NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1142 of 2010

Ashish Sharma S/o Late Ramanuj Sharma, aged about 35 years, Occupation – civil contractor, R/o near the Millennium Chowk, Raipur, District Raipur (CG)

---- Appellant

Versus

1. Shiv Kumar Dewangan S/o Vishnu Dewangan, aged about 41 years, occupation – truck driver R/o village Mohra, Rajnandgaon, Tahsil & District – Rajnandgaon (CG) (Driver of vehicle truck bearing registration No. CG/08/SC/0466)
2. M/s J. K. and Son's through Managing Director, Cinema Line, Rajnandgaon, Tahsil & District Rajnandgaon (CG) (Registered owner of vehicle truck bearing registration No. CG/08/ZC/0466)
3. The Oriental Insurance Company Limited through Divisional Manager, Divisional Office No. 1, Kutchery Chowk, Jail Road, Raipur, Tahsil and District Raipur (CG) (Insurer of vehicle truck bearing registration No. CG/08/B/1713)

---- Respondents

For Appellant	:	Shri Shivendu Pandya Advocate
For Respondent no. 3	:	Shri A. K. Athaley, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

03/11/2017

Present is an appeal by the claimant under Section 173 of the Motor Vehicles Act assailing the award dated 04.08.2010 passed by the 14th Additional Motor Accident Claims Tribunal (FTC), Raipur, District Raipur (CG) in Claim Case No. 24 of 2009. Vide the impugned award the Tribunal in an injury case under Section 166 of the MV Act has awarded a compensation of Rs.1,79,724/- with interest @ 7% per annum from the date of application.

2. The appeal by the claimant is for enhancement of compensation alleging that the amount of income assessed by the Tribunal is unreasonably low and that the Tribunal has not properly assessed the disability compensation which require substantial increase and enhancement.

3. Counsel for the appellant submits that the compensation paid under the other heads is also on the lower side as for pain and suffering only Rs.15,000/- has been granted. From the total compensation of Rs.1,79,724/- which has been awarded Rs.1,34,724/- is towards medical expenses and the rest of the amount which has been awarded under other heads is too meagre compensation considering the injury which the claimant sustained. The appellant in the instant case has suffered grievous injury on his right eye and the gravity of the injury can be measured from the fact that the appellant has lost complete vision of his right eye. He has become dependent for most of the things that he does which has put him to considerable loss monetary wise. Counsel for the appellant submits that the appellant because of the injury is not able to even drive two or four wheeler as a result of the complete loss of vision of his right eye and for which he has to engage a driver which has become a permanent recurring expenses. All this should have been taken into consideration by the Tribunal while computing compensation. He submits that it is a case where the income tax return filed by the injured had been produced before the Tribunal where the income of the deceased was shown at Rs.2,46,000/- per month and therefore, the compensation ought to have been accordingly assessed.

4. A perusal of the record would show that the income of the injured of the year prior to the accident i.e. 2006-07 was assessed about Rs.1,58,000/- and the income tax return which has subsequently been filed i.e. after the accident shows that the income of the appellant has been shown more than Rs.2,46,000/-. This clearly shows that there was no actual loss of income on account of the disability suffered by the appellant rather there is a steady increase in his income. Further, a perusal of the income tax return for this period would show that after deductions, the total income assessed by the income tax department was Rs.1,58,000/-. Thus, this Court assesses the income for the purpose of quantifying the disability at Rs.1,58,000/- and proceeds to compute the compensation accordingly. From the said amount if on 30% of disability which the appellant has sustained is taken, the amount would come to Rs.47,400/- which if multiplied by applying the multiplier of 16, the amount comes to Rs.7,58,400/-. It is ordered that the claimant shall be entitled for a compensation of Rs.7,58,400/- towards loss of earning capacity. In addition, the compensation awarded towards medical expenses of Rs.1,34,724/- and for pain and suffering of Rs.15,000/- as awarded by the Tribunal shall remain intact. Thus, the total compensation payable to the claimant shall become Rs.9,08,124/- in stead of Rs.1,79,724/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

5. The appeal thus stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola