Tahsil Dongargaon, District Rajnandgaon (CG).

---- Appellant**Versus**

1. Ram Kumar Naik S/o Hemu Ram Naik, aged about 50 years, Driver and owner R/o Bangla No.12 Central Excise Colony, Seminary Hills Police Station Gitty Khadan Nagpur (MH).
2. ICICI Lombard General Insurance Co.Ltd. registered and Head Office, Zenith House, Keshav Rao Khade Marg, Mahalaxmi Mumbai and Divisional Manager, Divisional office, Lal Ganga Shopping Complex, Shop No. 34, 3rd Floor, Raipur (CG).

---- Respondents

For Appellant	:	Shri AD Kuldeep, Advocate.
For Respondent No.2	:	Shri Pravesh Sharma on behalf of Shri Vinay Kumar Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****28.02.2018.**

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 02.09.2011 passed by the 1st Additional Motor Accident Claims Tribunal, Rajnandgaon (in short, the Tribunal) in Claim Case No.37/2010. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.1,23,600/- along with interest @ 6 percent per annum from the date of application.
2. The appellant challenges the award on the ground that the compensation awarded by the Tribunal is on the lower side. The doctor in the instant case has opined the disability of the claimant at

45 percent, but the Tribunal has only assessed the total disability at 10 percent which is on lower side and the same deserves to be enhanced. Referring to the injuries he submits that the claimant in the instant case has suffered two fractures on his left leg which has weakened the strength of his left leg for the rest of his life and therefore the disability of 10 percent assessed by the Tribunal be suitably enhanced.

3. Per contra, learned counsel for the respondent-insurance company opposing the appeal submits that the nature of injuries does not seem to be that of serious in nature and that the disability certificate issued was also for a period of three years and which could have substantially reduced in due course of time. Therefore, the compensation seems to be just and reasonable and the same does not warrant any interference.
4. Given the facts and circumstances of the case and upon hearing the counsel for the parties, indisputably the date of accident in the instant case is 23.06.2010, the vehicle involved in the accident and it was duly insured with the respondent No.2 is also not in dispute. The only issue is whether the disability assessed by the Tribunal was proper, legal and justified.
5. Indisputably, the injuries which the claimant suffered were two fractures on his left leg. He also received injuries on the other parts of the body. Given the nature of injuries, it is evidently clear that there were two fracture injuries on the left leg of the claimant and as such he must have lost much of its strength to sustain hard work and great

pressure. Thus, taking into consideration the judgment of Supreme Court in case of Raj Kumar Vs. Ajay Kumar & Anr.2011 (1)SCC 343, this court assesses the permanent disability of the claimant at 20 percent instead of 10 percent as assessed by the Tribunal.

6. Assessing disability at 20 percent instead of 10 percent, the claimant shall be entitled for compensation towards loss of earning capacity at Rs. 1,15,200/- instead of Rs.57,600/- as assessed by the Tribunal. Thus, the claimant shall now be entitled for a total compensation of Rs.1,81,200/- instead of Rs.1,23,600/- as awarded by the Tribunal.
7. The enhanced amount of compensation i.e. Rs.57,600/- shall also carry the same interest as has been awarded by the Tribunal.
8. Accordingly, the appeal stands partly allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge