

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 758 of 2011**

Santosh Tiwari S/o Sukhnandan Prasad Tiwari, aged about 39 years,
R/o Duma Talab, Mohba Bazar, Raipur (CG).

---- Appellant**Versus**

1. Motilal Sahu S/o Gokul Sahu, aged about 42 years, Near Hanuman Mandir, Gayatri Nagar, Bhawani Nagar, Kota, Raipu (CG).
2. Bajaj Allianz General Insurance Co. Lt. Through The Branch Manager, Br. Off. Shiv Mohan Bhavwan, Vidhan Sabha Road, Raipur.

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate.
For respondent No.2		Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****15.01.2018**

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 05.10.2010 passed by the 10th Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.14/2009. Vide the said impugned award, the Tribunal in an injury case has awarded a compensation of Rs.1,00,697/- to the claimant along with interest @ 6 percent per annum from the date of application.
2. There was no representation on behalf of the claimant, therefore, considering the fact that this appeal is of the year, 2011, this court thought it fit to take assistance of Shri Raj Awashi, Advocate, present in the court for disposal of the appeal.

3. Counsel for the appellant-claimant submits that the injured in the instant case had suffered multiple fractures and as a result of the fracture there is shortening of left leg of the claimant by 2 and ½ inches, however, the Tribunal does not seem to have given any compensation towards the disability. The income assessed by the Tribunal is also on lower side and the same deserves to be enhanced. Further, the compensation awarded for the period of treatment and also miscellaneous and incidental expenses is unreasonably low.
4. The counsel for the insurance company, however opposing the appeal submits that it is a case where the insurance company has been duly exonerated of its liability and the liability of payment of compensation has been fixed upon the owner. It is further contended that the owner in the instant case has not challenged the findings of the Tribunal and as such the finding of the Tribunal in affixing the liability upon the owner has attained finality.
5. Having heard the contentions put forth on either side and on perusal of records what reflects is that from the medical evidence there seems to be shortening of 2 and ½ inches in the left leg of the injured claimant. It also reflects that though the doctor has deposed that the claimant had suffered disability of 86 percent, the Tribunal did not find any substantial proof in this regard and has disbelieved the same. However, what is undisputed is the accident and the injury sustained by the claimant. So far as shortening of leg is concerned, the same is also not in dispute. However, even though it was difficult to accept

the disability of 86 percent as has been certified by the doctor, but what clearly reflects that because of the accident there was a shortening of 2 and ½ inches of left leg of the claimant as such the claimant must have suffered some loss of earning capacity.

6. Thus, considering the entire facts and circumstances of the case; the medical evidence which have come on record; the injuries sustained by the claimant, and also keeping in view the decision 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 30 percent. Likewise, it is also pertinent to take note of the fact that in August, 2008 even an unskilled labour would had been earning more than Rs.150/- a day i.e. 4500/- per month. Therefore, this court assesses the income of the claimant at Rs.4500/- instead of Rs.3000/- and proceeds to quantify the compensation.
7. Accepting Rs.4500/- as monthly income, the yearly income would be Rs.54,000/-, 30 percent of which would be Rs.16,200/-which if multiplied by applying multiplier of 15, the amount of compensation under loss of earning capacity would become Rs.2,43,000/-. Further, the claimant is also entitled for Rs.85,697/- under medical expenses as awarded by the Tribunal. So far as loss of income during treatment is concerned, the same shall also be Rs.4500/- instead of Rs.3000/-. So far as special diet is concerned, the said amount is enhanced from Rs.2000/- to Rs.5000/-. Likewise, for pain and suffering undergone by the claimant due to injuries/fractures sustained by the claimant in the accident, this court quantifies the

same at Rs.25000/- instead of Rs.5000/-. In addition, the claimant would also be entitled for Rs.6803/- towards transportation, engagement of attendant, and miscellaneous expenses incurred, making total compensation payable at Rs.3,70,000/- instead of Rs.1,00,697/- as awarded by the Tribunal. It is ordered accordingly that the claimant shall now be entitled for a total compensation of Rs.3,70,000/- instead of Rs.1,00,697/- as awarded by the Tribunal.

8. The above enhanced amount of compensation shall also carry interest at the same rate as has been awarded by the Tribunal.
9. It is made clear that the liability of payment of compensation shall remain upon the owner and driver of the vehicle as has been awarded by the Tribunal.
10. Accordingly, the appeal of the appellant-claimant stands allowed and disposed of.
11. Before parting with the matter, this court appreciates the valuable assistance rendered by Shri Raj Awasthi, Advocate, in the disposal of appeal.
12. Let a copy of this judgment be sent to the Secretary, District Legal Services Authority, Raipur, who in turn should ensure sending the copy of this judgment to the claimants at the address shown in the cause title.

Sd/-
(P.Sam Koshy)
Judge