IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.59 of 2010

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Chandra Prakash Jaiswal son of Naresh Prasad Bhagat resident of Village- Nadiya Tola, P.S. Kahalgaon, District- Bhagalpur …(claimant in the court below)

.... Appellant

Versus

1. Brajesh Kumar Choudhary son of Krishnadeo Choudhary At Present Residing At Qr. No. B-1-75, PTS, N.T.P.C., Kahalgaon, P.S.- Kahalgaon, District- Bhagalpur, Permanent resident Aulia Bad, P.S.- Jhandapur, Bihpur, District- Bhagalpur (Owner Of The Vehicle)
2. Nikhilesh Kumar Sangahi son of Nageshwar Sangahi resident of Village- Anandipur, P.S.- Kahalgaon, District- Bhagalpur (Driver Of The Vehicle)
3. The Branch Manager New India Assurance Company Ltd., Chandralok Complex, Radha Rani Sinha Road, P.S. Kotwali, District- Bhagalpur
4. The Divisional Manager, New India Assurance Company Ltd., Red Cross Building, North Of Gandhi Maidan, Patna (Insurer Of The Vehicle)

(opposite party no. 1 to 4 in the Claim Case)

.... Respondent

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Appearance :

For the Appellant/s : Mr. Vivekanand Vivek
For the Respondent/s : Mr. Sanjay Singh
Mr. Bimlesh Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
CAV JUDGMENT
Date: 3-03-2015

The present appeal under Section 173(1) of the Motor Vehicle Act, 1988 (hereinafter referred to as the "M.V. Act") has been preferred against the judgment and award dated 28/10/2009 and 6/11/2009 respectively passed by learned 1st Additional District Judge cum Motor Vehicle Accident Claim Tribunal, Bhagalpur (hereinafter referred to as the "Claim Tribunal"), in Claim Case No. 70 of 2003. It has been claimed that the Claim Tribunal has awarded meager amount of compensation. Accordingly, the appellant has filed this appeal for enhancement of the compensation amount. The appellant in the claim case had claimed total compensation amount of Rs. 10,19,000/-, whereas, the Claim Tribunal has awarded compensation amount of Rs. 1,11,068/-. Besides the said amount the insurance company was also directed to pay Rs. 15000/- towards medical expenses, Rs. 6000/- towards loss of income and Rs. 25,000/- toward physical pain and sufferings due to injuries suffered by the appellant. The compensation amount was directed to be paid with pendente lite interest at the rate of 9% per annum.

Short fact of the case is that in a motor vehicle accident, which had occurred on 2.10.2001 at about 9.15 p.m., within the jurisdiction of Kahalgaon Police Station, the appellant received multiple injuries and his left leg was fractured and he received serious injuries on his face. Besides this his intestine was also fractured. After the accident an F.I.R. vide Kahalgaon P.S. Case No. 284 of 2001 was registered against the driver of the jeep for the offence under Section 279 , 337 and 338 of the Indian Penal Code. It was alleged that due to rash and negligent driving by the driver of the jeep bearing Registration No. BR106990 (hereinafter referred to as “Offending Vehicle”) the motor cycle which was being driven by the appellant with pillion rider was dashed.

The appellant filed a claim case under Section 166 of the Motor Vehicle Act numbered as Claim Case No. 70 of 2003 in the court of District Judge cum Motor Accident Claim Tribunal, Bhagalpur. The claimant in the claim petition disclosed that at the time of accident he was aged about 22 years and he was a business man and his monthly income was Rs. 4,500/-. As per the claim case on 2.10.2001 the appellant along with his colleague was going from Kahalgaon to N.T.P.C. by a motor cycle and when he reached near Murkatiya Chawk the offending jeep, which was being driven rashly and negligently, dashed the motor cycle of the appellant. In the said accident besides the appellant, who was driving the motor cycle, pillion rider also received serious injuries. Thereafter they were brought to the clinic of one Dr. Digambar Prasad Singh. Since injuries on the person of the appellant was grievous in nature, after giving first aid the concerned doctor referred the appellant to Patna for immediate medical facility. On the basis of fardbyan of pillion rider namely Sri Arun Prasad Sah an F.I.R. vide Kahalgaon P.S. Case No. 284 of 2001 was registered on 3.10.2001 for the offence under Section 279, 337 and 338 of the Indian Penal Code against the driver of the offending vehicle. After the appellant was referred from Kaghalgaon to Patna the appellant was treated at Patna in Dr. Hai Clinic And Research Institute, Patna. During investigation by Dr. Hai it was found that intestine of the appellant had burst inside below the stomach and there was huge hemorrhage of the blood in the stomach. Accordingly, surgery was done and intestine was repaired. In the said accident besides the intestinal injuries the appellant had also sustained other cut injuries on face and leg. Injuries on the face was also grievous and as such, the appellant was treated by one Dr. Ashok Kumar Singh, a Plastic Surgeon and Plastic Surgery was also done. Since the appellant was suffering with the combined fracture of his left leg in which tibia of his left leg was badly damaged, the appellant was thereafter admitted in the clinic of Dr. R.N. Singh namely Sri Anup Memorial Orthopedic Centre and Research Institute, Kankarbagh, Patna. By Dr. R.N. Singh operation was done and plate inside the leg was planted. Even thereafter the appellant had suffered pain and after plaster was done subsequently puss was drained out with the proper treatment. It was claimed that even after long treatment the appellant was not able to walk freely. The appellant had become permanently disabled for which he was examined by the medical board and medial board found that the appellant was having 60% permanent disablement. Besides claiming compensation due to loss of earning the appellant claimed approximately Rs. 1,50000/- which he had incurred for his treatment of injuries, which were caused in the accident. This Medical claimed amount of Rs. 1,50,000/- was excluding of the cost of fooding, lodging and traveling incurred out of the treatment.

The claimant / appellant had made specific statement that he was doing business of whole sale, sale and purchase and manufacturing of Mixture (Dalmot), Chocolate, Biscuits and other materials and he was having average income of Rs. 4500/- per month. It was claimed that since for two years he was lying on bed due to disablement he was not able to do and continue with his business. It was claimed that he was put to loss of earning as well as loss from pain and suffering due to accident which had occurred due to rash and negligent driving by the driver. The claimant /appellant had claimed total compensation amount of Rs. 10,19,000/-. In the said case the owner and driver were impleaded as opposite parties who are respondent no. 1 and 2 in the present appeal. The New India Assurance Company Limited was also arrayed as party in the claim case before the court below.

Before the Claim Tribunal the owner and driver filed joint written statement and disclosed in the written statement that the driver of the offending vehicle was having valid driving licence and the offending vehicle was under insurance cover of New India Assurance Co. Bhagalpur vide Policy No. 3154010325097. The insurance company initially filed a written statement denying the claim of the claimant / appellant and also claimed that the owner of the offending vehicle had breached the terms of the insurance policy and claimed that driver was not having valid driving licence. However, it was admitted in the written statement that the offending vehicle was insured with the New India Assurance Company Ltd. at the time of accident. In the case before the Claim Tribunal the Insurance Company on 30.7.2009 filed additional written statement with a plea that the accident had occurred due to contributory negligence. It was pleaded that in this case jeep had collided with the motor cycle.

Before the Claim Tribunal to establish the claim from the claimant's side four witnesses were examined. The injured claimant / appellant was examined as Claimant Witness No. 1 (C.W. – 1). The claimant gave vivid picture of his case right from the date of accident till the date of his treatment. He categorically elaborated regarding his business and income, however, to establish the income no cogent documentary evidence showing actual income as Rs. 4,500/- per month. Sri Gyan Prakash Jaiswal was examined as C.W. – 2, who is own brother of the claimant. In his examination he proved number of documents such as medical bills, prescriptions etc. Those documents were got exhibited without any objection raised by the opposite parties. Sri Arun Kumar Sah, pillion rider and an injured has been examined as Claimant Witness No. 3 by way of filing statement on oath. In paragraph no. 1 of his statement on oath he has categorically stated that the jeep bearing registration no. B.R.12-6900 was being driven rashly and negligently and after noticing the rash driving the claimant /Chandra Prakash Jaiswal who was driving the motor cycle had turned his motor cycle to the left side, even thereafter, the offending vehicle dashed the motor cycle. It was reiterated that the driver of the jeep was driving rashly and negligently. He stated that during treatment in the clinic of Dr. Digambar Singh police arrived and recorded his statement and thereafter, F.I.R. was lodged against the driver of the offending vehicle. Sri Chandan Kumar Jaiswal has been examined as Claimant Witness No. 4 who reiterates that treatment of the claimant continued for a considerable period. He stated that the claimant was treated by Dr. Digambar Prasad Singh at Kahalgaon and thereafter he was referred to Patna and in Patna he was treated by Dr. A.A. Hai and thereafter he was treated by Dr. R.N. Singh, where treatment continued for one month. He has also disclosed that plastic surgery on the person of the claimant was done by one Dr. Ashok Kumar Singh at Patna. Before the court below number of bills, vouchers and prescription reports were got exhibited as Exhibit 1 to 1/ XXVII, 1/XXVIII to 1/XXXII , 1/XXXIII to 1/XLIX, 1/L to 1/LXI , Exhibit 2 to 2 /VII. Disablement certificate granted by the medical board as Exhibit – 3, prescription of plastic surgery centre

Exhibit – 4, Hai Clinic & Research Institute Discharge Ticket Exhibit – 5, Hai Clinic and Research Institute Prescription Exhibit - 5/1, Hai Clinic and Research Institute Prescription Exhibit - 5/2, X-Ray report and pathology report Exhibit -6, X-Ray imaging Exhibit - 7, certified copy of F.I.R. of Kahgalgaon P.S. Case No. 284 of 2001 Exhibit - 8 and photo copy of insurance policy of the offending vehicle as Exhibit – 9. Of -course from the claimant side number of documents, vouchers, bills etc. were got exhibited but either insurer or Owner – Driver never raised any objection.

Sri Vivekanand Vivek , learned counsel for the appellant in support of claim of enhancement of compensation amount has argued that once in the claim petition as well as in deposition during the trial the fact regarding monthly income of the claimant i.e. Rs. 4,500/- was brought on record, the learned Claim Tribunal only on the ground of non production of documents to establish the income, was not justified in rejecting the claim of monthly income of Rs. 4,500. He further submits that it is true that as per schedule – II of the Motor Vehicle ACT for medical treatment Rs. 15,000 limit has been prescribed, the law laid down by this court as well as the Apex court makes it clear that if in a case claimant by cogent evidence i.e. documentary evidence and oral evidence is in a position to establish that for the treatment of injuries, which had occurred in the vehicular accident, the claimant had incurred actual expenditure, the entire expenditure is to be compensated by either owner of the offending vehicle or the insurance company. He submits that admittedly in the present case the insurance company by filing written statement had accepted that offending vehicle was under insurance cover of the respondent no. 3 and 4 / New India Assurance Company and as such, the learned Claim Tribunal has grossly erred in reducing the actual expenditure which has been incurred on medical expenses from Rs. 1,50000/- to Rs. 15000/-. Learned counsel for the claimant has referred to an unreported order passed by this court on 12.3.2014 in Miscellaneous Appeal No. 846 of 2010 (Ratan Choudhary versus Sri Bedanand Singh and others). According to learned counsel for the appellant it is a fit case for directing for enhancement of the compensation amount.

Sri Sanjay Singh, learned counsel, who has appeared on behalf of respondent no. 3 and 4 /New India Assurance Company Ltd., submits that the compensation amount granted by the Claim Tribunal is just and proper. He submits that since no plausible evidence was brought on record to establish the monthly income of the claimant, the learned Claim Tribunal has rightly considered the income as Rs. 3000/- per month. He submits that as per minimum wages act at least in absence of any documentary evidence the claimant was expected to earn monthly income of Rs. 3000/- and as such, the learned Claim Tribunal has rightly considered the income of the claimant as Rs. 3000/- per month. Since the appellant has been held as 60% disabled, accordingly for 60% disablement Rs. 3000/- per month was reduced to Rs. 2000/- and after deducting 1/3rd as personal expenses annual income of the claimant was multiplied with 17 as prescribed in Schedule – II since at the time of accident the claimant was aged about 22 years. He further submits that the expenses incurred as medical expenses has rightly been given as Rs. 15000/- in terms of Schedule II Clause I(ii). Sri Sanjay Singh submits that the judgment and award is not required to be interfered with and the appeal is liable to be dismissed.

Sri Rajeev Ranjan Singh, learned counsel for the respondent no. 1 and 2/ owner and driver respectively of the offending vehicle has argued that since the offending vehicle was under insurance cover of respondent no. 3 and 4 at the time of accident, the learned Claim Tribunal has rightly directed the insurer of the vehicle to pay the compensation amount. He reiterates that the driver of the offending vehicle at the time of accident was having valid driving licence.

Besides hearing learned counsel for the parties, I have also perused the materials available on record including the Lower Court

Record. On the basis of materials available on record there is no dispute that the appellant in a vehicular accident had received multiple injuries over his face, his intestine had burst and his left leg had fractured for which the appellant was given medical treatment for several months. In respect of actual medical expenses besides specifically claiming that the appellant had incurred expenditure under medical head approximately Rs. 1,50000/-, the appellant had got number of bills and vouchers exhibited and those exhibits are on record, which suggest that the appellant had incurred huge expenses under medical head. Surprisingly, while those prescription, vouchers, bills and other documents were being got exhibited, no objection was raised and as such, under the provisions of Evidence Act those exhibits can not be over- looked now. In a case of permanent disablement the Hon'ble Apex court has given certain guidelines in a case reported in **2012(2) PLJR (SC) 142 (Govind Yadav vs. The New India Insurance Company Limited).** The Apex Court in the said case while relying on a case reported in **(2009) 6 SCC 1(Nizam's Institute of Medical Sciences vs. Prasanth S. Dhananka)** has quoted some important observation which is quoted hereinabove:-

> **"At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial**

> **<u>shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical , financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."</u>**

In a case reported in **(2010) 10 SCC 254 (Arvind Kumar Mishra vs. New India Assurance Company Limited)** the Apex Court has observed as follows:-

> **"We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. <u>The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong: he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.</u>"**

In a case reported in **(2011) 1 SCC 343 (Raj Kumar vs. Ajay Kumar)** the Apex Court has held as under :-

> **"The provision of the Motor Vehicle Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should , to the extent possible, fully and adequately restore the claimant to**

the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy , though some conjecture with reference to the nature of disability and its consequences, is inevitable. <u>A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full file, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries and his inability to earn as much as he used to earn or could have earned.</u>

The heads under which compensation is awarded in personal injury cases are the following:-

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability

(iii) future medical expenses

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries

(v) Loss of amenities (and / or loss of prospects of marriage)

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under

> **heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (III), (v) and (vi) relating to loss of future earning on account of permanent disability, future medical expenses, loss of amenities (and / or loss of prospects of marriage) and loss of expectation of life.**

The Hon'ble Supreme court in Govind Yadav Case (Supra) has directed that the principle laid down in Arvind Kumar Mishra vs New India Assurance Company Ltd. and Raj Kumar vs. Ajay Kumar cases must be followed by all the Tribunals and High Courts in determining the quantum of compensation payable to the victims of accident who are disabled either permanently or temporarily. It has been held that if the victim of the accident suffers permanent disablement then effort should also be made to award adequate compensation not only for the physical injury and treatment but also for the loss of earning and his inability to live a normal life and enjoy amenities, which he would have enjoyed, but for the disabilities caused by the accident he can not do so. In view of the guidelines given by the Apex Court and in the facts and circumstances of the present case, the court is of the opinion that the claim of the appellant of actual medical expenses which has been claimed approximately as Rs. 1, 50000/- which has been supported by the exhibited documents, the said claim must not be denied and as such, the claim of actual medical expenses of Rs. 1,50000/- is considered as just and reasonable. So far as calculation of loss of future income of the claimant due to permanent disablement is concerned, the court is of the opinion that in view of absence of any plausible documentary evidence in support of the claimant's claim of monthly income of Rs. 4,500/- the Claim Tribunal has rightly assessed the income as Rs. 3000/- per month and since permanent disablement is 60% the learned Claim Tribunal has rightly reduced the income from Rs. 3000/- to Rs. 2000/- per month. However, the learned Claim Tribunal has grossly erred in deducting 1/3rd as personal expenses. From the remaining income of the claimant 1/3rd from the income is to be reduced in a case in which death has occurred in a vehicular accident. The said 1/3rd is deducted on presumption that had the deceased remained alive, he would have incurred personal expenses for his remaining time but in a case of permanent injury situation is not similar. The reason is that a permanent disabled person is required to actually spend money and as such there is no question of any deduction as assumed 1/3rd personal expenses. Accordingly, the learned Claim Tribunal has committed error in deducting 1/3rd from the monthly income of the claimant /appellant. In view of 60% permanent disablement the appellant's monthly income is treated as Rs. 2000/- and it comes annually as Rs. 24000/-. So far finding recorded by the learned Claim Tribunal that it was a case of contributory negligence, the court is of the opinion that in view of evidences which have been brought on record the learned Claim Tribunal has grossly erred to record a finding that it was a case of contributory negligence. In the F.I.R. i.e. Ext. – 8 there is specific assertion that the offending vehicle was being driven rashly and negligently and due to rash and negligence of the driver of the offending vehicle the offending vehicle dashed the motor cycle which was being driven by the appellant. Besides F.I.R. in the evidence of C.W. – 1 and C.W. – 3 who are claimant's witness and the informant of the case it has categorically been stated that accident had occurred due to rash and negligent driving by the driver of the offending vehicle and driver of the offending vehicle was made accused in the F.I.R. Only on the basis of filing an additional written statement by the insurer / insurance company that too in the year 2009 without any corroborative evidence the learned Claim Tribunal was not justified to held that it was a case of contributory negligence only by taking aid of some judgments of the Supreme Court. The court is of the opinion that a case is first to be decided on the basis of evidence brought on record. In the present case there is cogent evidence to establish that it was not a case of contributory negligence. Before the Claim Tribunal besides filing claim case and getting number of documents exhibited from the claimant's side four witnesses were examined and all the four witnesses have established the case. Even though they were cross examined at length nothing has been brought on record to create any doubt on the claimant's case and as such, the finding of the learned Claim Tribunal that it was a case of contributory negligence is itself without any basis and is hereby set aside.

Now considering monthly income of the claimant / applicant as Rs. 3000/- per month which was minimum as per the Minimum Wages Act and 60% permanent disablement this income can be reduced to Rs. 2000/- per month which is Rs. 24000 per annum. The claimant / appellant at the time of accident was aged about 22 years. Of-course as per Schedule -II of the Motor Vehicle Act multiplier of 17 was applicable but in view of the judgment of the Apex Court reported in **(2009) 6 SCC 121 (SARLA VERMA (SMT) AND OTHERS** ***Versus*** **DELHI TRANSPORT CORPORATION AND ANOTHER)** the multiplier would be 18 and as such, after taking multiplier of 18 the total income comes to Rs 2000 x 12 x18 = Rs. 432000. Accordingly, the compensation amount comes to Rs. 432000/- which is added with Rs. 1,50,000/- as actual medical expenses with loss towards income Rs. 6000/-

which was awarded by the Claim Tribunal since on record it was established that the claimant was treated from 2.10.2001 to 6.12.2001 i.e. 2 months. The claimant / appellant is entitled to get Rs. 25000/- towards physical pain and suffering due to injuries suffered in the accident.

Accordingly total amount comes to Rs. 6,13000/-. The aforesaid amount is required to be paid with interest at the rate of 9% as was awarded by the Claim Tribunal which is to be calculated from the date of filing of the claim case i.e. 26.6.2003 till the date of payment. Accordingly, the respondent no. 3 and 4 are directed to pay the aforesaid amount to the appellant after adjusting the amount already paid to the appellant within a period of two months from the date of receipt / production of a copy of this order.

Accordingly, the appeal stands allowed.

(Rakesh Kumar, J)

Praful/-

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