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(2016) 07 SHI CK 0016

High Court of Himachal Pradesh

Case No: F.A.O. No. 201 of 2011

Ram Krishan	APPELLANT
Vs	
M/s Associates Bulk Transport Company	RESPONDENT

Date of Decision: July 1, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, Section 173

Citation: (2016) 3 SimLC 1190

Hon'ble Judges: Mr. Mansoor Ahmad Mir, CJ.

Bench: Single Bench

Advocate: Mr. T.S. Chauhan, Advocate, for the Appellant; Mr. Dinesh Thakur, Advocate, for the Respondent Nos. 1 and 2; Mr. B.M. Chauhan, Advocate, for the Respondent No. 3

Final Decision: Allowed

Judgement

Mansoor Ahmad Mir, C.J.(Oral) - Challenge in this appeal is to judgment and award, dated 11th January, 2010, made by the Motor Accident Claims Tribunal, Bilaspur, District Bilaspur, H.P. (for short "the Tribunal") in M.A.C. No. 19 of 2008, titled as Ram Krishan v. M/s Associates Bulk Transport Company and others, whereby compensation to the tune of 5,25,558/- with interest Rs. @ 7.5% per annum from the date of filing of the petition till its realisation came to be awarded in favour of the claimant injured and against the insurer (for short "the impugned award").

2. The owner-insured, driver and the insurer of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. The appellant-claimant-injured has questioned the impugned award on the ground of adequacy of compensation.

4. Thus, the only question to be determined in this appeal is ■ whether the amount awarded in inadequate? The answer is in the affirmative for the following reasons:

5. The Tribunal in para 13 of the impugned award has recorded the statement of the doctor, namely Dr. J.L. Sharma, who was an Orthopaedic, whereby he has stated that the appellant-claimant-injured, who was a driver by profession, has suffered permanent loss of function, is not in a position to drive and even cannot plough his fields. The said witness has also proved the disability certificate, which is exhibited as Ext. PW-2/A, which does disclose that the appellant-claimant-injured has sustained 55% disability qua his left upper limb. It is apt to reproduce relevant portion of para 13 of the impugned award herein:

"13. ■....Besides, the petitioner also examined Doctor J.L. Sharma, Orthopaedic as PW-2 to prove his disability certificate. This witness PW-2 Doctor J.L. Sharma stated that he is working as Registrar in the Orthopaedic department in the I.G.M.C. Shimla. That he was the member of the medical board and the petitioner was examined by the Medical Board and the disability certificate Ext. PW2/A was issued to the petitioner by Medical Board which is signed by him as member being orthopaedic. He added that the petitioner has sustained permanent disability to the extent of 55% qua his left upper limb and is not in a position to drive the vehicle adding that petitioner is also not able to plough fields due to the aforesaid permanent disability. Neither, the petitioner PW-3 Ram Krishan nor this witness Doctor J.L. Sharma are cross-examined on these material facts regarding the permanent disability sustained by the petitioner after this accident and qua the medical expenses incurred by him on his treatment....."

6. The Tribunal has rightly held that the earning capacity of the appellant-claimant-injured was 6,000/- per month at the time of the accident, but has fallen in an error in holding that the disability has suffered his income capacity only to the extent of 55%, which is not legally and factually correct. As per the statement of Dr. J.L. Sharma, as recorded by the Tribunal itself in para 13 of the impugned award, the appellant-claimant-injured has suffered 100% disability as a driver by profession. Meaning thereby, he has lost total earning capacity.

7. Thus, it is held that the appellant-claimant-injured has suffered loss of income to the tune of 6,000/- per month. The multiplier of "10", applied by the Tribunal, is maintained. Accordingly, the appellant-claimant-injured is held entitled to compensation to the tune of 6,000/- x 12 x 10 Rs. = 7,20,000/- under the head "loss of earning capacity". ?

8. The amount awarded under the other heads, i.e. "medical expenses", "transportation charges", "attendant expenses", "pain and suffering and amenities of life" to the tune of Rs. 24,058/-, Rs. 3,500/-, Rs. 2,000/-, Rs. 1,00,000/-, respectively, is upheld.

9. Viewed thus, it is held that the appellant-claimant-injured is entitled to total compensation to the tune of 7,20,000/- + Rs. 24,058/- + Rs. 3,500/- + Rs. 2,000/- + Rs.

1,00,000/- = Rs. 8,49,558/- with interest as awarded by the Tribunal. The enhanced amount of compensation shall carry interest from the date of the impugned award till its realization.

10. Having said so, the impugned award is modified, as indicated herein above and the appeal is allowed.

11. The insurer is directed to deposit the enhanced awarded amount before the Registry within six weeks. On deposition, the entire awarded amount be released in favour of the appellant-claimant-injured strictly as per the terms and conditions contained in the impugned award through payee''s account cheque or by depositing the same in his bank account.

12. Excess amount, if any, be released in favour of the appellant-insurer through payee''s account cheque.

13. Send down the record after placing copy of the judgment on the Tribunal''s file.