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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1044 of 2014

- Sunil Kumar Choubey, S/o Baldau Prasad Choubey, aged about 28 years, R/o Jangalpur, Tahsil & Dist.- Rajnandgaon (C.G.).

---- Appellant/claimant

Versus

1. Sheikh Qadar, S/o Sheikh Ahmed, aged about 39 years, R/o Churiya, Tahsil & Dist.- Rajnandgaon (CG).
2. Bharat Travels, Purana Bus Stand, Rajnandgaon, Tahsil & Dist.- Rajnandgaon (C.G.).
3. The New India Insurance Company Limited, Parkh Bhavan Station Road, Durg, Tahsil & Dist.- Rajnandgaon (CG).

---- Respondents

For Appellant	: Shri Aditya Bhardwaj, Advocate.
For Respondent Nos. 1 &2.	: None.
For Respondent No. 3	:Shri Qamrul Aziz, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

07/03/2019

01. This appeal has been filed by the claimant/injured against the award dated 23.08.2014 passed by 2nd Additional Motor Accident Claims Tribunal, Rajnandgaon, District- Rajnandgaon C.G. in Claim Case No. 165/2012 awarding total compensation of Rs. 3,67,800/- along with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

02. As per averments made in the claim petition, on 10.02.2012, at about 4.00 pm claimant was going from Rajnandgaon towards his

village Jangalpur on his Motorcycle bearing registration No. C.G.-08-HB/0942, when he reached near Canal (*Nala*), Non-applicant No. 1 while driving the offending vehicle (Bus) bearing registration No. C.G.-04-E/1797 rashly and negligently, dashed the motorcycle of the claimant, as a result of which the appellant/claimant fell down and his right leg came under the wheels of the offending vehicle and he also sustained injuries on other parts of the body. The appellant has suffered amputation of right leg from below the knee and is permanently disabled to the extent of 60 percent.

03 On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act claiming compensation of Rs. 39,57,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs. 3,67,800/- along with interest @ 6 % per annum from the date of filing of claim petition, till its realiazation and liability fastened upon the non-applicants/respondents.

04. Learned counsel for the appellant/claimant submits that at the time of accident, the claimant was aged about 28 years and was working as petty contractor. He (claimant) submitted income tax return in every financial year. As per his last income tax returns for assessment year 2013 and 2014, vide Exs. P -51 & P-52, his income shown as Rs. 1,99,500/-pa & Rs. 1,54,800/-pa, respectively but learned Claims Tribunal has only assessed Rs. 3,000/-pm for loss of income due to permanent disability sustained by claimant to the extent of 60%, which is resulted into 40% functional disability whereas it ought

to have been assessed as Rs.5,000/- per month. He further submits that the appellant has suffered amputation of right leg from below the knee vide Ex. P/10 and is permanently disabled to the extent of 60 percent, and on account of which, his business would be adversely affected, therefore it would be appropriate to consider the loss of earning in respect of the permanent disability-functional disability sustained by him.

05. Opposing the above contention, learned counsel for the Insurance Company submits that the Tribunal has already awarded compensation on the higher side and therefore, there is no need for its enhancement by this Court.

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

07. It is not disputed facts that offending vehicle (Bus) bearing registration No. C.G.-04-E/1797, driven by Non-applicant No. 1, owned by non-applicant No. 2 and insured with non-applicant No. 3- Insurance Company. The fact that the claimant suffered amputation of right leg and is permanently disabled to the extent of 60% percent which is proved by Doctor-Prakash Bhalerao (AW-2) of District Hospital, Rajnandgaon by issuing Permanent Disability Certificate vide Ex. P-10. In which he opined that the claimant suffered serious injuries including permanent disability to the extent of 60% and his right leg was amputated from below the knee. The Claims Tribunal has not assigned valid and sufficient reasons as to why the income of claimant was considered only Rs. 3,000/-pm i.e. 36000/- per annum. As regards the

income tax return vide Ex. P/51, P/52, submitted by the appellant, the applicant witness No. 1/claimant himself stated in para 7 of his statement that the income shown in the income tax return, only income tax Officer or his Chartered Accountant can explain but no any concerned officer was examined before the tribunal, therefore, in these circumstances, as per his working capacity as skilled labour his income can safely be considered as Rs. 5,000/-pm as per minimum wages prevailing at the relevant point of time. Further looking to the admission of claimant that his business is still going on after his accident but his earning is affected; and the injuries sustained by the claimant including permanent disability to the extent of 60% causing his right leg was amputated from below the knee therefore, in these circumstances 40% functional disabilities can be safely considered. Furthermore, looking to injuries and permanent disability sustained by the claimant to the extent of 60%, it would be appropriate to grant Rs. 50,000/- as additional amount for transplant of the knee and for future treatment.

08. However, considering the overall facts and circumstances of the case, the period of hospitalization of the claimant, the nature of injuries suffered by him, the nature of his job and other relevant aspects of the matter, this Court is of the opinion that the claimant is entitled for compensation in the following manner:

Sl. No.	**Heads**	**Amount awarded by the Tribunal**	**Calculation (in rupees)**
01.	Income of the claimant @ Rs.5,000/- per month	Rs. 3,000/-	Rs.5,000x12= Rs. 60,000/- per annum

02.	40% of (i) above to be added towards future prospects.		Rs. 60,000+24,000= Rs. 84,000/-
03	After calculating 40% functional disability the loss of earning @ 40%		Rs. 33,600/-
04.	Multiplier of 17 to be applied		Rs.5,71,200/-
05.	Towards Medical expenses	Rs. 1,07,000/-	Rs.1,07,000/- (as awarded by the Tribunal)
06.	Towards pain & suffering	Rs. 5,000/-	Rs. 25,000/-
07.	Towards attendant	Rs. 5,000/-	Rs. 10,000/
08.	Towards conveyance	Rs. 3,000/-	Rs. 3,000/-
09.	Towards special diet	Rs. 5,000/-	Rs. 5,000/-
10.	Toward artificial limb		Rs. 50,000/-
11.	**Total Compensation**		Rs.7,71,200/-

Since the Tribunal has already awarded Rs.3,67,800/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.4,03,400/- with interest as awarded by the Tribunal.

09. In the result the appeal filed by the claimant is allowed with modification in the impugned award to the above extent that the claimant shall be entitled for additional compensation of Rs. 4,03,400/- with 6% pa interest. However, rest of the conditions of the impugned award shall remain intact.

Sd/-

(Gautam Chourdiya)
Judge

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