

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1119 OF 2017

Surendra Kumar Sahu, S/o Shri Sevaram Sahu, aged about 24 years, R/o Village Kharra, Tahsil Kurud, District Dhamtari (C.G.)

... Appellant

versus

1. Virendra Kumar Verma, S/o Shri Ramnarayan Verma, aged about 33 years, occupation Driver, R/o Siddharth Chowk, Tikrapara, Raipur, Tahsil and District Raipur (C.G.)

2. Pramod Dubey, S/o Shri G.N. Dubey, aged about 45 years, R/o Bramhanpara, Raipur, Tahsil and District Raipur (C.G.)

3. Manager, National Insurance Co. Ltd., Branch Office No.2, Mobin Mahal, G.E. Road, Raipur, Tahsil and District Raipur (C.G.)

... Respondents

For Appellant	:	Mr. R.N. Jha, Advocate.
For Respondent No.3	:	Mr. Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/01/2018

1. The present is a claimant's appeal under Section 173 of the Motor Vehicles Act, 1988, seeking for enhancement of compensation awarded by the First Additional Presiding Officer of the Court of First Additional Motor Accident Claims Tribunal, Raipur, vide its award dated 19.5.2017, in Motor Accident Claim Case No. 137/2002.

2. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166/140 of the Motor Vehicles Act, has awarded a compensation of Rs.93,073/- to the appellant-claimant with interest thereon at the rate of 7.5% per annum.

3. Learned counsel for the appellant-claimant submits that this is the second round of litigation so far as the claimant is concerned. That the Tribunal on an earlier occasion *i.e.* on 1.4.2004 had passed an award in favour of the claimant awarding an amount of Rs.10,000/- which was subjected to challenge by the claimant in Misc. Appeal No. 704/2004 before this Court. The said appeal stood disposed of on 4.11.2016 and this Court after setting aside the award dated 1.4.2004 had remitted the matter

back for reconsideration and also after affording an opportunity to prove the disability part if any. Subsequent to the matter being remanded, the claimant was further examined and in addition the claimant also got examined a doctor *i.e.* AW-3 Dr. V.K. Pandey who was a member of the Medical Board and who had also treated the claimant at the time of accident and he has also opined that the claimant suffered from permanent disability of 45% as per the orthopedic manual. However, the Tribunal vide the impugned award has passed an award enhancing the compensation from Rs.10,000/- to Rs.93,073/- vide the impugned award.

4. Learned counsel for the appellant-claimant also referring to paragraph 19 of the impugned award submits that the Tribunal has erred inasmuch as not granting any compensation to the claimant for the disability that he has suffered. He further submits that once when there is a disability certificate issued by the competent Medical Board and the same having also been proved by a doctor before the Tribunal, there was no reason why the Tribunal should have not granted the compensation for the disability caused. He next submits that as a result of the accident the claimant has suffered permanent disability and as such he was entitled for much more compensation than what has been awarded.

5. Learned counsel for respondent no.3-insurance company however opposing the appeal submits that there is no scope of any further enhancement of the compensation awarded inasmuch in the earlier round the compensation awarded was Rs.10,000/- which has now been increased to Rs.93,073/-, as such there is a sufficient enhancement made considering the nature of injury which the claimant has suffered. He further submits that the claimant in due course of time has also got employment which further establishes that there is no substantial loss of earning capacity and thus he prayed for the rejection of the appeal.

6. Having heard the contentions put forth on either side and on perusal of record, undisputedly, from the facts what have been narrated by either side, the date of accident, the injury suffered by the claimant, the vehicle involved in the accident, the vehicle being duly insured with respondent no.3-insurance company, are not in dispute.

7. The only issue to decide is, as to whether the compensation awarded is justified or not? If we take into consideration the statements of two doctors examined, *i.e.*, AW-2 Dr. A.A. Saifi and also the subsequent doctor AW-3 Dr. V.K. Pandey, the disability part stands proved and that as per the Medical Board, the disability is 45%.

8. Applying the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343**, if we take into consideration the deposition of doctor it would reveal that the doctor has assessed the functional disability of the right hand of the claimant at 45%. That by itself would not mean that there would be a total loss of 45% of earning capacity. Of course, there would be some loss of earning capacity because of the right hand of the claimant has become disabled permanently and therefore this Court assesses the permanent functional disability of the body as 25% and the loss of future earning capacity at 20%.

9. If we take notional income of the claimant considering the period of accident of January, 2002, it can safely be assessed at Rs.3000/- monthly which makes the yearly income at Rs.36,000/-. The claimant shall also be entitled increase of 40% of his income under the head, future prospects, which would bring the annual income at Rs.50,400/- of which considering the loss of earning due to functional disability to the extent of 20%, the amount would come to Rs.10,080/- which if multiplied applying the multiplier of 18, the amount would reach to Rs.1,81,440/-.

10. It is accordingly ordered that the claimant shall be entitled for a compensation of Rs.1,81,440/- towards the disability in addition to the compensation what has already been awarded by the Tribunal, making the total compensation payable to the appellant-claimant at Rs.2,74,513/-. It is further ordered that the entire amount of compensation shall carry interest at the rate of 7.5% from the date of claim application.

11. The appeal stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge