

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MA No. 1113 of 2005**

Yashwant alias Banti S/o Shri Bhagwant Rao Dekate, aged about 20 years, R/o Rambag, Dhamtari, District Dhamtari (C.G).

---- Appellant**Versus**

1. Bhushan Sahu S/o Shri Radheshyam Sahu, R/o Rampur Ward, Dhamtari, District Dhamtari (C.G)
2. The United Insurance Company Limited, Krishna Complex, Kachahari Chowk, Raipur, District Raipur (C.G).

---- Respondents

For Appellant	:	Shri R.K.Pali and Shri Amit Sahu Advocates.
For respondent No.2	:	Shri Dashrath Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy
Order On Board

31/07/2017

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation against the award dated 17/08/2005 passed by the Additional Motor Accident Claims Tribunal, Dhamtari (in short, the Tribunal) in Claim Case No.135/2004.
2. The Tribunal considering the evidence which have come on record granted compensation of Rs.1,91,940/- to the claimants against which the present appeal has been filed.
3. Counsel for the appellant submits that the calculation of compensation made by the Tribunal is extremely on the lower side. He submits that the Tribunal has accepted the medical expenditure incurred by the claimant to the tune of Rs.1,40,000/- which itself justifies the fact that there was grievous injuries sustained by the

appellant. Unfortunately, the appellant could not produce the disability certificate because of his ignorance and not keeping the records of the treatment properly. He submits that the Tribunal however has accepted the accident, the resultant injuries and the medical expenditure incurred by the appellant taking into account the evidence of Dr.Yadu who was examined before the Tribunal. It is also not in dispute that the appellant had been hospitalized for about 2 months. Further, it is also not in dispute that the appellant had been subjected to surgery on both his legs and steel rods and plates were inserted as part of treatment. All these reflects the gravity of injury and therefore prayed for enhancement of compensation.

4. So far as the calculation of the yearly income of the appellant at Rs.15,000/- is concerned, the same also is extremely on the lower side as in the year 2003 i.e. at the time of accident, the minimum wages of a labour itself was more than 100/-, which makes monthly wages to be Rs.3,000/- and therefore the minimum wages that should have been taken into account for quantifying the compensation should have been Rs.36,000/- yearly. It is ordered accordingly.
5. Admittedly for about 1 and ½ years time the appellant could not resume his duties on account of the injuries and thus loss of income for 1 and ½ years comes to Rs.54,000/-.
6. So far as pain and suffering is concerned, considering the two surgeries and insertion of steel rod and plates in both his feet, this court feels that an amount of Rs.15,000/- awarded by the Tribunal is

on the lower side. It is ordered that the appellant under this head is liable to receive Rs.50,000/- instead of 15,000/-. Considering the fact that appellant was hospitalized for about 2 months and that for about 1 and ½ years he was not able to perform his normal duties, he had to keep attendant and thus quantification towards engagement of attendant is assessed at Rs.25,000/-. Likewise, the appellant is also entitled for compensation under the head special diet which this court quantifies at Rs.10,000/-.

7. So far as the disability part is concerned, true it is that the appellant has examined the Doctor before the Tribunal who has proved the accident, the resultant injury and the fact that the appellant sustained two fractures on both the feets and had to be operated upon and steel rods and plates had to be inserted on both his feets. Thus, considering the fact there would had been an admitted functional disability as he would not be able to perform his duties what he was performing prior to the accident and the impact of the injury would be lifelong, this court assess the disability of the appellant to be that of 15%. Accepting 15% disability, the loss of income sustained by the appellant would be 15% of the annual income of Rs.36,000/- which makes Rs.54,000/- and if the same is multiplied by the multiplier of 18, it comes to Rs.97,200/-. Thus, the appellant shall be entitled for total compensation of Rs.2,36,200/- and an amount of Rs.1,39,440/- awarded towards medical expenses, making it total compensation payable to the appellant at Rs.3,75,640/- instead of Rs.1,91,940/- as awarded by the Tribunal.

8. Thus, the appellant shall now be entitled for enhanced amount of Rs.1,83,700/- in addition to what has been awarded. The enhanced amount of compensation shall also carry interest at the same rate as has been ordered by the Tribunal. Remaining part of the award shall remain intact.
9. Thus, the appeal stands allowed. The respondent No.2-insurance company is granted two months time to deposit the enhanced amount of compensation before the concerned claims Tribunal.

Sd/-
(P. Sam Koshy)
Judge

inder