



IN THE HIGH COURT OF JUDICATURE

AT BILASPUR (C.G.)

Division Bench

M.A. No. 1427 OF 2007

Appellant /Claimant :

R.R. No. 3784/07
Presented by Shri. Sandeep Sahu
Dated. 12-07-07

Ajay Kumar Nishad s/o Late

Sevak Ram, Age about 20 Years,

R/o Ward 5 Ahiwara, Post - Ahiwara

Tah. - Dhamdha, Distt. - Durg (C.G.) ✓

v/s

Respondents:

(Driver)

1. Santosh Kumar Dewangan s/o

Khorbahara Ram Sahu,

Age about 30 year,

R/o Ward No. 5, Ahiwara

Tah. - Dhamdha, Distt. - Durg (C.G.) ✓

(Owner)

2. Mo. Mustafa S/o Mo. Ibrahim

Age about 45 years

R/o (i) Near ShivRam Mandir, Ahiwara

Tah. - Dhamdha, Distt. - Durg (C.G.) ✓

(ii) Ward No. 13, Nandani Nagar

Tah. - Dhamdha, Distt. - Durg (C.G.) ✓

(Insurer)

3. The New India Insurance Co. Ltd.

New India Insurance Building 87,

Mahatma Gandhi Marg, Fort Mumbai

c/o (i) Branch Manager,

The New India Insurance Co. Ltd.

Obe Dena Bank Nandani Road, Power

House, Bhilai, Distt. - Durg (C.G.)

(Signature)

(Sandeep Sahu)
Name

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(ii) Divisonal Manager

The New India Insurance Co. Ltd.

Divisonal Office, Thakkar Complex, Power House,
Bhilai, Distt. - Durg

APPEAL UNDER SECTION 173 of MOTOR
VEHICAL ACT -1988

(Claim valued Rs. 11,52,668)



HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B.: Hon'ble Mr. Justice N.K. Agarwal

M.A. (C) No.1427 of 2007

APPELLANT

Ajay Kumar Nishad

Versus

RESPONDENTS

Santosh Kumar Dewangan and
others

**MEMORANDUM OF APPEAL UNDER SECTION 173 OF
THE MOTOR VEHICLES ACT**

Appearance :

Mr. C.R. Sahu, Counsel for the appellant.

Mr. Raj Awasthy, Counsel for respondent No.3.

ORAL ORDER

(30.04.2013)

Heard.

(2) This is claimant's appeal seeking enhancement of the compensation awarded by VIII Additional Motor Accidents Claims Tribunal (FTC), Durg (C.G.) in Claim Case No.276/2005 vide award dated 30.07.2007.

(3) As against the compensation of Rs.11,83,500/- claimed by the claimant, by filing application under Section 166 of the Motor Vehicles Act (in short "the Act") for the injuries sustained by him in the motor accident on 09.08.2005, the Tribunal awarded a total sum Rs.37,540/-



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as compensation along with interest @ 6% per annum from the date of filing of the claim petition till it is actually paid.

(4) 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.C.G.07-ZC-2427 by its driver i.e. respondent No.1; the appellant sustained multiple injuries in the said accident; respondent No.3/insurance company established violation of policy conditions and not liable for payment of compensation, as 6-7 persons were sitting in the said truck; assessed and awarded the aforesaid sum as compensation against the owner and driver of the vehicle with a direction to respondent No.3 to first pay the amount of compensation to the appellant and then, recover the same from the owner and driver.

(5) The only submission made by learned counsel for the appellant is that the Tribunal has not awarded appropriate sum under the head loss of income and thereby, awarded a low compensation of Rs.37,540/- only.

(6) On the other hand, learned counsel appearing for respondents No.3/insurance company supported the award impugned and submitted that the Tribunal, in a case where neither the treating doctor was examined nor



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the appellant has suffered any loss of future earning capacity, awarded an adequate sum on account of loss of income i.e. Rs.23,040/-, which does not call for any interference.

(7) I have heard learned counsel for the parties, perused the award impugned including the records of the Tribunal.

(8) The fact that the accident had occurred due to rash and negligent driving of the truck driver and that the insurance company is not liable for payment of compensation are now not in dispute.

(9) As per the evidence available on record, the appellant sustained fracture of left femur bone. As per the statement of Dr. Akhilesh Yadav, who was not the treating doctor, the appellant suffered permanent disability to the extent of 12%. He has not stated anything regarding appellant's loss of earning capacity. Even the appellant has not stated anything regarding his loss of earning capacity. The Tribunal has awarded Rs.3000/- towards medical expenses, Rs.2000/- towards attendant, Rs.2500/- towards special diet, Rs.2000/- towards transport, Rs.5000/- towards pain and sufferings and Rs.23,040/- towards loss of income and thus, has awarded a total sum of Rs.37,540/- as compensation to



the claimants, which in the facts and circumstances of the case cannot be termed as shockingly on lower side warranting interference of this Court.

(10) In view of the above, I do not find any scope for enhancement of compensation awarded by the Tribunal.

(11) The appeal being devoid of merits, is liable to be and is hereby dismissed.

Sd/-
N.K. Agarwal
Judge

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