

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 297 of 2016

Jaswant Chandrakar @ Yashwant Kumar S/o Late Juthelram Chandrakar, aged about 42 years, R/o village Keslikala (Khurd), Police Station – Kunda, Tahsil Pandariya, District (Revenue and Civil) Kabirdham (C.G.).

---Appellant

Versus

1. Santosh Kumar Singraul S/o Ramkumar Singraul, aged about 28 years, R/o village Kunda, Tahsil Pandariya, District (Revenue and Civil) Kabirdham (C.G.) (Driver).
2. Panchram Chandrakar S/o Dayaram Chandrakar, aged about 48 years, R/o Kunda, Police Station – Kunda, Tahsil Pandariya, District (Revenue and Civil) Kabirdham (C.G.) (Owner).
3. Royal Sundaram Alliance Insurance Company Limited, Through Branch Manager, Rama Trade Center, 1st floor, near Rajiv Plaza, Old Bus Stand Road, Bilaspur, Tahsil & District (Revenue and Civil) – Bilaspur (C.G.) (Insurer).

---Respondents

For appellant/claimant	:	Shri Anand Kesharwani, Advocate.
For respondent No.2/owner	:	Shri Keshav Dewangan, Advocate.
For respondent No.3	:	Shri Bhaskar Payasi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/02/2018

1. Present is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act assailing the award dated 23/11/2015 passed by the learned 8th Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Motor Accident Claim Case No. 20/2015.
2. Vide the impugned award, the Tribunal in a case of amputation under Section 166 of the Motor Vehicles Act has awarded a compensation of

Rs.7,79,500/- with interest @ 6% per annum from the date of application.

3. While passing the impugned award, the Tribunal has fastened the liability of payment of compensation upon the Insurance Company.
4. The contention of the counsel for the appellant/claimant is that, the amount of compensation awarded is on the lower side in as much as the income assessed by the Tribunal is much less than what he was drawing on the date of accident. He further submits that, the Tribunal ought to have taken into consideration the income under future prospects while quantifying the compensation. He further submits that, the claimant on the date of accident was aged around 42 years and therefore the income under future prospects also should have been added while quantifying the compensation. It was further contended that, the compensation awarded under the pain and suffering is also too meagre an amount considering the nature of injuries sustained by the claimant. He further submits that, the claimant would also be entitled for compensation for loss of amenities so also the compensation towards the mental agony and for affixing of an artificial limb ought to have been considered by the Tribunal and thus prayed for suitable enhancement of the award.
5. The facts of the case in brief is that, on 07/02/2013, the claimant met with an accident from a Bolero Jeep bearing registration No. CG-10-F-5937 owned by the respondent No.2, driven by the respondent No.1 and

was duly insured by the respondent No.3/Insurance Company. As a result of the said accident, the claimant sustained grievous injuries and during the course of treatment, the left hand of the claimant had to be amputated from the shoulder joint. The injury part has been proved by Dr.Pankaj Dabelia – AW/4 who had assessed the disability at 60%. The claimant in the instant case also was present before this Court during the course of hearing. On seeing the claimant itself, it is evidently clear that, his left hand had been amputated from the shoulder joint.

6. At this juncture it would be relevant to refer to part 2 schedule 1 of the Employees Compensation Act which gives the percentage of disability in respect of permanent or partial disability caused in the case of injury. Entry 1 of part 2 reflect the case of amputation from shoulder joint which shows the percentage of loss of earning capacity at 90%.
7. This Court thus has no hesitation in reaching to the conclusion that, since the amputation of the left hand of the claimant was from the shoulder joint, the percentage of disability ought to had been 90% instead of 60% as assessed by the doctor. It is assessed accordingly.
8. Further, what is also evident is that, the date of accident in the instant case is February-2013. It is anybody's guess that during the said period, the minium income of even an unskilled labour would had been around Rs.200/- per day. The profession which the claimant was performing prior to his accident was that of a Mason.

9. Thus this Court has no hesitation in fixing the income of the claimant at Rs.200/- per day i.e. Rs.6,000/- per month instead of Rs.4,500/- as assessed by the Tribunal and proceeds to compute the compensation accordingly.
10. Accepting Rs.6,000/- as the monthly income of the claimant, the yearly income would be Rs.72,000/- to which the claimant shall also be entitled for 40% of the income towards future prospects i.e. Rs.28,800/- which would bring the yearly income of the claimant at Rs.1,00,800/-. Assessing the disability of the claimant at 90%, the loss of earning capacity would be Rs.90,720/- which if multiplied by applying multiplier of 14, the amount would come to Rs.12,70,080/-. It is ordered accordingly that, the claimant shall be entitled for a compensation of Rs.12,70,080/- towards loss of earning capacity. In addition, the claimant shall also be entitled for an amount of Rs.3,10,900/- as awarded by the Tribunal towards the medical and traveling expenses. So far as the pain and suffering and mental agony which the claimant has undergone on the amputation of one of his hand, this Court quantifies the compensation at Rs.1,00,000/- instead of Rs.15,000/- as awarded by the Tribunal. Further, this Court awards an amount of Rs.1,00,000/- towards the fixing of an artificial limb. Thus, the total compensation payable to the claimant would be Rs.17,80,980/- instead of Rs.7,79,500/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

11. The appeal thus stands allowed and disposed off.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE