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CF 12 

Division Bench
IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

MISCELLANEOUS APPEAL NO. - CO 163 OF 2006

(MEMORANDUM OF APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988)

APPELLANT
CLAIMANT

✓ Chunuram Turkane, aged about 48 years
S/o Puru Mehar Turkane, R/o- Village -
Baktara, Police Station- Mandirhousad,
Raipur, District - Raipur (C.G.)

VERSUS

RESPONDENTS
NON-CLAIMANTS

✓ 1. Dhannu Ram , aged about 25 years , S/o
Madanpuri, Occupation- Driver

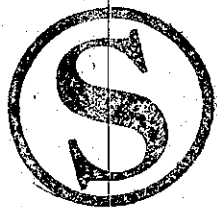
2. Maniram Kumhar S/o Shri Deosaran
Kumhar

Both R/o- Village - Darba, Police Station-
Mandirhousad, District - Raipur (C.G.)

✓ 3. The New India Insurance Company Limited,
Through Divisional Office, Bajrang Market,
RDA Building, G.E. Road, Raipur, District-
Raipur (C.G.)

P.R. No. 1269/06
Presented by Sri. Bipendra Pandey
dated 26/06/06

MEMORANDUM OF APPEAL UNDER SECTION 173 OF THE MOTOR
VEHICLES ACT, 1988

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 163 of 2006**

Chunuram Turkane

---- Appellant

Versus

Dhannu Ram and Others

---- Respondents

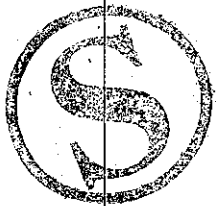
For Appellant – Shri A.L. Singroul, Advocate.
For Respondents No.1 & 2 – Ms. Minu Banerjee, Advocate.
For Respondent No.3 – Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order****21/08/2015**

1. This appeal is against the award dated 25th February, 2006 passed in Claim Case No.106/2005 by the 9th Additional Motor Accident Claims Tribunal, Raipur. The appeal is by the claimant/injured.

2. Briefly stated facts as pleaded by the appellant/claimant is that on 26/12/2004 claimant Chunuram was going on a scooter, when he reached near a place named Grace Depot Village Nakta Mod, at that time another vehicle i.e. tractor being driven by original non-applicant No.1 in a rash and negligent manner dashed the appellant. By impact of such accident, right leg of the appellant/claimant was fractured at many places and also claimant sustained injuries on his head as also on his claw foot for which he was operated twice at different hospitals. It was stated that because of such accident one lakh rupees expenditure was incurred. Consequently, on the different heads claim petition was filed.

3. Non-applicants No.1 and 2 stated that no accident was ever



caused. It was further stated that neither vehicle was driven at a high speed at the relevant time nor any accident was committed and false report was lodged. It was further stated that vehicle was insured with original non-applicant No.3, the New India Insurance Company Limited. So award if any has to be made good by the insurance company. Insurance company contended that at the time of the accident driver of the offending vehicle was not holding any valid licence and therefore it led to breach of condition of the policy. It was further stated that no functional disability was caused. Consequently, appellant is not entitled for any compensation.

4. Tribunal after evaluating the facts and evidence came to a finding that at the relevant time on 26/12/2004 claimant/appellant while was going on a scooter the accident had caused by the tractor bearing No.C.G.04/ZG 1107 and trolley bearing No.1108. It was further held that at the relevant time, the tractor was being driven at a high speed and consequence of rash and negligent driving appellant sustained the injuries. The said finding is not under any challenge by the claimant. In absence of any challenge to the same, same is affirmed.

5. Learned counsel for the appellant would submit that despite evidence on record of the medical bill court has only awarded the amount of Rs.13,872/- and consolidated amount of Rs.35,000/- for the accident which too is meager as the court failed to take in to account medical evidence on record and the permanent disability which was caused to the appellant. Consequently, it is prayed that amount may be suitably enhanced.

6. Learned counsel for the respondents however submits that award is well merited which do not call for any interference and the appeal may be

dismissed.

7. I have heard learned counsel for the parties at length, perused the documents. Perusal of the award shows that it is a case of personal injury.

8. It is a settled law that the compensation in personal injury cases should be determined under the following heads:

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:
 - Loss of earning during the period of treatment;
 - Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

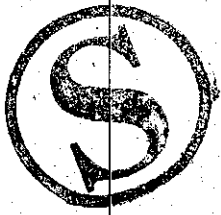
Non-Pecuniary Damages (General Damages)

- (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)]

9. The Hon'ble Supreme Court, in **Govind Yadav v. New India Insurance Company Limited**, (2011) 10 SCC 683, while considering the principles under which the pecuniary compensation is to be granted, held in para 11 as under:

"11. The personal sufferings of the survivors and disabled persons are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. If an individual is

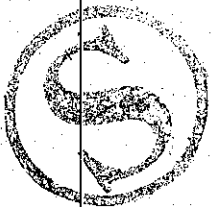


permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term 'compensation' used in Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident."

10. The Hon'ble Supreme Court, while adjudicating the quantum of compensation, has reiterated the law laid down in **Raj Kumar v. Ajay Kumar and another, (2011) 1 SCC 343** and has held that 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 life, 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.

11. Claimant has stated that after the accident he was taken to the Life Worth Hospital wherein he was initially admitted for 6-7 days and he was operated on his right leg and treated for injury on his head as also left leg. He further stated that after treatment he could not recover fully and had to continue with the treatment. He further stated that in such treatment an amount of Rs.50,000/- was incurred. Claimant further stated that before the accident he used to do the job of coolie and used to earn Rs.100/- per day and after the accident since his leg was not working properly, he could not do any job. Tribunal has awarded consolidated sum of Rs.35,000/- for the injury and loss of income etc.

12. Here in the instant case the documents have been placed on record from Ex.P-7 to Ex.P-24 which are the bills of the doctors. Ex.P-25, 26 and



27 have already been consolidated in the bills, therefore taking into Ex.P-7 to Ex.P-24 which are of the treatment and the medical bills of the appellant it works out to Rs.38,555/-. There is no reason to disbelieve the same since it prima facie appears that amount shown have been spent by the appellant/claimant along with medical bills. It also shows that appellant/claimant was subjected to operation, therefore in view of the documents which are placed on record, an amount of Rs.38,555/- as expenses relating to treatment, hospitalization is granted. Further looking to the fact that appellant was operated and he was resident of Mandir Hasaud and was treated at Raipur on the head of transportation, nursing, for attendant and other miscellaneous expenses, another amount of Rs.10,000/- is awarded. Appellant had stated that he used to earn Rs.100 per day being a labour and considering the period of treatment taking into account he was operated for fracture naturally he could not have performed the job for a considerable period. Therefore, taking notional income to Rs.2500/- per month for the accident which happened in the year 2004 amount of Rs.7500/- is awarded for loss of earning during the period of treatment. Further in future medical expenses considering the nature of injury an amount of Rs.10,000/- is awarded for future medical expenses. On the head of non-pecuniary damages for damage for pain and suffering and trauma in consequence of injuries taking into account that appellant was admitted and was operated twice, amount of Rs.25,000/- is granted for damages for pain and suffering. Further for loss of future earning on account of disability appellant placed on record Ex.P-29 which shows the disability to the extent 33%. Certificate has been proved by the doctor PW-3.

13. Taking into statement of PW-3 doctor G.S. Bachhu, he had stated

that he had examined the patient and after examination he found that patient used to walk with limping and he was not able to sit properly. Consequently, after examination he had given a certificate of disability to the extent of 33%. Same is placed on record marked as Ex.P-29. According to the statement of the appellant, he stated that he was working as labour and after the accident he was not able to perform his job. Therefore, taking into fact notional income of the appellant as Rs.2500/- annual income would be Rs.30,000/- and since he was aged about 48 years at the time of accident, multiplier of 13 would be applicable which comes to Rs.3,90,000/-. Therefore, after considering statement of the appellant though disability has been shown to 35% such disability was confined to 33% and at the same time doctor had stated that he was not able to say how much functional disability was caused. Taking into account documents placed and the statement, in the opinion of this court functional disability is estimated to 10%, thereby future earning loss comes to 39,000/-. Therefore, the amount of compensation is reassessed as under:-

S.No.	Heads	Calculation
(i)	For medical expenses	Rs.38,555/-
(ii)	For transportation, nursing, for attendant and other miscellaneous expenses	Rs.10,000/-
(iii)	For loss of earning during the period of treatment	Rs.7500/-
(iv)	For future medical expenses	Rs.10,000/-
(v)	For pain, suffering and trauma	Rs.25,000/-
(vi)	For loss of future earning	Rs.39,000/-
	Total	Rs.1,30,055/-

14. Thus, the total compensation will be Rs.1,30,055/-. After deducting Rs.48,872/- awarded by the tribunal, the enhancement would be

Rs.81,183/-.

15. In the result, the appeal is partly allowed. The claimant will be entitled to the said sum of Rs.81,183/- in addition to what is already awarded with interest at the rate of 6% per annum from the date of application. No order as to costs.

16. The Registry is further directed to communicate the claimant in writing the "amount of award enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

Sd/-
Goutam Bhaduri
Judge

Gouri

