

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1147 of 2014

- Jageshwar @ Jagesh Yadav, S/o Jhaduram Yadav, aged about 45 years, R/o Village- Mayana, Thana/Tahsil – Charama, Revenue/Civil District Kanker (C.G.)

---- Appellant/Claimant

Versus

1. Gaindlal Manhare S/o Parsuram Manhare, aged about 35 years, R/o Village- Hardanda, Thana- Gandai, District Rajnandgaon (C.G.)
(Driver)
2. Vinay Gupta S/o Bhaiyalal Gupta, R/o Gvalipara, Near Congress Bhavan, Revenue/Civil District Durg (C.G.)
(Owner)
3. The Oriental Insurance Co. Ltd., Branch Office- 16, R.S.S. Market, Power House, Supela, Bhilai, Revenue/Civil District Durg (C.G.)
(Insurer)

---- Respondents

For Appellant	:	Shri Samir Singh, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Raj Awasthi, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

03.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant/Appellant, seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, North Bastar, Kanker (C.G.) vide award dated 29.09.2014 passed in Claim Case No. 42 of 2013.
2. The Claimant/Appellant claimed compensation of Rs.6,20,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for grievous injury sustained by him in the motor accident.
3. Facts of the case, in brief, are that on 02.03.2012 the Claimant/Appellant was going to village Kottara Market by his bicycle, on the way, Respondent No.1, driver of the offending vehicle- Truck bearing registration No. O.R. 19 G/0550,

driving the said vehicle in a rash and negligent manner dashed the bicycle of the Claimant. Due to the accident, Claimant fell down from the bicycle and sustained grievous injuries on his right hand and has suffered 30% permanent disability.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.61,000/- to the Claimant with interest @ 6% per annum from the date of filing of the application till realization.

5. Learned counsel for the Appellant/Claimant submits that as per para-9 of the impugned award, the learned Tribunal has given finding that the Claimant suffered 30% permanent disability and has awarded low compensation to the Claimant. He further submits that due to the accident, the Claimant is unable to perform his work properly and the Tribunal has not awarded any amount towards grievous injury, conveyance, attendant and special diet. He also submits that the Claimant sustained grievous injury on his right shoulder and it was also fractured, therefore, looking to the injury sustained by the Claimant, the amount of compensation deserves to be enhanced suitably.

6. Learned counsel for the Insurance Company/Respondent No.3 opposes the contention made by the learned counsel for the Appellant/Claimant and submits that as per statement of NAW-2 – Dr. Lokesh Dev, he states, in para-3 of his cross-examination, disability of the Appellant would be cured through physiotherapy and the Appellant has suffered disability in relation to hand and not in relations to the whole body. Therefore, the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

7. Heard learned counsel for the parties and perused the material available on record.

8. In present case, the Tribunal has assessed the income of the Claimant as Rs.3,000/- per month by doing work of labour and considering the fact that due to accident, the Claimant is unable to perform his work at least for three months, has awarded Rs.9,000/- towards loss of income of the Claimant for three months. Rs.

15,000/- for medical treatment, Rs.30,000/- for 30% permanent disability of his hand and Rs.7,000/- for pain and suffering has been awarded by the Tribunal. Thus, the Tribunal awarded a total compensation of Rs.61,000/- to the Claimant which appears to be on the lower side. Therefore, in the facts and circumstances of the case, this Court is of the view that a lump sum additional amount of Rs.39,000/- to the Claimant making the total compensation under the above heads to Rs.1,00,000/- would be just and proper.

9. It was argued that the Tribunal has not awarded any amount towards grievous injury sustained by the Appellant, conveyance, attendant and special diet. As per Ex.-P/7, the Appellant sustained injuries on his right arm, right elbow and right wrist. As per Ex.-P/22 disability certificate, the Appellant suffered 30% disability. Ex.P/22 was given by Dr. Lokesh Dev (NAW-2) but it was not mentioned in the certificate that the disability is temporary or permanent. In para-3, NAW-2 states that disability of the Appellant can be cured through physiotherapy. Therefore, this Court is of the opinion that the Claimant is entitled for Rs.5,000/- towards conveyance, Rs.5,000/- towards attendant, Rs.5,000/- for special diet. This apart, looking to the nature of injury sustained by the Claimant, Rs.25,000/- for grievous injury is also awarded to him. Keeping in view of overall facts and circumstances of the case, pleadings of the parties and the evidence adduced by them, this Court is of the opinion that the Claimant/Appellant is entitled for compensation in the following manner:-

Sl.No.	Head	Calculation
1	Towards loss of income for three months	Rs.9,000/- (as awarded by the Tribunal)
2	For medical expenses	Rs.15,000/- (as awarded by the Tribunal)
3	For 30% permanent disability	Rs.30,000/- (as awarded by the Tribunal)
4	For pain & suffering	Rs.7,000/- (as awarded by the Tribunal)
5	A lump sum additional amount on the above heads No. 1 to 4	Rs.39,000/-

6	For conveyance	Rs.5,000/-
7	For attendant	Rs.5,000/-
8	For special diet	Rs.5,000/-
9	For grievous injury	Rs.25,000/-
	Total Compensation	Rs.1,40,000/-

Since the Tribunal has already awarded Rs.61,000/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.79,000/-.

10. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimant/Appellant shall be entitled to a total enhanced amount of compensation of Rs.79,000/- with further direction of payment of interest on the enhanced amount of compensation with interest @ 6% per annum from the date of filing of the application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge