

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 861 of 2018**

- Dharam Singh S/o Prem Singh, Aged About 40 Years Caste - Gond, Resident Of Village - Podikala, Police Station - Pasan, District Korba Chhattisgarh. (Claimant), District : Korba, Chhattisgarh

---- Appellant**Versus**

1. Akabar Ali S/o Asiq Ali, R/o Chhoti Bazar, Bahtadafai Chirmiri, Post - Chirmiri, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
2. Smt. Resna Khan W/o Islam Khan R/o Kapoor Singh Dafai, Chhoti Bazar, Bahtadafai Chirmiri, Post - Chirmiri, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
3. The Branch Manager Oriental Insurance Company Limited, Manendragarh, Post Manendragarh, District Koriya, Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Respondents

For Appellant
For Respondent

Shri Sanjeev Kumar Sahu, Advocate.
Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****05/10/2018**

1. This is claimant's appeal seeking enhancement of compensation awarded by the Additional Motor Accidents Claims Tribunal, Katghora to the Additional Tribunal, Katghora, District Koraba C.G. (for short 'the Tribunal') in Claim Case No. 10 of 2014 vide award dated 16.04.2018.
2. As against the compensation of Rs.27,50,000/- claimed by the appellant/claimant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the grievous injuries sustained by him in the road accident on 20.01.2013, the Tribunal

awarded a total sum of Rs.83,053/- along with interest @ 9% per annum from the date of application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led by the parties, held: the accident had occurred due to rash and negligent driving of offending Bolero bearing registration No. C.G.15/AD/0485 by its driver i.e., respondent No.1 herein: appellant/claimant sustained grievous multiple injuries and his leg was fractured and he suffered 10% permanent disability, respondent No.3 / Oriental Insurance Company liable for payment of compensation as it could not establish any violation of policy conditions; assessed and awarded the aforesaid sum as compensation.
4. Learned counsel for the appellant, would submit that the appellant was a labour, was earning Rs. 8,000/- per month from the Goat Husbandry but learned Tribunal wrongly considered his income as per minimum wages. He submits that as per Doctor certificate Ex.P-6 the claimant suffered 42.42% permanent disability, on account of which his labour work as well as movement was restricted. However, the Tribunal has awarded only Rs.5,000/- towards the pain and suffering. Therefore, the appellant prays for enhancement of the compensation suitably.
5. Counsel for the respondents opposed the arguments advanced by the appellant's counsel and stated that as per Doctor certificate permanent disability was not in respect of the whole body but it was on the leg only because of the fracture which cannot be said to be permanent disability. As per finding of the Tribunal, breach of condition is also mentioned by the learned Tribunal but liability fastened upon the respondent. He submits that the amount awarded by the Tribunal is just and proper and needs no interference by this Court.

6. Heard learned counsel for the parties and perused the material available on record.
7. As per Dr. P.P. Singh (AW-2) he examined the claimant after about two years and found 42.42% permanent disability. Upon X-ray examination of the claimant the Doctor found that on account of old fracture in the right leg the claimant was suffering from pain in knee and ankle there was stiffness and deformity in the leg. The Certificate issued by Doctor P.P. Singh is not challenged in cross examination regarding the injury and permanent disablement.
8. Considering the fact that the appellant is in trouble for a long life due to injury caused by this accident in his body, the pain and suffering reduced the efficiency of the work of the claimant, looking to his job i.e. labour and the permanent disability, the loss of earning capacity can be taken as 15%. The amount awarded by the Tribunal towards pain and suffering is also on lower side, therefore, considering the facts and circumstances of the case, the claimant is held for compensation in the following manner:-

S.No.	Head	Calculation
1.	Notional Income of the claimant	Rs. 4646/- i.e. Rs.55,752/- per annum.
2.	Multiplier of 14 applied	Rs. 55,752x14 = 7,80,528/-
3	Loss of earning capacity @ 15%	Rs. 1,17,079/-
4.	For pain and suffering	Rs. 20,000/-
	Total compensation	Rs. 1,37,079/-

9. In the result, the appeal is allowed in part. Since, the Tribunal has already awarded Rs.83,053/-, after deducting the same the claimant is held entitled

for an additional compensation of Rs.54,026/- with interest at the rate of 9% per annum from the date of application till its realization.

10. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh