

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 1073 of 2011

Hari Arjun S/o Narayan, aged about 30 years, R/o village Dharampura No.1, Tah.Jagdalpur, District Bastar (C.G.).

---Appellant

Versus

1. K.Satya Rao S/o K.Sanyasi Rao.
2. Ishwar Rao @ Gopi S/o S.Rao.
Both are R/o Chitrakut Road, Hikmi Para, Jagdalpur, District Bastar (C.G.).
3. The New India Assurance Co.Ltd., Through Branch Manager, Jagdalpur, District Bastar (C.G.).

---Respondents

For Appellant	:	Shri Keshav Dewangan, Advocate.
For Respondent No.3/ Insurance Company	:	Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/01/2018

1. Present is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act assailing the award dated 01/04/2011 passed by the learned Motor Accident Claims Tribunal, Jagdalpur, District Bastar (C.G.) in Motor Accident Claim Case No.236/1999.
2. Vide the said impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.93,764/- without interest. Out of the said amount, Rs.80,000/- is awarded towards the pain and suffering and mental agony, Rs.6,764/- towards the

medical expenses, Rs.2,000/- for repair of the Motorcycle belonging to the appellant and Rs.5,000/- towards future medical expenses.

3. The counsel for the appellant/claimant submits that, the Tribunal in the instant case has not awarded any compensation for the disability which has been caused to the claimant. He further submits that, it is a case where the femur bone of the right thigh of the claimant has got fractured and that as a consequence of the treatment, the right leg got shortened by $\frac{1}{2}$ inch and therefore he was not able to stand with his right leg so also he was not able to move freely as he could prior to the accident. He further submits that, the appellant in the instant case was operated on a couple of occasions for the treatment of the femur bone and also steel plates and rods were inserted in the course of the treatment. He further submits that, a doctor was also examined namely Dr.V.K.Jha who had deposed before the Tribunal that, the claimant in the instant case got permanent disability to the extent of 55%. However, the Tribunal has not awarded any compensation for the disability so caused. He further submits that, even otherwise, the compensation towards the special diet, engagement of an attendant and incidental transportation expenses were all not considered for grant of compensation. He further submits that, the amount of compensation towards the pain and suffering and mental agony which the appellant has undergone is also on the lower side and thus prayed for suitable enhancement of the award.

4. The counsel for the Insurance Company on contrary opposing the appeal submits, that the finding of the Tribunal does not warrant any interference in as much as it is based upon the evidence which has come on

record. He further submits that, the claimant have also not got a disability certificate issued from a competent medical board and for this reason also, the finding of the Tribunal does not warrant any interference.

5. Having heard the contentions put forth on either side and on perusal of the record, what is undisputed is the date of accident to be 07/06/1999, the vehicle involved in the accident and the vehicle being duly insured with the respondent No.3/Insurance Company. It is also an admitted position that, the claimant in the instant case was working as a compounder at the Government Ayurvedic Dispensary, Turangur, Division Dimra Pala, District Bastar. Exhibit-P/64 is a salary slip issued for the month of November-2000 where his monthly income was shown at Rs.4,918/-. Further, what is also an admitted position is that, Dr.V.K.Jha-AW/3, an Orthopedic Surgeon, Maharani Hospital, Jagdalpur was examined during the course of the evidence and he has certified the claimant to be 55% disability by virtue of the shortening of leg and also the weakening of thigh bone.

6. Now coming to the facts of the case, admittedly, there is a shortening of leg proved by the doctor. Though, there is no medical certificate issued from the District Medical Board, but undisputedly, Dr.V.K.Jha has deposed before the Tribunal to prove the disability and the injury. Though, the doctor has assessed the claimant suffering from 55% of the disability, but the said disability would be of the leg, the overall disability would not be to that extent. That, so far as the overall functional disability is concerned, keeping in view the decision of the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar & Anr [2011 1 SCC 343]**, this Court

assesses the overall disability at 25% instead of 55% as assessed by the doctor. Thus, this Court is of the opinion that ends of justice would meet if, the claimant is awarded a compensation towards loss of earning capacity to the tune of 25%. Further, this Court based on the salary slip of the injured/claimant assesses his monthly income at Rs.4,918/- which for convenience sake is been rounded off at Rs.4,900/- per month i.e. Rs.58,800/- yearly. The claimant would also be entitled for 50% of the said amount i.e. Rs.29,400/- towards future income which when added to the yearly income of the injured, the amount would come to Rs.88,200/-. If we assesses the permanent disability of the claimant at 25%, the claimant would be entitled for 25% of Rs.88,200 i.e. Rs.22,050/- towards loss of earning capacity. This amount when multiplied by applying multiplier of 17, the amount would come to Rs.3,74,850/-. It is ordered accordingly that. the claimant shall be entitled for Rs.3,74,850/- towards loss of earning capacity. In addition, the claimant shall also be entitled for an amount of Rs.1,00,000/- towards the pain and suffering and mental agony instead of Rs.80,000/- as awarded by the Tribunal. Further, the claimant shall also be entitled for the medical expenses of Rs.6,764/- as awarded by the Tribunal. So far as the loss of income of two months during which the claimant has not been able to perform his duties, this Court quantifies the compensation at Rs.9,800/-. Further, the claimant would also be entitled for Rs.2,000/- awarded by the Tribunal towards the expenses incurred in the maintenance of the vehicle which was driven by the appellant. In addition, the claimant shall also be entitled for an amount of Rs.5,000/- awarded by the Tribunal towards the

future medical expenses. This Court also awards an amount of Rs.8,350/- towards the miscellaneous incidental expenses incurred in the engagement of an attendant and transportation expenses to make the total compensation payable to the injured at Rs.5,00,000/-. Thus, the claimant shall be entitled for a total compensation of Rs.5,00,000/- instead of Rs.93,764/- as awarded by the Tribunal.

7. Further, this Court is of the opinion that non granting of interest to the claimant again is bad and not sustainable for the reason that, the Tribunal on an earlier occasion had rejected the claim application with nill award to the claimant which was later on remanded by the High Court vide order dated 26/10/2010 in MAC No.387/2003. The claimant cannot be found fault with for the rejection of the claim application.

8. Considering the facts and circumstances of the case, this Court is of the opinion that, the claimant shall be entitled for interest on the awarded amount @ 6% per annum from the date of application.

9. The appeal stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE