

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1211 of 2018**

- Sukul Ram Bhaina S/o S/o Manbodh Ram Bhaina Aged About 25 Years R/o Village Jurali, Tahsil Katghora, District Korba, Chhattisgarh.

---- Appellant/claimant**Versus**

1. Gulab Singh Kanwar S/o S/o Shri Narayan Singh Aged About 42 Years R/o Korkoma, Police Station Kartala, District Korba, Chhattisgarh.
2. Sai Mangalam, Transport Raipur, Chhattisgarh.
3. New India Insurance Company Limited, Through Division Manger, New India Insurance Company Limited Division Office, T. P. Nagar, Korba, Tahsil And District Korba, Chhattisgarh.

---- Respondents

For Appellant
For Respondent

Ms L. Kashyap, Advocate.
Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****22/10/2018**

1. This is claimant's appeal seeking enhancement of compensation awarded by the learned Additional Tribunal of Upper Motor Accident Claims Tribunal, Katghora District Koraba C.G. (for short 'the Tribunal') in Claim Case No. 123 of 2012 vide award dated 26.04.2018.
2. As against the compensation of Rs.24,00,000/- 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 31.08.2012, the Tribunal awarded a total sum of Rs.1,51,815/- along with interest @ 7% 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 that the accident had occurred due to rash and negligent driving of Truck bearing registration No. CG04/JC/4347 by its driver i.e., respondent No.1 herein: appellant/claimant sustained grievous multiple injuries on his body and he suffered 16% permanent disability, respondent No.3 / New India 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 submits that the appellant was a Labour, was earning Rs. 6,000/- per month but learned Tribunal wrongly considered his income as per minimum wages. He submits that as per Doctor Ghanshayam Diwan (AW-3), who had given disability certificate Ex.P-29 the claimant suffered 39.30% 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 confined to a particular limb. 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. G Diwan (AW-3) he examined the claimant after about five years and found 39.30% permanent disability in his right leg. After examination of the claimant the Doctor found that on account of old fracture in the right leg the claimant was suffering from pain in right knee and ankle, there was pain and stiffness in the leg. The Certificate issued by Doctor G. Diwan (AW*3) is though challenged in cross examination regarding the injury and permanent disablement, but nothing could be brought on record which could make the above certificate doubtful or false.
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 20%. The Tribunal has not awarded any amount towards medical expenses. However, the documents filed by the claimant relating to medical treatments i.e. Ex.P-12 to Ex.P-16, Ex.P-18, Ex.P-19 & Ex.P-20 the total medical expenditure incurred by the claimant comes to Rs.27,074/-. Looking to the nature and extent of injuries suffered by the claimants, in the opinion of this Court, the aforesaid expenses towards medical treatment could have been reasonably incurred by the claimant and therefore, he is held to be entitled for this amount also. Hence, the claimant is held entitled for compensation in the following manner:

S.No.	Head	Calculation
1.	Notional Income of the claimant	Rs.4,498/- i.e. Rs.53,976/- per annum.
2.	Multiplier of 16 applied	Rs.53,976/-x16 = 8,63,616/-
3.	Loss of earning capacity @ 25%	Rs.2,15,904/-
4.	Pain and suffering	Rs.5000/-
5.	Medical expenses	Rs.27,074/-
	Total compensation	Rs. 2,47,978/-

9. In the result, the appeal is allowed in part. Since, the Tribunal has already awarded Rs.1,51,815/-, after deducting the same the claimant is held entitled for an additional compensation of Rs.96,163/- with interest at the rate of 7% per annum from the date of application till its realization.

10.No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh