

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 767 of 2012**

Vikash Kumar Shrivastava S/o Braj Kumar Shrivastava Aged About 18 Years R/o Katras Bazar, P.S. Katrasgarh, District Dhanbad, Jharkhand, R/o Village Karabel P.S. Sitapur, District Surguja, Chhattisgarh

---- Appellant**Versus**

1. Vinay Kumar Kujur S/o Juguru Ram Aged About 25 Years R/o Karabel, P.S. Kamleshwarpur, Tahsil Sitapur, District Surguja, Chhattisgarh
2. Tripurari Yadav S/o Satyanarayan Yadav Aged About 31 Years R/o Manjhapara, Post Narmadapur, P.S. Kamleshwarpur, Tahsil Sitapur, District : Surguja, Chhattisgarh
3. Branch Manager, Reliance General Insurance Company Limited, Branch Office, Vidhanasabha Road, Ravi Bhawan, Pandri Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. A.N. Pandey, Advocate and Mr. P.K. Tulsyan, Advocate (Amicus appointed by the Court)
For Respondent No.2	:	Mr. Rahul K. Mishra, Advocate
For Insurance Company	:	Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****16/02/2018**

1. The present is an appeal by the Claimant under Section 173 of the Motor Vehicles Act seeking for enhance of the compensation. Challenge is to the award dated 10.05.2012, passed by the 1st Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja, Chhattisgarh, in Motor Accident Claim Case No. 88/2011.
2. Vide the impugned award, the Tribunal in an injury case has awarded a compensation of Rs.2,62,000/- with interest @ 6% per annum from the date of application.

3. The contention of the counsel for the appellant is that the appellant in the instant case was an 18 years old boy and from the accident that he suffered on 14.05.2010 his left leg had to be amputated below his knee. It was the contention of the counsel for the appellant that considering the nature of the injury and the age of the Claimant, the amount of compensation assessed is unreasonably low and the same deserves suitable enhancement. He further submits that by virtue of the said accident, the appellant has been rendered permanently disabled and the loss of earning capacity as such would be 100% because after the amputation of his left leg, the mobility of the appellant has become totally restricted and thus prayed for the award to be accordingly enhanced.
4. Per contra, the counsel appearing for the Insurance Company opposing the appeal submits that the award seems to be fair and reasonable for the reason that the Claimant was only 18 years old of age and it cannot be presumed that he was in employment during the said period and therefore the income assessed and the calculation made by the Tribunal does not warrant interference and the appeal deserves to be rejected.
5. The counsel for the Insurance Company further submits that he has also filed cross-objection assailing the compensation. The ground raised in the cross-objection is that the vehicle did not have a valid permit or fitness certificate so also the Driver of the offending vehicle did not have a valid license to the extent of having proper endorsement to drive a heavy goods vehicle and prayed for the award to be set-aside and the Insurance Company be exonerated of its liability.

6. So far as the cross-objection of the Insurance Company is concerned, this Court does not find any strong case made out by the counsel for the Insurance Company for the simple reason that perusal of the record would show that the Insurance Company has not led any evidence before the Tribunal to substantiate any of its contention. In the absence of any evidence on the part of the Insurance Company the allegations and contentions put forth by the Insurance Company is not established and the cross-objection thus deserves to be and is accordingly rejected.
7. Further from the perusal of the record it would also reveal that the Claimant himself has produced the relevant documents pertaining to the vehicle including the registration certificate, the fitness certificate and the license of the Driver of the offending vehicle and the Driver's license also shows proper endorsement to drive heavy goods vehicle.
8. Now coming to the issue whether the compensation awarded is just and reasonable, this Court is of the opinion that considering the fact that it is an accident which took place in May, 2010. Under no circumstances the notional income to be assessed for an accident that took place during the said period could be anything less than Rs.4500/- as even an unskilled labour would had been earning more than Rs.150/- a day. This Court therefore assesses the notional income of the Claimant at Rs.4500/-instead of Rs.3000/-. The Claimant in addition would also be entitled for 40% of his income towards future prospects, which would bring the monthly to Rs.6300/- and the yearly income at Rs.75,600/-.

9. Considering the nature of injury which has been caused to the Claimant, if we take into consideration the schedule under the Workmen's Compensation Act, the disability pertaining to the Claimant i.e. amputation below knee, the disability would be as per part-2 of schedule-1, serial No.20 & 21. Thus this Court has no hesitation to rely upon the said schedule and assess the said disability of the Claimant at 50%. Assessing 50% as the disability and loss of earning capacity of the yearly income would come to Rs.37,800/-, which if multiplied applying the multiplier of 18, the amount would come to Rs.6,80,400/- as compensation towards loss of earning capacity, it is ordered accordingly. In addition, the Claimant shall also be entitled for the compensation of an amount of Rs.25,000/- towards medical expenses and also an amount of Rs.25,000/- towards special diets and incidental charges incurred during the course of treatment. So far as the future treatment is concerned, this Court considering the fact the Claimant would also have to get an artificial limb affixed, quantifies the expenses for the future treatment part at Rs.1,00,000/-. In addition, so far as the pain and suffering and mental agony which he has undergone, considering the age of the Claimant to be of 18 years, this Court assesses the amount for mental agony and pain & suffering at Rs.2,00,000/- instead of Rs.25,000/- as assessed by the Tribunal. Likewise, the Claimant would also be entitled for compensation under the loss of amenities to the tune of Rs.1,00,000/-, which would make the total compensation payable at Rs.11,30,400/- instead of Rs.2,62,000/- as awarded by the Tribunal.

10. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.
11. This Court extends a word of appreciation to Mr. P.K. Tulsyan, Advocate for rendering the assistance in the disposal of the case.
12. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved