

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 401 of 2012**

Gulam Mustafa S/o Gulam Faz Kadir, Musalman, aged about 32 years,
R/o village Salba, Thana & Tahsil Baikunthpur, District Korea (CG)

---- Appellant**Versus**

1. Firoz Ahmed S/o Ashiq Ali, aged about 36 years, R/o Dabripara, Ward No.8, Baikunthpur, Thana and Tahsil, Baikunthpur, District Korea (CG)
2. Sunil Pal S/o Bijendra Prasad Pal, aged about 40 years, R/o School Para, Mission Road Baikunthpur, Thana & Tahsil Baikunthpur, District Korea (CG)
3. Branch Manager, IFFCO Tokio General Insurance Co. Ltd., 84 Narmada Road, Jabalpur, District Jabalpur (MP)

---- Respondents

For Appellant	:	Shri Anil Gulati, Advocate
For Respondent no.3	:	Shri Amrito Das along with Shri P. Acharya, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****26/02/2018**

Present is an appeal by the claimant under Section 173 of the Motor Vehicles Act. The challenge is to the award dated 18.01.2012 passed by the Motor Accident Claims Tribunal, Korea, Baikunthpur (CG) in Claim Case No.14/2009. Vide the impugned award, in a case of amputation, the Tribunal has awarded compensation of Rs.6,99,979/- with interest @ 7.5% per annum from the date of application.

2. Counsel for the appellant submits that the amount of compensation awarded is too meager an amount considering the nature of injury sustained and the claimant is entitled much more compensation than what has been

awarded. He submits that right from the time of assessment of the income itself, the Tribunal has given too meager an amount for the purpose of calculating compensation. According to the counsel for the appellant, the claimant in the instant case was a driver by profession and was earning more than rupees 200 a day, therefore, the compensation should have been calculated taking the income of the deceased at Rs.6,000/- per month. He submits that the claimant is also entitled for compensation under the future prospects and for the future treatment for affixing artificial limb etc. He further submits that the Tribunal should have also granted compensation towards pain and suffering much more than what has been awarded and prayed for the award to be suitably enhanced.

3. Counsel for the Insurance Company, on the contrary, opposing the appeal submits that a plain reading of paragraphs- 18 to 24 of the impugned judgment clearly shows that the Tribunal has considered all the aspects while granting compensation and granted sufficient compensation considering the period of accident and the nature of employment of the claimant. Thus, prayed for rejection of the appeal.

4. Having heard the contentions put forth on either side and on perusal of the record what reflects is that the date of accident being 09.03.2008, the vehicle involved in the accident being a Marshal Jeep bearing registration No. CG 16 ZE 0815 owned by respondent no.2, driven by respondent no.1 and duly insured with respondent no.3. As a result of the accident, the claimant sustained grievous injuries on his right leg which ultimately had to be amputated below his knee. As per the provisions of the Workmen Compensation Act, the nature of the said injury would fall under Part-II of Schedule 1 where the amputation of the leg below knee would show the loss of earning capacity at 50%. The doctor in the instant case AW-2 Rajendra

Bansaria had assessed the overall disability of the claimant at 62% taking into consideration the amputation and other injuries.

5. Given the facts and circumstances of the case, this Court does not find the disability assessed by the Tribunal either to be on higher side or erroneous in any manner considering the over all nature of injuries.

6. So far as the quantum of compensation is concerned, the date of accident undoubtedly is 9th of March 2008. During the said period even an unskilled labour would have been earning more than rupees 150 – 200 a day. The claimant herein was a driver by profession. He would have been earning much more than an unskilled labour. But the fact that the claimant has not produced sufficient proof of his employment part. Therefore, we assess the income that was earned by an unskilled labour and fix the notional income at Rs.4,500/- in stead of Rs.2,500/- a month. Accepting Rs.4,500/- as the monthly income, the yearly income would be Rs.54,000/-. Keeping in view the recent decisions of the Supreme Court, the claimant would be entitled for 40% of his income towards future prospects which comes to Rs.21,600/- making the total yearly income at Rs.75,600/-. If the said amount is multiplied applying the multiplier of 18, the amount would come to Rs.12,85,200/- of which, the claimant shall be entitled for compensation towards loss of earning capacity to the extent of 62% which would bring the figure to Rs.7,96,824/-. The claimant would be entitled for Rs.39,979/- towards medical expenses as assessed by the Tribunal. So far as pain and suffering and mental agony are concerned, this Court finds Rs.1,50,000/- as assessed by the Tribunal to be proper and justified. In addition, the claimant would also be entitled for an amount of Rs.1,00,000/- for the expenses towards affixing artificial limb. Thus, the claimant shall be entitled for a total compensation of Rs.10,86,803/- instead of Rs.6,99,979/- as assessed by the Tribunal. The enhanced amount

shall also carry interest at the same rate as has been awarded by the Tribunal.

7. Accordingly, the appeal of the claimant stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola