

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 364 OF 2012

Smt. Jamuna Bai, W/o Laxmi Narayan Sahu, aged about 35 years, R/o Village- Hasda, Chauki, Kanwar, Police Station Gurur, District Durg (C.G.)

... Appellant

versus

1. Mansingh, S/o Khorbahra Satnami, aged about 48 years, R/o Village- Patan Pul Utai, Thana- Utai, District Durg (C.G.) (Driver)
2. Afjal Khan, S/o Hameed Khan, R/o behind of Masjid, Kalibadi, Durg, District Durg (C.G.) (owner)
3. Bajaj Alliance General Insurance Co. Ltd., Branch Office- Branch Manager, Shop No. 412, 413, 4th Floor, Ravi Bhawan, Jaistambh Chaouk, Raipur, District Raipur (C.G.)

... Respondents

For Appellant	:	Mr. Anil Gulati, Advocate.
For Respondents No. 1 and 2	:	Mr. Tarun Dansena, Advocate.
For Respondent No.3	:	Mr. Abhishek Sinha, Mr. G.S. Patel and Mr. D.L. Dewangan, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/02/2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-claimant seeking for enhancement of the compensation awarded.
2. Challenge in the present appeal is to the award dated 24.1.2012 passed by the Additional Motor Accident Claims Tribunal, Balod, District Durg, in Claim Case No. 127/2011.
3. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.10,000/- in favour of the appellant-claimant with interest thereon at the rate of 6% per annum from the date of presentation of the claim application, with penal interest of 9% in case the amount of compensation is not deposited within a period of two months.

4. Learned counsel for the appellant-claimant submits that it is a case where the claimant had suffered grievous injuries from the accident that took place on 27.8.2009 as a result of which she suffered injuries on her right hand as also on the other parts of her body. She was operated upon and steel rod/plate had to be inserted for the treatment of her injuries. He further submits so far as the injury and disability part is concerned, they had examined a private doctor, *i.e.*, Dr. R.K. Soni, who has assessed the disability at 40%, but since the certificate was not issued from a competent Medical Board the same was not accepted by the learned Tribunal and only a compensation of Rs.10,000/- has been awarded.

5. It was further contended by the learned counsel for the claimant that during pendency of the appeal before this Court, the claimant has obtained a disability certificate from the District Medical Board, Dhamtari, dated 29.7.2010, where the said Medical Board has assessed the permanent disability of the claimant at 40%, though the doctors have opined that the condition is progressive in nature. The said disability certificate has been brought on record in this appeal by way of an application under Order 41 Rule 27 of the Code of Civil Procedure.

6. Under normal circumstances, since the additional evidence has been brought on record, the matter should have been remitted back to the Court below so that the claimant could have got a doctor examined to prove the said certificate so also the respondents could have got an opportunity to cross-examine the doctors so far as disability part is concerned. This Court however is not inclined to remit the matter back, for the simple reason that the accident in the instant case is of August, 2009, *i.e.*, almost about 9 years have lapsed and if the matter is remitted back, a considerable time would further be taken for the adjudication of the case.

7. Perusal of record would show that a private doctor, *i.e.*, Dr. R.K. Soni, had been examined before the Court below and who had also proved the disability certificate assessing the disability at 40%. However, the same was not accepted by the learned Tribunal as it was not issued from a competent Medical Board. Now, the claimant has got a disability certificate, dated 29.7.2010, duly issued from District Medical Board, Dhamtari, consisting of four specialist doctors. This Court does not find any strong reason to disbelief the said certificate. Further, the percentage of disability stands corroborated from the evidence of Dr. R.K. Soni examined before the Court below.

8. The learned counsel for respondent no.3-insurance company has objected to the acceptance to the said disability certificate for want of proper cross-examination of the doctors as regards assessing the actual over all functional disability to ascertain the loss of earning capacity. He submits that even otherwise the disability certificate or the medical certificate cannot be taken on record unless it is proved by the doctors who have authored the said certificate and for this reason also the said certificate cannot be taken into consideration while quantifying the compensation.

9. The contention put forth by the insurance company would not be sustainable, for the reasons assigned in the preceding paragraphs where the record shows that Dr. R.K. Soni has been examined who had also certified the disability to be 40% and also for the reason that the District Medical Board, Dhamtari now has issued a certificate also assessing the disability at 40%. Thus, there is sufficient force to take cognizance of the disability certificate produced by the claimant.

10. Applying the principles laid down by the Hon'ble Supreme Court in the case of **Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343**, this Court considering the nature of injury so also the disability certificate and considering the fact that the disability is on the right hand of the claimant, assesses the over all disability at 20% instead of 40% as assessed by the doctors and proceed to quantify the compensation accordingly.

11. Considering the fact that the accident in the instant case is of the year 2009, this Court assesses the monthly income of the claimant at Rs.4000/- which would bring the yearly income at Rs.48,000/- of which considering the loss of earning due to functional disability to the extent of 20%, the loss of earning capacity would come to Rs.9600/- annually which if multiplied applying the multiplier of 15, the amount towards the loss of earning capacity would come to Rs.1,44,000/-. In addition, the claimant shall also be entitled for an amount of Rs.20,000/- towards pain and suffering and for an additional amount of Rs.10,000/- towards special diet and other incidental expenses. Thus, making the total compensation payable to the claimant at Rs.1,74,000/-.

12. It is accordingly ordered that the claimant shall be entitled for a total compensation of Rs.1,74,000/- instead of Rs.10,000/- as awarded by the learned Tribunal. It is further ordered that the entire amount of compensation shall carry interest at the same rate as has been fixed by the learned Tribunal.

13. The appeal thus stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge