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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1667 of 2018

- The New India Assurance Company Limited Through Its Branch Manager, Branch-Office T.P. Nagar, Korba, Tah. And Distt. Korba Chhattisgarh..............Non-Applicant No.3,

---- Appellant

Versus

1. Virendra Kumar Binjhwar S/o Shri Gorelal Binjhwar, Aged About 23 Years R/o Vill.- Ghathadwari, Tah.-Kartala, District Korba Chhattisgarh...........(Applicant),

2. Pawan Singh, S/o Shri Vijay Singh, Aged About 29 Years R/o Housing Board, Bhilai, District Durg Chhattisgarh................(Non-Applicant No. 1)

3. Gulshan Arora, S/o Ram Prakash Arora Address- Arora Transport, T.P. Nagar, Bhilai, Tah. And Distt. Durg Chhattisgarh............(Non-Applicant No. 2)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondent No.1	:	Shri Ashutosh Shukla, Advocate.
For Respondent No.2 & 3	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

06/05/2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 21.6.2018 passed by II Additional Motor Accident Claims Tribunal, Korba in Claim Case

No.10/2014 awarding total compensation of Rs.26,61,899/- with interest @ 7% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

02. As per claim petition, on 1.2.2014 the claimant along with his friend by riding motorcycle bearing No. CG 11/CK 1533 was going from Village-Sarvani, Distt. Raigarh to Sakti. However, on the way, non-applicant No.1 Pawan Singh by driving Trailor bearing No. CG 07 CA 3634 in a rash and negligent manner, dashed the said motorcycle. As a result of this accident, claimant suffered grievous injuries and his left leg above the knee was amputated. The claimant is still undergoing treatment and in future would also require treatment. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the injured claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that the claimant himself was equally responsible for the unfortunate accident as his motorcycle was got dashed from the backside but the Tribunal did not consider this aspect of the matter. Further, the amount of Rs.15 lacs towards artificial limb in future and Rs.5 lacs for pain and suffering and other hardships awarded by the Tribunal being very much on the higher side need to be reduced suitably.

05. On the other hand, learned counsel for the respondent No.1/claimant supports the impugned award and submits that as there was no evidence adduced by the non-applicants showing contributory negligence of the claimant, no counter FIR was lodged against the claimant, the Tribunal has rightly not held the claimant negligent in any manner. Further, considering the age of the claimant, the gravity of the injury, in particular the fact that the claimant's left leg above knee has been amputated, the evidence of the doctors, the Tribunal has rightly awarded Rs.15 lacs for artificial limb in future and likewise Rs. 5 lacs for pain and suffering and other hardships. Therefore, there is no need

to interfere with the award impugned.

06. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

08. So far as contributory negligence on the part of the claimant is concerned, the claimant stated on oath before the Tribunal as AW-1 that the motorcycle was dashed by the offending vehicle Trailor on its backside at the turning. No any evidence has been adduced by the non-applicants to show that the claimant was negligent in causing the accident. As per statement of eyewitness AW-2 Sandeep Kanwar, driver of the offending vehicle non-applicant No.1 was driving the vehicle rashly and negligently. There is no counter FIR lodged against the claimant. Therefore, looking to the entire oral and documentary evidence on record, the Tribunal was justified in not holding the claimant contributory negligent in causing the accident.

09. As regards the quantum of compensation, it is not in dispute that the claimant was 23 years of age at the time of accident and his left leg above the knee has been amputated. Thus, the entire life of the claimant is badly affected. The claimant is bachelor and as such, his marriage prospects have also been adversely affected. As per Ex.P/72, the claimant suffered 80% permanent disability in his left leg which has been duly proved by AW-4 Dr. Ghanshyam Diwan. According to the claimant, he has been advised to change the artificial leg every five years, which would incur around Rs.4 lacs each time. His statement has been corroborated by AW-3 Dr. Sandeep Kumar Reddy, Branch Manager of Indolight India Ltd., Raipur and he further stated that the cost of artificial limb increases by 10% every year. This statement has not been rebutted by the insurance company in cross-examination. Even otherwise, considering the age of the claimant i.e. 23 years, the natural changes in the physique of the claimant with the passage of time, the hike in prices, it is quite natural that the claimant would be required to incur expenses in future for change of artificial limb.

Therefore, the Tribunal was justified in awarding Rs.15 lacs under this head.

Likewise, considering the nature and extent of injury suffered by the claimant, the fact that his left leg above knee has been amputated, he is bachelor and as such, his marriage prospects would also be affected adversely due to this injury, there may be loss of his life expectancy, he would suffer hardships in discharge of even his routine work also, this Court is of the opinion that award of Rs.5 lacs by the Tribunal towards pain and suffering and other hardships cannot be said to be excessive or on the higher side, rather it appears to be just and proportionate to the gravity of the injury and its adverse impact on the life of the claimant.

10. In the result, the appeal filed by the insurance company being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/

(Gautam Chourdiya)

Judge

Khan