AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 726 of 2009

1. Ashok Kumar Jain S/o Savatraj Ji Jain aged about 42 years, R/o Chainpura Road, Tahsil Pandaria, District Kabirdham (CG)

---- Petitioner

Versus

1. Smt Durmila Bharti, W/o Lekhram Bharti, R/o House No.B/586, Chandela Nagar, Ring Road, Bilaspur (CG), Permanent Address-Village Bemetara, Thana-Bemetara, District Durg (CG) **(Owner)**

2. Tarun S/o Mangalchand Satnami R/o House No.B/586 Chandela Nagar, Ring Road, Bilaspur (CG) Permanent Address Village Kanher, Tahsil Saja, District Durg (CG) **(Driver)**

3. United India Insurance Company Limited, Through Branch Manager, Mendhekar Complex, Rajendra Nagar, Branch Bilaspur (CG)

---- Respondent

For appellant : Shri S.S. Rajput, Advocate.
For Respondent No.1 & 2 : None
For Respondent No.3 : Shri H.B. Agrawal, Sr.Adv. with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

25/08/2015

This appeal arises out of the award dated 10.2.2009 passed by 8th Additional Motor Accident Claims Tribunal (FTC), Bilaspur (hereinafter referred to as “the Tribunal”) in claim case No.60/07 awarding compensation of Rs.3,49,571/- in favour of the injured-claimant.

02. Facts of the case, in brief, are that on 21.4.2006 when injured appellant Ashok Kumar Jain was travelling in a bus bearing registration No.CG-04-E-0261, the said vehicle turned turtle as a result of which appellant sustained grievous injuries. He was initially hospitalized at Kawardha and thereafter he was referred to hospital at Raipur where in

order to save his life, his left hand from the elbow was amputated by the doctors. He remained in hospital from 21.4.2006 to 5.5.2006.

03. A claim case was filed by the injured-claimant before the Tribunal for compensation of Rs.12 lacs, *inter alia*, pleading that before the accident he was working as Sales Executive-cum-Accountant in a petrol pump namely Amba Fuels, drawing monthly salary of Rs.7,000/- at the time of accident he was 42 years of age, on account of amputation he has been thrown out of the job, is not doing anything and would be compelled to live with amputated hand lifelong, therefore, he is entitled for suitable compensation.

04. However, the Tribunal after appreciation of the evidence on record by the impugned award granted a total compensation of Rs.3,49,571/- lacs in favour of the claimant along with interest @ 6% p.a. from the date of application till realization on the following heads:

(i) For loss of earning capacity : Rs.2,70,000/-
ii) For medical treatment : Rs. 68,571/-
(iii) For pain and suffering : Rs. 7,000/-
(iv) For special diet : Rs. 2,000/-
(v) For attendant : Rs. 2,000/-

05. Learned counsel for the appellant submits that the compensation awarded by the Tribunal is very much on the lower side and is required to be increased suitably for the following reasons:

(i) that the appellant has proved his monthly income as Rs.6,500/- and for no justification, the Tribunal has arrived to the conclusion that monthly income of the appellant was Rs.3,000/-.
(ii) that the Tribunal has not awarded any compensation to the appellant for loss of future prospects which in the present case should have been 30% of the income.
(iii) as the left hand of the appellant has been amputated from elbow, he has suffered 80% permanent disability which has also been proved by the doctor and thus considering this aspect of the case, the Tribunal ought to have granted compensation towards permanent disability as

well as disfigurement of the appellant.

(iv) that under the conventional heads also the Tribunal has awarded a meager amount which is required to be enhanced suitably.

06. On the other hand, supporting the impugned award learned counsel appearing for the insurance company submits that award impugned is just and proper and likewise the finding recorded by the Tribunal in respect of income of the appellant is also in accordance with law. He submits that in the facts and circumstances of the case and the nature of evidence adduced by the parties, the impugned award cannot be termed as inadequate or insufficient, warranting interference by this Court.

07. Heard learned counsel for the parties and perused the material available on record.

08. The appellant has pleaded and also adduced oral evidence that his monthly income was Rs.7,000/-. His employer has been examined by the Tribunal who too has stated that he was paying Rs.6,000/- as salary and Rs.500/- as bonus to the appellant. Thus, considering the evidence adduced by the appellant, in the considered opinion of this Court, his monthly income can safely be taken as Rs.5,000/- i.e. Rs.60,000/- p.a.

09. While assessing compensation, especially under the Motor Vehicles Act, the Tribunals are statutorily responsible for fixing a compensation which should be just and proper, commensurate with the injury or loss, as the case may be, suffered by the claimants. Although compensation for loss of limbs or life can not be weighed in golden scales, it has to be kept in mind that the compensation is not expected to be a windfall for the victim/claimant. It should be “just” and not a bonanza; not a source of profit, but at the same time, should not be a pittance. There can be no straight jacket formula governing all cases for measuring the value of human life or limbs in terms of money. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any, of each case. Every method or mode adopted for assessing compensation has to be

considered in the background of "just" compensation which is the pivotal consideration. Though a wide discretion is vested in the Tribunal in respect of awarding compensation, but such assessment/determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equability, fairness and reasonableness, and non-arbitrariness. If it is not so, it can not be just.

10. In the recent decision rendered in ***Rekha Jain Vs. National Insurance Company Ltd. and others, 2013 AIR SCW 4616***, after referring to the various judgments of the Apex Court and other Courts while summarizing the law in relation to grant of compensation in the cases of personal injury, it has been observed by the Apex Court as under:

> 14. Point No.(iii) is also required to be answered in favour of the appellant. We are of the view that the appellant is substantially entitled to enhancement of compensation under various heads of non-pecuniary damages having regard to the concurrent findings recorded on this aspect of the matter by the High Court. Both the Tribunal and the High Court have accepted the nature of injuries sustained by her and the percentage of permanent partial disablement suffered by her due to the Motor Vehicle Accident as per the Disability Certificate No.943 dated 24.2.2006 issued by the Chief Medical Officer of the District Medical Board of Sambalpur. This aspect of the matter is very relevant for the purpose of examining the claim of the appellant and also to find out as to whether the Tribunal and the High Court were justified in not awarding just and reasonable compensation in favour of the appellant under the various heads of non-pecuniary damages. This Court is required to keep in mind justice, equity and good conscience which must be the primary, relevant and important aspects for awarding just and reasonable compensation to an unfortunate victim, the appellant herein who has sustained grievous injuries to her body and whose future prospects are completely doomed. Further, the Tribunal and courts while awarding compensation for bodily injuries, must realise that the possession of one's own body is the first and most valuable of all human rights and that all other possessions and ownership are the extensions of the basic right. Bodily injuries should be equated with the deprivation which entitles a claimant to damages and the amount of damages varies in accordance with the gravity of injuries. In this regard, it is worthwhile to refer to certain paragraphs which have been referred to by the Karnataka High Court in the case of K.

Narasimha Murthy vs. The Manager, Oriental Insurance Company Limited and Anr., ILR 2004 Karnataka 2471, wherein the Division Bench of the Karnataka High Court has considered the relevant important aspects from the judgment of this Court and the House of Lords and different learned scholars and authors of books on awarding pecuniary and non pecuniary damages. The abovementioned decision states about the approach of the Motor Accidents Claim Tribunals and Courts for awarding just and reasonable compensation in favour of the claimants in relation to the bodily injuries suffered by them. It is worthwhile to extract Paragraph 16 from K. Narasimha Murthy case (supra), which reads as under:

> "16. The Courts and Tribunals, in bodily injury cases, while assessing compensation, should take into account all relevant circumstances, evidence, legal principles governing quantification of compensation. Further, they have to approach the issue of awarding compensation on the larger perspectives of justice, equity and good conscience and eschew technicalities in the decision-making. There should be realisation on the part of the Tribunals and Courts that the possession of one's own body is the first and most valuable of all human rights, and that all possessions and ownership are extensions of this primary right, while awarding compensation for bodily injuries. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies according to gravity of injuries."

25. It is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury cases the two main elements are the personal loss and pecuniary loss. Chief Justice Cockburn in Fair's case, supra, distinguished the above two aspects thus:

> "In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by the accident : secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income".

26. McGregor on Damages (14th Edition) at paragraph

no.1157, referring to the heads of damages in personal injury actions, states as under:

> “The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the Courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.”

Besides, the Court is well-advised to remember that the measures of damages in all these cases 'should be such as to enable even a tort feasor to say that he had amply atoned for his misadventure'. <u>The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to 'hold up his head among his neighbours and say with their approval that he has done the fair thing', is quite apposite to be kept in mind by the Court in assessing compensation in personal injury cases.</u>”

(Emphasis laid by the Court)

27. In R. Venkatesh v. P. Saravanan & Ors. 2001(1) Kar. L.J. 411, the High Court of Karnataka while dealing with a personal injury case wherein the claimant sustained certain crushing injuries due to which his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100% though only the claimant's left lower limb was amputated. In paragraph 9 of the judgment, the Court held as under:

> "9. As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit for any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below knee, has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well-settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100 per cent".

28. Lord Reid in Baker v. Willoughby, (1969) 3 All ER 1528 at p.1532, has said:

> "A man is not compensated for the physical injury; he is compensated for the loss which he

> suffers as a result of that injury. His loss is not in having a stiff leg; it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned…. ."

11. In the present case, the Tribunal has not considered future loss of income to the appellant as well as the hardship to be faced by him due to permanent disability. In the facts and circumstances of the case, as at the relevant time the appellant was 42 years of age, 30% of the annual income is required to be added to his income. After doing so, the annual income of the appellant comes to Rs.78,000/- (Rs.60,000/- + Rs.18,000/-). As per medical evidence, he has suffered 80% permanent disability. Even if the same is taken as 70%, the loss of annual income comes to Rs.54,600/-. Considering the age of the appellant, the proper multiplier applicable in this case would be 14. After applying this multiplier, the total loss of future income comes to Rs.7,64,400/-. Since the appellant has sustained 70% permanent disability, he is entitled to Rs.50,000/- under the head of permanent disability.

12. As regards grant of Rs.68,571/ towards expenditure incurred in treatment by the appellant, this Court has no reason to reduce or enhance the said amount and therefore, the same would remain as it is. However, the Tribunal has not awarded any amount towards expenditure to be incurred in having artificial limb as the appellant's left hand from the elbow was amputated. Therefore, in the facts and circumstances of the case, particularly the fact that the appellant would be required to have artificial limb at present, which is subject to decay with the passage of time and as such, would need the same in future also, the appellant is held entitled for Rs.1 lac under this head.

13. As regards the amount awarded towards pain and suffering i.e. Rs.7,000/-, special diet i.e. Rs.2,000/- and attendant i.e. Rs.2,000/-, as the present is a case of amputation of hand, in the considered opinion of this Court, the amount awarded under the aforesaid heads is required to be enhanced to Rs.1,00,000/- (pain and suffering),

Rs.20,000/- (special diet) and Rs.5,000/- (attendant) respectively. Admittedly, the injury suffered in the unfortunate accident has resulted in disfigurement of the appellant and therefore, he is entitled for Rs.50,000/- under this head.

14. For the sake of convenience, the amount awarded by this Court under various heads is particularized as under:

1.	For loss of future earning/income (on account of permanent disability taking multiplier of 14)	Rs.7,64,400/-
2.	For permanent disability (70%)	Rs.50,000/-
3.	For medical expenses	Rs.68,571/-
4.	For artificial limb	Rs.1,00,000/-
5.	For Pain and suffering	Rs.1,00,000/-
6.	For disfigurement	Rs.50,000/-
7.	For special diet	Rs.20,000/-
8.	For Attendant	Rs.5,000/-
	Total	**Rs.11,57,971/-**

15. In view of what has been discussed above, the appellant is held entitled for a total compensation of Rs.11,57,971/- and since the Tribunal has already awarded Rs.3,49,571/-, after deducting the same the appellant is entitled for enhancement of Rs.8,08,400/-. This additional amount of compensation shall carry the interest @ 6% p.a. as awarded by the Tribunal from the date of filing of claim petition i.e. 30.4.2007 till realization.

16. In the result, the appeal is allowed and the award impugned stands modified to the above extent.

Sd/

(Pritinker Diwaker)

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