NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1162 of 2011

Benudhar S/o Lachchhu, age about 25 years, R/o Amaguda, Patel Para, District Bastar (C.G.).

---Appellant

Versus

1. S.Ramu Murty S/o S.S.Murty, aged about 41 years, R/o Main Road, Jagdalpur, District Bastar (C.G.) at present R/o Surundwada Semara, P.S.Nagarnar, District Bastar (C.G.).
2. Shankar Rao S/o S.Samalu Rao, aged about 41 years, R/o Hotkachawa, Jagdalpur, District Bastar (C.G.).
3. Branch Manager, United India Insurance Company Limited, Branch Anupama Chowk, Jagdalpur, District Bastar (C.G.).

---Respondents

For Appellant	:	Shri Subhash Yadav, Advocate.
For Respondent No.3/ Insurance Company	:	Shri H.B.Agrawal, Senior Advocate along with Ms.Deepali Dubey, 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 27/08/2011 passed by the learned First Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (C.G.) in Motor Accident Claim Case No.93/2009.

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.1,94,600/- with interest @ 6% per annum from the date of application.

3. The counsel for the appellant/claimant submits that, the amount of compensation awarded towards pain and suffering, loss of amenities and special diet is unreasonably low and thus prayed for suitable enhancement of the award. He further submits that, the doctor in the instant case had deposed before the Tribunal proving the disability at 55%, whereas the Tribunal has assessed the disability at only 30% which also does not seem to be justified and the same deserves suitable modification.

4. The senior counsel appearing for the Insurance Company however opposing the appeal submits that, the amount of compensation awarded is just, fair and reasonable and it does not warrant any interference. He further submits that, the Tribunal has taken into account all the evidences which have come on record while reaching to the said conclusion and thus prayed for the rejection of the appeal, as there is no scope of any interference with the quantum of compensation awarded.

5. Having heard the contentions put forth on either side and on perusal of record, some of the admitted factual matrix of the case are the accident that took place on 25/04/2009, the resultant injury caused to the claimant i.e. fracture of the femur bone of the right thigh so also the fracture of the right tibia bone, the vehicle involved in the accident and the same was also duly insured with the respondent No.3/Insurance Company. In the course of the treatment, the claimant also had to be operated upon and steel plates and screws had to be affixed for his treatment and that he was not able to walk

straight as a result of the accident. The injury has been proved by the doctor who has also certified the claimant to have suffered from disability of 65%.

6. If we taken into account the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar & Anr [2011 1 SCC 343],** the finding of 30% of disability towards loss of earning capacity seems to be just and reasonable when compared to the nature of injury sustained by the claimant. However, considering the fact that the accident took place in April-2009, this Court is of the opinion that the notional income assessed by the Tribunal at Rs.3,000/- is on the lower side, as during the said period, the minimum income of even an unskilled labour would had been somewhere around Rs.150-200/- per day i.e. Rs.4,500-6,000/- per month.

7. Thus, accepting Rs.4,500/- as the monthly income of the deceased, the yearly income would become Rs.54,000/-. If we take 30% as the permanent disability as assessed by the Tribunal, the claimant would be entitled for the loss of earning capacity to the extent of 30% of his yearly income. Therefore, 30% of Rs.54,000/- would be Rs.16,200/- which if multiplied by applying multiplier of 18, the amount would come to Rs.2,91,600/-. It is ordered accordingly, that the claimant shall be entitled for Rs.2,91,600/- towards loss of earning capacity instead of Rs.1,83,600/- as assessed by the Tribunal. In addition, the claimant shall also be entitled for a compensation under the pain and suffering at Rs.25,000/- instead of Rs.5,000/- as awarded by the Tribunal. Likewise, for the loss of amenities also, the claimant would be entitled for an amount of Rs.10,000/- instead of Rs.5,000/- as awarded by the Tribunal. So far as the compensation towards special diet, transportation

and incidental expenses, this Court is of the opinion that an amount of Rs.1,000/- awarded by the Tribunal is unreasonably low. Accordingly, this Court quantifies the same at Rs.20,000/-. Thus, the total compensation payable to the claimant would become Rs.3,46,600/- instead of Rs.1,94,600/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

8. The appeal stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit