

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 78 of 2012**

Rajesh Pancham, aged about 40 years, S/o Late Victor Pancham,
R/o Tikrapara, Ward No. 3 Dongargarh, Distt. Rajnandgaon C.G.

---- Appellant**Versus**

1. Rajesh Kuldeep, aged about 32 years, S/o Shri Mohardas Kuldeep,
R/o near Shrivastava House, Kumarpara, Ward No.14, Distt.
Rajnandgaon (CG).
2. Ashok Kumar Das S/o Alias Das, aged about 62 years, Ward No.12,
Budhwari Para, Dongargarh, Distt. Rajnandgaon C.G.
3. Royal Sundaram Allianz Insurance Co. Ltd. Sundaram towers, 45896
White Road, Chennai-400014.

---- Respondents

For Appellant : Shri Hanuman Prasad Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****28.02.2018.**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimant seeking enhancement of compensation against the award dated 01.10.2011 passed by the 3rd Additional Motor Accident Claims Tribunal, Durg (in short, the Tribunal) in Claim Case No.282/2011. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.90,720/- after assessing contributory negligence of 70 percent towards the driver of the Car in which the claimant was travelling.
2. The appellant challenges the award on the ground that the assessment of contributory negligence is erroneous and the same deserve to be set aside. It was the contention of the appellant that the

percentage of disability assessed by the Tribunal is also on the lower side considering the fact that the appellant had received fracture on left Patella of knee and it had to be operated upon and the percentage of disability assessed by the doctor was 40 percent and there was no justification for the Tribunal to have reduced it to 10 percent. Further, the compensation awarded under the other heads also deserve to be suitably enhanced. The claimant also should have been granted interest from the date of application and not from the date as mentioned by the Tribunal and that there is no justification for not granting interest from the date of application.

3. None for the respondents though served and represented.
4. Considering the fact that the appeal is of the year, 2012, this court proceeds to decide the case with the material available on records.
5. The admitted facts of the case are that the accident occurred on 26.09.2008 when the Maruti Van bearing registration No.CG-08-1589 in which the applicant was travelling dashed against a Scorpio Jeep coming from the opposite direction as a result of the said accident, the claimant suffered fracture on Patella of his left knee and had to be operated. The claimant filed a claim application which stood decided vide impugned award. While passing the impugned award, the Tribunal has reached to the conclusion that there was 70 percent contributory negligence on the part of the driver of the Maruti Van in which the claimant was travelling and 30 percent of negligence towards the driver of the Scorpio.
6. The counsel for the appellant submits that the finding of contributory

negligence is erroneous for the reason that the claimant was not driving the vehicle. He was the occupant of the Van and therefore, he cannot be blamed for the said accident. Further, the claimant is also entitled for future prospects to be taken while quantifying the compensation. He submits that Doctor Prakash Bhalerao, AW-2, examined before the Tribunal, who was a member of District Medical Board, has issued disability certificate of the claimant at 40 percent. The disability was also permanent in nature.

7. Having considered the submission on behalf of the claimant and on perusal of records, on the basis of factual matrix of the case, what requires to be ascertained is whether there was a contributory negligence towards the present appellant-claimant or not? Admittedly, the claimant herein was an occupant of the vehicle. He was not driving the vehicle and unless he was driving the vehicle, the element of contributory negligence cannot be ascertained against the claimant. Moreover, the policy issued was a package policy which otherwise covers the risk of occupant also.
8. Under the circumstances, the claimant would had been entitled for entire compensation to be assessed and thus, the finding of contributory negligence is not sustainable. The same deserves to be and is hereby set aside.
9. So far as the compensation part is concerned, admittedly AW-2, Dr. Prakash Bhalerao, has been examined. He has assessed the disability to be 40 percent. Taking into consideration the nature of injury particularly the fracture of left Patella and the subsequent

operation and also considering the judgment of Supreme Court in case of Raj Kumar Vs. Ajay Kumar & Anr.2011 (1)SCC 343, this court assesses the permanent disability of the claimant at 20 percent instead of 10 percent as assessed by the Tribunal.

10. If we take into consideration the monthly salary of the claimant at Rs.4000/- as has been assessed by the Tribunal, he would be entitled for 40 percent of the said amount towards future prospects i.e. Rs.1600/-, to make the monthly income at Rs.5600/- and yearly Rs.67,200/-.
11. Assessing disability at 20 percent instead of 10 percent, the claimant shall be entitled for compensation towards yearly loss of earning capacity at Rs.13,440/-, which if multiplied applying the multiplier of 15, the amount would come to Rs.2,01,600/-. In addition, the claimant shall also be entitled for medical expenses of Rs. 18,600/- as awarded by the Tribunal. The compensation awarded towards attendant is enhanced from Rs.3000/- to Rs.5000/-. Similarly, the compensation under pain and suffering is enhanced from Rs.10,000/- to Rs.15,000/-. The amount of Rs.5000/- awarded towards special diet is maintained. Similarly, Rs.20,000/- awarded under loss of efficiency of work and Rs. 2000/- towards incidental travelling expenses are also maintained. Thus, the claimant shall now be entitled for a total compensation of Rs.2,67,200/-.
12. Since the finding of contributory negligence has already been set aside by this court, the claimant shall be entitled for the entire amount of Rs.2,67,200/- instead of Rs.90,720/- as awarded by the Tribunal.

13. So far as interest part is concerned, this court does not find any strong reason why the Tribunal has not granted interest from the date of application. There is also no justification for granting the interest w.e.f. 01.01.2011. Therefore, the said finding is also set aside and it is held that the claimant shall be entitled for interest on the said amount at the same rate as awarded by the Tribunal from the date of filing of claim application i.e. 02.03.2009 instead of 01.01.2011.
14. Accordingly, the appeal stands allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge

inder