

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 75 of 2019**

- Abdul Sabir Ali S/o Moh. Abdul Hafiz Aged About 36 Years R/o Near Masjid, Behind Sarkari Kua, Kota, Raipur, District- Raipur, Chhattisgarh.

----Appellant**Versus**

1. Motilal Prasad S/o Shri Rameshwar Prasad R/o Vishwakarma, Motorboard Workshop, Hirapur, Tehsil And District- Raipur, Chhattisgarh.
2. Oriental Insurance Company Ltd. Divisional Managar, Divisional Office, Madina Manzil, Kachahri Chowk, Raipur, Tehsil And District- Raipur, Chhattisgarh.

---- Respondents

For Appellant	Shri Akhilesh Mishra, Advocate.
For Respondents	None.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

18/01/2019

1. Heard on admission.
2. The appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") seeking enhancement of compensation awarded by the First Additional Presiding Officer of First Additional Motor Accident Claims Tribunal, Raipur, District Raipur, C.G. in Claim Case No.681/2016 vide award dated 07.05.2018, thereby granting compensation of Rs.1,92,800/- with interest @ 9% per annum from the date of application till realization

in favour of the claimants, fastening liability upon Insurance Company along with non-applicant no.1/respondent no.1.

3. As per claim petition, on 19.04.2016, claimant/injured was driving the offending vehicle Truck bearing no.CG04/JB/0622 loaded with stone and was going from Koyara to Raipur, when the said vehicle reached near Kalta Ghat Zeor Point, the said vehicle got unbalanced and dashed against the dumper standing on the road, as a result of which claimant/injured suffered grievous injuries on his right leg and other parts of the body. At the time of accident, claimant/injured was aged about 36 years and earning Rs.3,200/- per month as a Driver. The vehicle was owned by non-applicant no.1 and insured with non-applicant no.2.
4. On claim petition being filed by the claimant under Section 163A of the Motor Vehicles Act for compensation to the tune of Rs.14,00,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
5. Learned counsel for the appellant submits that as per recent amendment made in Section 163A of the Motor Vehicles Act a sum of Rs.5,00,000/- is payable in injury case resulting in permanent disability. He submits that the claimant suffered 35% permanent disability in the accident but the Tribunal did not consider the same and further the Tribunal without considering the nature of job of the claimant, the gravity of

the injuries suffered by him, the pain and suffering undergone by him during treatment, the medical bills, has awarded a meager sum under the head of medical expenses and pain and suffering.

6. Heard learned counsel for the appellant and perused the impugned award.
7. The Tribunal in para 12 of the impugned award, considering the permanent disability certificate (Ex.P-19) in which the claimant is shown to have suffered 40% permanent disability, the evidence of Dr. A.A. Safi according to whom the claimant suffered 10% disability in right leg and 15% disability in left leg i.e. total 25% as per disability certificate Ex.P-23, which remain unrebutted in cross-examination, has rightly considered the permanent disability of the claimant as 25%. Further, considering the nature and extent of injuries suffered by the claimant, his age i.e. 34 years assessed on the basis of his date of birth mentioned in his driving licence, the provisions of Section 163A of the Motor Vehicles Act and Second Schedule framed thereunder, the Tribunal has rightly awarded compensation in favour of the claimant toward medical expenses as well as pain and suffering. Therefore, considering the over all facts and circumstances of the case, the oral and documentary evidence adduced by the claimant and the provisions of Section 163A of the Motor Vehicles Act, this Court is of the opinion that the amount

awarded by the Tribunal cannot be said to be on the lower side and it appears to be just and proper warranting no enhancement by this Court.

8. In the result, the appeal being without any substance is liable to be and is, accordingly, dismissed at the admission stage.

Sd/-
Gautam Chourdiya
Judge

Akhilesh