

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 132 of 2011**

Phool Singh, S/o. Dhan Singh, Aged about 30 years, Occupation-Service, R/o. Bholvapadar, Kondagao, Permanent R/o. Dharampura No.2, Kalipur Road, Tahsil Jagadalpur, District Bastar, Chhattisgarh

---- Appellant**Versus**

1. Puran Lal Sinha, S/o. Leelaram Sinha, Aged about 28 years, Occupation Driver, R/o. Konta, Kandupara, District Dantewada, Chhattisgarh
2. Sayyad Sattar Ali, S/o. Sayyad Sarfaraz Ali, Aged about 36 years, R/o. Ashok Park Quarter No.41, Dharampura, Jagadalpur, District Bastar, Chhattisgarh
3. Reliance General Insurance, through: General Manager, Registered office- Reliance Centre, 19, Walchand Hirachand Marg, Ballard Estate, Mumbai 400001.

----Respondents

For Appellant	:	Mr. Praveen K. Dhurandhar, Advocate (Amicus curiae appointed by the Court)
For Insurance Company	:	Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****03/01/2018**

1. Present is an appeal by the Claimant assailing the award dated 07.10.2010, passed by the 3rd Additional Motor Accident Claims Tribunal, Jagdalpur, District Bastar, Chhattisgarh, in Claim Case No. 27/2010. Vide the impugned award the Tribunal in an injury case has awarded a compensation of Rs.56,272/- with interest @6% per annum from the date of application.
2. The brief facts of the case is that the injured/claimant in the instant case met with an accident while he was traveling on truck bearing registration No. CG/17/H/7786, which was driven by the respondent no.1 and owned by the respondent no.2 and the vehicle was insured by the respondent no.3.

3. As a result of the accident, the Claimant sustained grievous injuries on his left hand and during the course of the treatment; the left hand had to be amputated from the shoulder. During the course of the trial, the Claimant apart from examining himself had also examined Dr. Virendra Jha (AW-2), an Orthopedic specialist, who had deposed before the Tribunal that the Claimant in the instant case suffered a disability of more than 50%. However, since the Claimant was a Government teacher and there was no loss in the earning capacity, the Tribunal awarded only an amount of Rs.25,000/- towards the disability compensation and the total compensation awarded was of Rs.56,272/-.
4. The counsel for the Claimant submitted that the compensation award to the Claimant is unreasonably low and that taking into account the nature of the injury sustained, the amount of compensation awarded deserves to be suitably enhanced.
5. It was further contended that the Tribunal has not properly assessed the compensation for the pain and suffering so also no compensation has been awarded for affixing of the artificial limb that would be required and prayed for the award to be suitably enhanced.
6. The Insurance Company i.e. respondent no.3 has also filed a cross-objection assailing the impugned award so far as the liability part is concerned. It was contended by the counsel for the Insurance Company that from the admitted factual matrix of the case itself, both from claim application as well as from the evidence of the Claimant it clearly reflects that he was traveling on the truck as a gratuitous passenger and that the policy which was issued would not

cover the risk of the gratuitous passenger in a goods carried vehicle as the vehicle involved was a truck and prayed for the award to be suitably modified and the liability part be shifted upon the Owner.

7. Having heard the contention put forth on either side and on perusal of record, it reflects that the Owner of the vehicle was proceeded exparte after due service before the Tribunal and in the present appeal also the Owner inspite of proper service had not entered appearance.
8. From the plain reading of the claim application under Section 166 of the Motor Vehicles Act as also from the evidence, which has been adduced before the Tribunal it clearly reflects that the Claimant in the instant case had boarded a truck of which the Driver was known to him and while he was traveling in the said truck, the accident occurred. The evidence and the pleading of the Claimant clearly reflects that he was not either an employee engaged for the said truck nor was any premium paid by the Owner to the Insurance Company covering the risk of any gratuitous passenger. However, from the perusal of record it reflects that there has been no defence whatsoever taken by the Insurance Company in as much as no written statement was filed, nor was there any evidence led by the Insurance Company in their support.
9. Though there is no evidence on the part of the Insurance Company either in the form of written statement or in the nature of evidence, but from the admitted facts as it stands from the evidence and pleading of the claimant himself it clearly reflects that he was a gratuitous passenger.

10. Under the given circumstances, this Court is of the opinion that ends of justice would meet if the Insurance Company is directed to pay the entire compensation awarded and applying the doctrine of “pay and recovery”, the amount can be recovered by initiating appropriate recovery proceedings against the Owner and Driver of the vehicle. As regards the enhancement of compensation is concerned, true it is that the admitted position as it stands is the date of accident, the vehicle involved in the accident, the Claimant suffering injury to the extent of amputation of his left hand from the shoulder point from the said accident, the vehicle being duly insured by the Insurance Company-respondent No.3. Considering the nature of the injury i.e. of an amputation of left hand, this Court is of the opinion that the compensation awarded by the Tribunal is definitely unreasonably low and it deserves suitable enhance.
11. It is beyond imagination to visualize the nature of pain and suffering and mental agony, which the Claimant must have undergone from the said accident in as much as there was an amputation of his left hand and the impact of the amputation would be suffered by the Claimant all through his remaining life. That he must have also being put to great extent of loss of amenities to life, in as much as he would not be able to drive a two wheeler or a four wheeler any further and would always have to depend upon the public transport or would have to depend upon some other persons for his movement from one place to another. Likewise, the amount of money that must have been spent by engaging an attendant also awarded is extremely low, which deserves for suitable enhancement.

The claimant would also be entitled sufficient amount with which he could have thought of getting an artificial limb implanted.

12. Considering all these, this Court is of the opinion that for the pain and suffering which he has suffered, the ends of justice would meet if the amount of Rs.1,50,000/- is awarded instead of Rs.10,000/- as awarded by the Tribunal. Likewise, for the loss of amenities in life also this Court quantifies the compensation of Rs.1,50,000/- instead of Rs.10,000/-. So far as engagement of attendant and for the special diet required for the speedy recovery of the injury caused, this Court quantifies the compensation at Rs.50,000/- instead of Rs.5,000/- as quantified by the Tribunal. So far as the disability part is concerned, this Court quantifies the compensation at Rs.2,00,000/- instead of Rs.25,000/- taking into consideration the nature of injury which is an amputation of left hand. In addition, this Court awards an amount of Rs.1,00,000/- to the Claimant for affixing of the artificial limb. Further, the Claimant shall also be entitled for the amount of Rs.6,272/-, which has been awarded by the Tribunal towards medical expenses. Thus, the total compensation payable to the Claimant would become Rs.6,56,272/- instead of Rs.56,272/-.
13. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.
14. As has been held earlier, it shall be the responsibility of the Insurance Company i.e. respondent No.3 to pay the compensation, and in turn the Insurance Company has the liberty of recovering the amount from the respondent No. 1 & 2. The appeal stands allowed.

15. This Court extends a word of appreciation to Mr. Praveen K. Dhurandhar, Advocate for rendering the assistance in the disposal of the case.
16. The Registry is directed to send a copy of this judgment to the Secretary, District Legal Services Authority, Jagdalpur, District Bastar, who in turn, is directed to make all efforts to ensure serving a copy of this judgment to the Claimant at the address shown in the cause title.

Sd/-
(P. Sam Koshy)
Judge

Ved