

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 382 of 2014

- Dhanesh Kumar S/o Khuman Sahu, aged about 24 years, R/o Village Khapri, Post Demar, Tahsil and District, Dhamtari (C.G.)

---- Appellant/Claimant

Versus

1. Chandrahash S/o Arjun Lal, caste sahu, aged about 33 years, R/o Kaneri, Post Kuliya, P.S. Gurur, District- Balod (C.G.)
2. Subhashchandra S/o Natulal Kothari, R/o Devendra Nagar, Sector-4, D-105, Raipur, Tahsil and District- Raipur (C.G.)
3. Divisional Manager, The New India Insurance Company Limited, Mobin Mahal, Jail Road, Raipur, Tahsil and District Raipur (C.G.)

---- Respondents

For Appellant	:	Shri B.P. Singh, Advocate
For Respondents 1 & 2	:	Shri S.S. Baghel, Advocate appears on behalf of Shri B.D. Guru, Advocate
For Respondent No.3	:	Shri Qamrul Aziz, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

04.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the injured-Claimant/Appellant, seeking enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal (FTC), Dhamtari, District Dhamtari (C.G.) vide award dated 20.03.2014 passed in Claim Case No.140 of 2013.
2. The claimant/Appellant claimed compensation of Rs.23,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act and Section 140 of the Amended Motor Vehicles Act 1994 for injury sustained by him in the motor accident.
3. Facts of the case, in brief, are that on 27.01.2013 deceased-Amar Singh,

Asharam Sahu, Satish Dewangan, Virendra Kumar and the injured present Appellant were present beside one Charan betel shop and where chewing betel and at that time, Respondent No.1/driver of the offending vehicle Truck bearing registration No. CG-04- 1275 driving the said vehicle in a rash and negligent manner overturned the vehicle on the betel shop, due to which deceased- Amar Singh, Asharam Sahu, Satish Dewangan and Virendra Kumar died and the present Appellant received grievous injuries and during treatment of the Appellant, his left leg upto thigh has been amputated.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.4,68,925/- in favour of the Appellant/Claimant with interest @ 6% per annum from the date of application till realization. The Tribunal has also directed that the Respondents are jointly and severally liable for payment of compensation to the Claimant/Appellant.

5. Learned counsel for the Appellant/Claimant submits that as per document proved by the Claimant and also supported by the Doctors who issued disability certificate (Ex.-P/26) of District Medical Board Dhamtari, the Appellant had suffered 80% permanent disability, but the Tribunal has considered only 40% loss of earning capacity due to amputation of left leg of Appellant. He further submits that the accident occurred in the month of January, 2013, the Appellant is a skilled labour as Carpenter and was earning Rs.7,000/- per month, but the Tribunal has considered the same as Rs.3,000/- per month which appears to be on the lower side. Even, as per minimum wages prevalent at that time his monthly income ought to have been taken at Rs.4,500/-. He further submits that only Rs.10,000/- towards physical and mental pain has been awarded by the Tribunal which is also on the lower side and needs to be enhanced suitably.

6. Learned counsel for the Respondents 1 to 3, however, opposes the appeal and supports the award passed by the Tribunal and submits that the learned

Tribunal has rightly assessed the income of the deceased, therefore, it is just and reasonable and does not call for any interference in the instant appeal.

7. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

8. *Firstly*, so far as argument relating to permanent disability caused to the Claimant due to accident is concerned, as per statement of Dr. Vinod Kumar Pandey (AW-5) who is the member of District Medical Board, Dhamtari, he has proved the disability certificate (Ex.-P/26). He proved this fact that the Claimant's left leg above knee was amputated which resulted into 80% permanent disability to him. Further, MLC report- Ex.-P/7 and treatment bills- Ex.-P/8 to Ex.-P/24 were proved by the Claimants as well as Ex.-P/26- certificate issued by concerned member of Medical Board for permanent disability, there is no any reason to disbelieve the above documents and also statement of given by Dr. Vinod Kumar Pandey (AW-5). As per the evidence of Claimant- Dhanesh Kumar (AW-1) himself, in paras- 2, 4 and 5, he also stated that his left leg was amputated and he suffered 80% permanent disability. Thus, considering the oral, documentary and medical evidence available on record and the nature of job of the Claimant, this Court is on the opinion that due to amputation of left leg of the Claimant above the knee, he suffered 80% permanent disability which affected his earning capacity to the extent of 60%. Therefore, the Tribunal was not justified in assessing the loss of earning capacity of the Claimant to the extent of 40%.

9. *Secondly*, so far as argument relating to income of the Claimant is concerned, the Tribunal has determined the monthly income of the Claimant as Rs.3,000/-. As per evidence of Claimant (AW-1) in para-6, he was working as Carpenter and was earning Rs.7,000/- per month. Considering the age i.e. 24 years of the injured-Claimant/Appellant and evidence adduced by the Claimant that he was doing job of Carpenter, the minimum wages of the skilled labour i.e.

Rs.4,500/- per month at the relevant time, this Court is of the opinion that the income considered by the Tribunal as Rs.3,000/- per month is on the lower side and it can safely be taken as Rs.4,500/- per month.

10. *Thirdly*, so far as argument relating to amount awarded by Tribunal towards physical and mental pain to the Claimant is concerned, it is noticed from the impugned award that the Tribunal has awarded only Rs.10,000/- towards physical and mental pain which is on the lower side. Therefore, in the facts and circumstances of the case, considering the nature and extent of injury suffered by the Claimant, the part of the body where the injury was caused and the period of his hospitalization, this Court is of the opinion that amount of Rs.10,000/- awarded by the Tribunal towards physical and mental pain deserves to be enhanced to Rs.40,000/-.

11. On the basis of aforesaid discussions, this Court is of the view that the Claimant/Appellant is entitled for compensation in the following manner:

Sl.No.	Head	Calculation
1	Income of the injured- Claimant/Appellant	Rs.4,500/- per month i.e. Rs.54,000 per annum
2	Loss of earning to the extent of 60%	Rs.32,400/-
3	Multiplier of 17 applied	Rs.32,400/- x 17 = Rs.5,50,800/-
4	Expenses incurred towards medical treatment	Rs.2,04,125/- (as awarded by the Tribunal)
5	For physical and mental pain	Rs.40,000/-
6	During treatment for special diet and conveyance	Rs.10,000/-
	Total Compensation	Rs.8,04,925/-

Since the Tribunal has already awarded Rs.4,68,925/-, after deducting the

same from the above amount, the Claimant is held entitled for additional compensation of Rs.3,36,000/-.

12. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimant/Appellant shall be entitled to a total enhanced amount of compensation of Rs.3,36,000/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment. However, rest of the conditions of the impugned award shall remain intact.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge