

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1155 of 2011**

Dukalha Ram Dhivar S/o Ratthu Ram Dhivar, aged about 45 years, R/o village Jairoud (Umariya) Post Reewa, Tahsil – Arang, District Raipur (CG)

---- Appellant**Versus**

1. Narendra Sahu S/o Uday Ram Sahu, aged about 23 years, R/o Ward No.13 Police Station Tumgaon, Tahsil & District – Mahasamund (CG) (Driver of vehicle bus bearing registration No. CG/04/G/8936)
2. Dileep Kumar Yadav S/o Nand Lal Yadav, aged about 40 years, R/o Ward No. 13, Police Station Tumgaon, Tahsil & District – Mahasamund (CG) (Registered owner of vehicle bus bearing registration No. CG/04/G/8936)
3. The Branch Manager, the Reliance General Insurance Company Limited, through Branch Manager, Branch Office, Shop No. 412/413, 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur, Tahsil & District Raipur (CG)

---- Respondents

For Appellant	:	Shri Shivendu Pandya, Advocate
For Respondent no.3	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09/01/2018**

Present is an appeal under Section 173 of the Motor Vehicles Act by the claimant seeking for enhancement of compensation awarded in Claim Case No. 144/2010 by the 2nd Additional Motor Accident Claims Tribunal, Raipur dated 04.04.2011. Vide the impugned award, in a case of amputation of right leg, the Tribunal has awarded a compensation of Rs.1,53,500/- with interest @ 6% per annum from the date of application.

2. Counsel for the appellant submits that in the instant case the amount of compensation quantified by the Tribunal is unreasonably low and the same deserves to be substantially enhanced. He submits that the Tribunal has not properly assessed the income of the deceased considering the period of accident. The Tribunal should have appreciated the fact that the nature of injury left the claimant 100% disabled as he was working as a Hamal prior to the accident and subsequent to the accident he is not in a position to perform his duties to earn his livelihood. Therefore, it has also to be assumed that there is a total loss of earning capacity and the compensation should have been awarded accordingly. Counsel for the appellant further submits that even otherwise, the award is on the lower side for the reason that the Tribunal has not given any compensation under pain and suffering that the claimant has undergone and for the loss of amenities he would face in his life so also no compensation has been awarded for fixing an artificial limb. He submits that the Tribunal has also not awarded any compensation towards special diet and incidental expenses which the claimant had incurred. Thus, prayed for suitable enhancement.

3. Counsel appearing for the Insurance Company, however, opposes the appeal and submits that the Tribunal has rightly assessed the income of the deceased at the relevant point of time and on the basis of which, the Tribunal has quantified the compensation which cannot be said to be without any substance and base. Thus, prayed for rejection of the appeal.

4. Having heard the contention put forth on either side and on perusal of the record what is reflected is that undisputedly the claimant in the instant case met with an accident on 18.05.2010, as a result of the accident, he sustained injuries which ultimately led to the amputation of his right leg. It is also proved in the evidence that the claimant in the instant case was working

as a Hamal. Undisputedly, the date of accident being May, 2010, the minimum income of a labour particularly a Hamal would have been somewhere between 150 to 200 a day which would make the monthly income at Rs.4,500/- to 6,000/-. For computation of compensation, this Court assesses the monthly income of the deceased at Rs.5,000/- a month in stead of Rs.3,000/- as assessed by the Tribunal which would bring the yearly income at Rs.60,000/-

5. Given the facts and circumstances of the case and the recent decision of the Supreme Court, the injured would be entitled for 25% of his income towards future prospects while quantifying the compensation, considering the age of the injured. 25% of the income if added under future prospects, it would bring the yearly income at Rs.75,000/-. If the said amount is multiplied applying the multiplier of 13, the amount comes to Rs.9,75,000/-. It is ordered that the claimant shall be entitled for a compensation of Rs.9,75,000/- towards loss of earning capacity. In addition, the claimant shall also be entitled for compensation of Rs.1,00,000/- towards pain and suffering, Rs.1,00,000/- for loss of amenities, Rs.75,000/- towards incidental expenses including engagement of an attendant, special diet and transportation expenses and Rs.1,50,000/- for artificial limb which would make the total compensation payable to the claimant as Rs.14,00,000/- in stead of Rs.1,53,500/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

6. The appeal thus stands allowed.

**Sd/-
(P. Sam Koshy)
JUDGE**