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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 614 OF 2006

Harendra Singh alias Babul, aged about 24 years, S/o Pratap Singh Yadav, R/o Gulabpura, Police Station Bakebar, District Itawa (U.P.), presently residing at Civli Lines, Baloda Bazar, Raipur (C.G.)

… Appellant

Versus

1. Manager, Durga Carrier Private Limited, Ladan Road, Baloda Bazar, District Raipur, through Sanjeev Singh, S/o Vijay Singh, aged about 40 years, R/o High School Road, Baloda Bazar, Raipur (C.G.)
2. Manager, The India Insurance Company Limited, Branch Office, Baloda Bazar, Garden Chowk, Baloda Bazar, District Raipur (C.G.)

… Respondents

For Appellant	:	Mr. Ashok Soni, Advocate.
For Respondent No.2.	:	Mr. Prasanjeet Dutta, Advocate, under instructions of Mr. Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/08/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the Appellant-Claimant, assailing the award dated 12.4.2016 passed by the First Additional Motor Accident Claims Tribunal, Baloda Bazar, in Claim Case No. 13 of 2006.

2. Vide the said impugned award, the Tribunal in a proceeding under Section 163(A) of the Motor Vehicles Act, has awarded a compensation to the Appellant-Claimant to the tune of Rs. 2,54,000/- with interest thereon at the rate of 6% per annum till realization of the compensation.

3. The Claimant has filed the present appeal seeking enhancement of the compensation awarded.

4. During the pendency of the appeal, the Respondent-Insurance Company has also filed a cross-objection opposing the impugned award on the ground that since the Claimant has pleaded his income to be more than Rs.6000/- per month i.e. approximate actual income of the Claimant to be more than Rs.40,000/-, under the provisions of the Motor Vehicles Act the claim case of the Claimant itself would not had been maintainable.

5. Brief facts of the case are that the Appellant-Claimant was a driver of a Truck, bearing Registration No. CG04-G/1653, owned by Respondent No.1 and insured by Respondent No.2-Insurance Company. On 24.11.2004, because of the technical fault in the said Truck, i.e., on account of failure of the steering, the Appellant-Claimant could not control the Truck and because of the steering failure the Truck went and dashed against a tree, resulting in grievous injuries to the Claimant.

6. As a result of the injuries sustained by the Claimant, both of his legs got completely damaged and during the course of the treatment both of his legs had to be amputated.

7. The grounds raised by the Claimant in the appeal are that the Tribunal has not taken into account the income of the Claimant properly and further the Tribunal has also not appreciated any compensation for the loss of amenities as the Claimant has lost both of his legs. The Claimant accordingly sought for enhancement of the compensation suitably.

8. None appeared for the owner of the vehicle. The Insurance Company is being represented by Shri Prasanjeet Dutta, Advocate, under instructions of Mr. Sudhir Agrawal, Advocate.

9. Shri Dutta submits that the Insurance Company has also filed a cross-objection under Order XLI Rule 22 of the Code of Civil Procedure. The Insurance Company has raised the solitary ground of the claim case of the Claimant before the Tribunal itself is not maintainable as the Claimant has pleaded his salary of more than Rs.6000/- a month which makes the yearly salary more than Rs.40,000/- and which would, therefore, not fall within the purview of Section 163(A) of the Motor Vehicles Act and thus prayed for the dismissal of the appeal so also the quashment of the award holding the claim case itself to be not maintainable.

10. So far as the cross-objection of the Insurance Company is concerned, once when we take into consideration the fact that though the Claimant may have pleaded his income to be Rs.6000/- per month but the Tribunal has only accepted the income of the Claimant to be Rs.15,000/- annually. According to the Tribunal, since the Claimant has not been able to produce any sufficient proof of evidence in respect of his salary, it has taken the annual income of the Claimant at Rs.15,000/- annually and has proceeded to decide the case accordingly.

11. At this juncture, it would be relevant to refer to the decision of this High Court in the case of **New India Assurance Co. Ltd.** v. **Sumitra Bai and Others**, **2015 ACJ 675**, wherein it has been categorically held that even if there is a pleading of more than Rs.40,000/- annually but since the Tribunal considering the evidence which have come on record has accepted the notional income less than Rs.40,000/- annually, the claim case is maintainable. Thus, in the opinion of this Court, the cross-objection filed by the Insurance Company deserves to be and is accordingly dismissed, relying upon the decision in the case of Sumitra Bai (supra).

12. In this case also applying the analogy laid down by the coordinate Bench of this Court in Sumitra Bai case (supra), if we take into consideration the evidence which have come on record, the statement of the Claimant itself was that he was earning Rs.6000/- a month and of which he was giving Rs.3000/- to his family.

13. The obvious inference which can be drawn from this is that he was getting the monthly salary of Rs.3000/- which he was giving to his family and the other Rs.3000/- which he was receiving was the daily bhatta which he was being paid on daily basis and the daily bhatta cannot be taken as part of the income/wages. Those are the allowances which are given for the sustenance of the driver during working days. Thus, even as per the evidence of the Claimant, his income has to be presumed to be that of Rs.3000/- a month as has been deposed by the Claimant before the Tribunal.

14. Another fact which has to be taken into consideration is that the notional income which has been assessed by the Tribunal of Rs.15,000/- an year makes the actual income to be Rs.1250/- per month and which if divided into 30 days of a month it would come roughly just over Rs.40/- a day. Therefore, in the opinion of this Court, the notional income of Rs.15,000/- which has been accepted by the Tribunal is not proper, legal and justified and it should had been taken at Rs.36,000/- annually for the purpose of quantification of the income. Accordingly, if we take Rs.36,000/- as the annual income and apply the multiplier of 17, the amount would be Rs. 6,12,000/-. Thus, this Court is of the opinion that the Claimant shall be entitled for a compensation of Rs. 6,12,000/- under the head of loss of income.

15. Further, the Tribunal has accepted 80% as his total disability which also in the opinion of this Court is improper and unjustified for the reason that the evidence which have come on record show that the Claimants has lost both of his legs as both of his legs have been amputated making him totally immobile and unable to perform the duties of a driver causing total loss of income. Thus, in the opinion of this Court, by virtue of both the legs of the Claimant getting amputated, there is a 100% disability sustained by him.

16. In addition, if we take into consideration the award passed by the Tribunal it clearly reflects that no amount of compensation has been paid to the Claimant for the loss of amenities which he would sustain all through his life by virtue of both his legs getting amputated. This quantifies the compensation under the loss of amenities at Rs.1,00,000/-.

17. Thus, the total compensation which the Claimant shall be entitled for would be Rs.6,12,000/- as loss of income, Rs.1,00,000/- under the head of loss of amenities and Rs.50,000/- as awarded by the Tribunal under the special head, totaling to Rs. 7,62,000/-. It is held accordingly.

18. With the aforesaid modification, the appeal is allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

/sharad/