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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1153 of 2008

Nirmal Patel, son of Geetram Patel, aged about 30 years, resident of Pangaon, Police Station & Tahsil Palari, District Raipur (C.G).

---- Appellant

Versus

1. Maniram, son of Banshilal Satnami, aged about 27 years, resident of village Ravaiya, Police Station Baloda Bazar, District Raipur (C.G) – Driver of the offending Truck bearing No.C.G.04/ZC 1013)
2. M/s Durga Carrier, Lavan Road, Baloda Bazar, District Raipur (C.G). Owner
3. The New India Insurance Company Limited, Branch Office, Civil Lines, Baloda Bazar, District Raipur (C.G) - Insurer

---- Respondents

For the Appellant	:	Mr. Vikram Dixit, Advocate.
For Respondent No.3	:	Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

31.08.2015

1. This is an appeal by the claimant against the award dated 01.05.2008 passed by the II Additional Motor Accidents Claims Tribunal, Baloda Bazar in Claim Case No.59 of 2007. On first round of litigation, this Court by order dated 04.04.2014 passed in M.A(C). No.1153 of 2008 remitted back the case with a direction to examine the doctor namely G.S. Bachu who has issued the medical certificate Ex.P-97 to ascertain the authenticity of the medical certificate Ex.P-97 so as to know the recent condition of the claimant. After remitting the case, the statement of Dr. G.S. Bachu was recorded and the case has been sent back to this Court. So the appeal is being heard on merits.

2. Briefly stated facts of the case are that on 22.12.2006 the appellant claimant was going back to his village Pangaon from Baloda Bazar on

his motorcycle alongwith his friend. On the way at about 1.30 p.m., when he reached to Ambedkar chowk near Baloda Bazar, a Truck bearing C.G.04/ZC-1018 which was driven by non applicant No.1 in rash and negligent manner dashed the motorcycle. By impact of such dash, the injured fell down and the Truck ran over the genital organs of the claimant, therefore, he was admitted to the hospital and was treated. Subsequently the claim petition having been filed, the Tribunal has assessed the claim of Rs.1,45,116/- and held that since the injured was also liable for the contributory negligence to the extent of 50%, the award of Rs.72,600/- was passed.

3. Learned counsel for the appellant would submit that though the Tribunal has held that there was contributory negligence, but the same cannot be inferred as no evidence was adduced by the non-applicants i.e., driver and owner of the vehicle or the Insurance Company. He further submits that after remittance of the case, the evidence of Doctor would show that the claimant has become permanently impotent and thereby the accident has caused permanent disability. Therefore, just compensation may be allowed by enhancing the amount of impugned award.

4. Per contra, learned counsel for the Insurance Company supported the award and would submit that the award is well merited which do not call for any interference by this Court.

5. I have heard learned counsel for the parties and have also perused the documents on record.

6. The Tribunal in its award at Para 10 has referred to the pleadings made by the non-applicant wherein it is stated that the claimant was in drunken condition at the time of accident, therefore, it resulted into such accident. Consequently, the Tribunal has given a finding that the claimant was also equally liable for contributory negligence for the accident. A perusal of the statement would show that the claimant

had stated that at the relevant time while he was riding the motorcycle, he was dashed by the offending vehicle from behind. He denied the suggestion given to the witness that the accident took place while he was over-taking another vehicle from wrong side. No evidence was adduced by the non-applicants that is either by owner/driver or the insurer.

7. The Tribunal on the basis of pleading has held that the claimant was liable for contributory negligence. It is settled proposition that if the defence has not produced any evidence before the Tribunal, only on the basis of pleading, the contributory negligence cannot be assumed as it will remain as a pleading without any proof.

8. Admittedly, in this case, no evidence was adduced by the respondents, therefore, as has been laid down in ***National Insurance Company Limited V. Sinitha & others, (2012) 2 SCC 356*** in case when the issue of contributory negligence is raised then the onus of proof of contributory negligence lies on the shoulder of defence (owner or insurer). Therefore, In the instant case, applying the aforesaid principle, since no evidence was adduced either by the Insurance Company or the owner & driver, the presumption of contributory negligence cannot be accepted. In a result, the finding of contributory negligence of 50% on the part of deceased as held by the Tribunal cannot be sustained and thereby is set aside.

9. The claimant has stated that he has suffered permanent disability. The permanent disability certificate is filed as Ex.P-97. This Court by order dated 04.04.2014 has remitted the case for examination of the doctor so as to ascertain the present position of the claimant. Pursuant thereto, Dr. G.S. Bachu was examined before the Tribunal on 06.05.2015. He has stated that the certificate Ex.P-97 was issued by the Medical Board and he was one of the member of the Board and he has certified the permanent disability. The doctor attested the

photographs of the claimant. The doctor denied the suggestion given to him that he was not member of the District Medical Board. He stated that 90% disability is caused to the genital organs of the claimant. He further stated that Ex.P-97 was issued by him and proved the authenticity of the same.

10. 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:

3. Loss of earning during the period of treatment;

4. Loss of future earnings on account of permanent disabilaity.

(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)]

11. Hon'ble the 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."

12. 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.

13. Now, if the statement of claimant is seen, he has deposed that while he was going to his house at village Pangaon along-with his friend, on the way at Ambedkar Chowk, near Baloda Bazar, the offending truck driven by Maniram in rash and negligent manner dashed his motorcycle whereby he sustained grievous injuries on his private parts i.e., genital organs as also on his leg. He was initially admitted to Baloda Bazar Hospital and thereafter, he was shifted to M.M.I. Hospital, Raipur where his injuries were treated. He stated that he was admitted in MMI Hospital for one and half months and incurred expenses of Rs.1,30,000/- for his treatment. He has further stated that after the operation, his testicles were taken out since it was damaged. He further stated that his penis also got severe injury and

after conducting surgery, a hole was made in the penis thereby he was passing urine and he cannot urinate from his penis as earlier. He further stated that an operation was also conducted on his thigh and grafting was made. In respect of injuries, he has further stated that the hole made in the penis has to be closed and a pipe has to be inserted there to urinate in future. He further stated that every month, the pipe has to be inserted for urination otherwise, he cannot urinate. Narrating further this witness has stated that he cannot perform intercourse with his wife since his penis was damaged, therefore, though he desired for one more child, he could not get it. He further submits that since he could not perform intercourse with his wife, he feels ashamed for that. He further stated that after the accident, he could not work for 6-7 months.

14. The disability of claimant is proved as Ex.P-97. Considering the documents produced on record and statement of Doctor and that of the claimant, the income is required to be reassessed.

15. The tribunal on the heads of pecuniary damages awarded Rs. Rs.4000/- for attendant charges; Rs.4000/- for nutritious food; Rs.4800/- for transportation; Rs.81,700/- towards treatment in MMI Hospital; Rs.23,616/- for medical expenses and Rs.10,000/- for loss of future income. Considering the documents placed on record in respect of pecuniary damages like treatment in hospital, the medical bills etc., as stated above, the same appear to be just and proper which do not require any reassessment. For loss of earning during treatment, the Tribunal has awarded Rs.12000/- per month. Taking into statement of claimant/appellant, the same also do not require any reconsideration.

16. No amount has been awarded for future treatment expenses. The claimant has stated that the hole made in penis has to be closed in future and further a pipe has to be inserted so as to urinate and

therefore, further amount of Rs.30,000/- would be required. Taking into fact that the condition of claimant has not been diluted in cross examination an amount of Rs.25,000/- is awarded on the head of non-pecuniary damages for future medical expenses.

17. For loss of potency to perform sexual intercourse with the wife, the Tribunal has awarded only Rs.5000/- which is very meagre. Considering the statement of the Doctor that the claimant became impotent and physically handicapped to have sexual intercourse with his wife and the fact that it will continue for life long, therefore, an amount of Rs.1,00,000/- is awarded for loss of family/marital life. Further an amount of Rs.50,000/- is awarded towards damages for for pain and suffering/trauma as a consequence of injuries. The amount of Rs.10,000/- awarded for future loss would be termed as loss of expectation of life. Therefore, the compensation to be reassessed is as under:

S.No.	Heads	Calculation
1	Attendant charges as awarded by the Tribunal	Rs. 4,000/-
2.	Loss of earning during treatment as awarded by the Tribunal	Rs. 12,000/-
3.	Transportation charges as awarded by the Tribunal	Rs. 4,800/-
4.	Loss of marital life	Rs.1,00,000/-
5.	Treatment expenses of MMI Hospital as awarded by the Tribunal	Rs. 81,700/-
6.	Medical expenses as awarded by the Tribunal	Rs. 23,616/-
7.	Nutritious food as awarded by the tribunal	Rs. 4,000/-
8.	Future medical/treatment expenses	Rs. 25,000/-
9.	Damages for pain and suffering/trauma as a consequence of injuries	Rs. 50,000/-
10.	Loss of expectation of life	Rs. 10,000/-

		Total	Rs.3,15,116/-

18. Thus the total compensation will be Rs.3,15,116/-. The said amount shall carry interest @ 9% per annum from the date of filing of the claim petition till the date of payment. It is made clear that the finding of contributory negligence is set aside, therefore, no amount shall be deducted towards contributory negligence The Insurance Company shall be liable to make good the entire payment of compensation. After deducting Rs.72,600/- awarded by the tribunal, the enhancement would be Rs. 2,42,516/-.

19. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 2,42,516/- in addition to what is already awarded.

20. The Registry is further directed to communicate the claimants 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

Rao