

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1521 of 2018**

1. Peer Mohamad S/o Rahimuddin, aged 54 years, Occupation-Truck Driver, R/o NR. Dynamic School, Moudhapara, P.S. Moudhapara, Raipur, Tahsil & District Raipur (C.G.)

---- Appellant**Versus**

1. Ramkumar Vishwakarma S/o Durgaram Vishwarkarma, Occupation-Truck Driver, R/o 553, Barsa Colony, Kirandul, Dist.- Dantewada (C.G.).

(Driver of the Offending Vehicle bearing Truck No. C.G.18 H-0662)

2. K. P. Shiva S/o K. Priya Swami, Occupation Vehicle bearing truck No. C.G. 18/h-0662)

3. The United Insurance Company Ltd. Through Branch Manager Branch Office Kutchary Chowk, Jail Road, Raipur, Tahsil & District-Raipur (C.G.) (Insurer of the offending vehicle bearing truck No. C.G.18/h-0662).

---- Respondents

For Appellant	: Shri Arun Shukla, Advocate
For Respondent.	: Shri Raj Awasthi, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

26.11.2018

1. This appeal has been preferred by the injured claimant against the award 16.05.2018 passed by Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.326/2014 awarding total compensation of Rs. 2,86,419/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 to 3 jointly and severely.

2. Facts of the case, as per claim petition, are the appellant/claimant is a driver of Dubey Travels bearing registration No. C.G.04/E-2482, on 21.10.2013, he was driving the said bus from Bailadilla to Raipur, at about 2 pm when he reached in front of Murbel Motel, near Kanker, at that very time offending vehicle Truck bearing registration No. C.G. 18 H. 0662 coming from opposite side dashed his bus by driving rashly and negligently by respondent No.1 – Ramkumar Vishwakarma, as a result of which Peer Muhmmad/claimant suffered grievous injuries including permanent disability to the extent of 30%.

3. On a claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned in opening paragraph of the judgment.

4. No counter appeal has been filed by the insurance company

5. Learned counsel for the appellant/claimant submits that the injured claimant sustained grievous injuries including permanent disability to the extent of 30 percent but the learned Tribunal has considered only 15 percent permanent disability and awarded amount towards loss of earning capacity on the basis of 15% permanent disability, which is on lower side and needs to be enhanced suitably.

6. Learned counsel for the respondent opposes the contention made by the appellant and supported the award impugned and argues that the learned Tribunal already considered all aspect of the matter that injuries not caused to the whole body but on the lower part of the body of the appellant, therefore there is no need to be enhancement in the award impugned.

7. Heard both the parties and perused the record and award

impugned.

8. Learned Tribunal, as per evidence adduced by the claimant, has considered 15% permanent disability for the purpose of computation of compensation, which is appropriate in the facts & circumstances of the case and there is no need to be interfered in this finding. Dr.A. A. Saifi (AW-1) has stated in his evidence in para 4 that there is no any stiffness in his legs, movement is normal and due to the accident his right leg has short to the extent of 1.5 c.m. However, the working capacity of claimant suffered for about 4 months, but the Tribunal has considered only three months' loss of income which needs to be enhanced for four months.

9. It is true, claimant is working as driver. However, looking to the fact that appellant sustained multiple injuries in the motor accident and remained in Hospital for a period of 8 days, the Tribunal has certainly fallen in error in assessing the loss of income of the claimant during treatment as Rs. 27,000/- for a period of three months whereas as per his medical certificate, the claimant is unable to work for a period of four months, therefore, looking to overall circumstances of the case, it would be appropriate to consider loss of income of the claimant during treatment as Rs. 36,000/-, therefore, the claimant would become entitle to Rs. 36,000/- on account of loss of income during treatment; and amount awarded under the head of special diet as Rs. 1,600/- also appears to be on lower side, which is enhanced to Rs. 10,000/-, it appears that Tribunal has not awarded any sum towards conveyance & future treatment, thus it would be appropriate to award Rs. 5,000/- towards conveyance & Rs. 30,000/- towards future treatment. Thus, considering all the aspects of the matter, this Court is of the opinion that the claimant is entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Towards medical expenses	19,199/- (as awarded by

		the Tribunal)
02.	For special diet	10,000/-
03.	Towards loss of earning for four months @ Rs.9,000/- per month	36,000
04.	For attendant	1,000/- (as awarded by the Tribunal)
05.	For conveyance	5,000/-
06.	For mental agony	20,000/- (as awarded by the Tribunal)
07.	For pain & suffering	20,000/- (as awarded by the Tribunal)
06.	For future treatment	Rs.1,96,020 (as Tribunal by the Tribunal) + 30,000/- awarded by this Court = Rs.2,26,020/-
	Total:	Rs.3,37,219

10. Since the Tribunal has already awarded Rs.2,86,419/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.50,800/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

