NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1328 of 2014

- Ferumal Munjwani, son of late Hukumat Mal Munjwani, aged about 72 years, resident of Nehru Market, Balak Chowk, Dhamtari, Tahsil and District Dhamtari (C.G.)

---- Appellant/claimant

Versus

1. Dalsingh, son of Akal Singh Dhurve, aged about 23 years, resident of Village Majgaon Jhimratola, Police Station – Mavai, District Mandla (M.P.)
2. Yashwant Rao Thakre, son of late Maruti Rao Thakre, aged about 62 years, resident of Banstal, Raipur, Police Station –Gole Bazar, Tahsil and District Raipur (C.G.)
3. Branch Manater, New India Insurance Company Limited, R.D.A. Building, Bajrang Market, Raipur, District – Raipur (C.G.)

---- Respondents

For Appellant	: Shri B. P. Singh, Advocate and Shri Shikhar Bhaktiyar, Advocate.
For Respondent No. 3	:Shri N. K. Malviya, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

28/02/2019

(1) This appeal has been filed by the claimant/injured against the award dated 13.11.2014 passed by Additional Motor Accident Claims Tribunal, Dhamtari in Claim Case No. 124/2014 awarding total compensation of Rs. 6,26,552/- 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 08.10.2013 claimant was going to Rice Mill in his Activa Motorcycle bearing registration No. C.G.-05/S/3237, when he reached near Village – Shyamtarai, respondent No. 1 while driving the offending vehicle Truck bearing registration No. C.G.-04/J.D./0130 rashly and negligently, dashed the activa motorcycle of the claimant from back side, as a result of which appellant sustained grievous injuries on both legs one from knee and one from thigh resulting into the permanent disability to the extent of 100%.

03 On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act claiming compensation of Rs. 58,00,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs. 6,26,552/- 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 the claimant is a businessman and every year he submits the income tax return before the Income Tax Department. As per his last return vide Exs. P A-46 to P A-50 submitted before the Tribunal for assessment of his income, the claimant's income ought to have been considered as Rs.4,50,000/- per annum whereas the learned Tribunal has wrongly assessed the income of claimant as Rs. 2,00,000/- per annum only and his yearly loss of earning assessed as only 50,000/- only. He submits that the appellant has suffered amputation of both the legs and is permanently disabled to the extent of 100 percent, and on account of

which, his business would be adversely affected, therefore it would be appropriate to consider the 100% permanent disability as 100% functional disability.

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 undisputed facts that offending vehicle Truck bearing registration No. CG.04 /J.D./0130 owned by non-applicant No. 2 and insured with non-applicant No. 3- Insurance Company. The fact that the claimant suffered amputation of both the legs and is permanently disabled to the extent of 100 percent is proved by the doctors of District Hospital, Dhamtari by issuing Permanent Disability Certificate vide Ex. P-43 stating that claimant suffered serious injuries including permanent disability to the extent of 100% and his both the legs were amputated. As per income tax returns vide Ex. A/49, A/42 and A/50, income shown by the claimant before the Income Tax Department is Rs. 4,74,427/- per year for the assessment in the year 2013 to 2014 and total tax is paid accordingly prior to the accident for assessment of income for the year 2013 & 2014.

08. Thus, Claims Tribunal has not assigned valid and sufficient reasons as to why the income of claimant was considered only Rs.

2,00,000/- per year. Looking to the admission of claimant that his business is still going on after his accident but his earning is affected and looking to the injuries sustained by the claimant including permanent disability to the extent of 100% causing his both the legs were amputated i.e. one leg is from thigh whereas one from the knee therefore, in these circumstances 50% functional disabilities can be safely considered as per his working capacity. After deducting the income tax Rs. 23,580/- as per income tax return in round figure Rs. 4,00,0000/- can be considered yearly income of the claimant/injured.

09. 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**	**Calculation (in rupees)**
01.	Income of the claimant @ Rs.4,00,000/- per annum	Rs.4,00,000/- per annum
02	After calculating 50% functional disability the loss of earning @ 50%	Rs. 4,00000/2= Rs.2,00,000/-
03.	Multiplier of 5 to be applied	Rs.10,00,000/-
04.	Towards Medical expenses	Rs.3,46,552/- (as awarded by the Tribunal)
05.	Towards pain & suffering	Rs. 30,000/-
06.	**Total Compensation**	Rs.13,76,552

Since the Tribunal has already awarded Rs.6,26,552/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.7,50,000/- with interest as awarded by the Tribunal.

10. In the result the appeal filed by the claimant is allowed with modification in the impugned to the above extent that the claimant shall be entitled for additional compensation of Rs. 7,50,000/- with 6% pa interest. However, rest of the conditions of the impugned award shall remain intact.

Sd/-

(Gautam Chourdiya)
Judge

amita