NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 176 of 2011

T.V. Mohan, son of Late T.V. Govind, aged about 63 years, Resident of village Palli, P.S. Frezerpur, District Bastar (C.G).

---- Appellant

Versus

1. Jyotishwar Kurup, son of T.V. Mohan, aged about 26 years, resident of village Palli, P.S. Frezerpur, District Bastar (C.G)
2. T.V. Ravi, son of T.V. Mohan, aged about 31 years, resident of village Palli, P.S. Frezerpur, District Bastar (C.G).
3. Branch Manager, National Insurance Company Ltd., Branch Office Jagdalpur, District Bastar (C.G)

---- Respondents

For Appellant	:	Mr. Pravin Tulsyan, Advocate
For Respondent No. 3	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

15.09.2015

1. This is an appeal by the injured/claimant against the award dated 31.08.2010 passed in claim Case No.42/2010 by the Third Additional Motor Accidents Claims Tribunal, Bastar, Jagdalpur whereby the Tribunal has partly allowed the claim petition by awarding a total compensation of Rs.3,99,602/-.

2. Brief facts of the case, as pleaded by the claimants, are that on 14.09.2008 claimant T.V. Mohan along-with one Rajendra Prasad

Gupta & Leeladhar Naidu were traveling in Maruti Alto bearing Regn.No.C.G.17-C/0761. They were going from Jagdalpur to Nagpur. On the way near a place known as Balenga Mandir turn, the said Maruti Car driven by Non-applicant No.1 Jyotishwar Kurup in rash and negligent manner struck against a tree and thereby the appellant claimant sustained severe injuries. Subsequently because of the injury, the right leg above the nee was amputated.

3. Non-applicants 1 & 2 have jointly filed their written statement and denied the averment that at the time of accident the offending vehicle was driven in rash and negligent manner. It was stated that at the time of accident, the driver was having valid and effective driving licence. It was contended that the vehicle was insured with the original non-applicant No.3, the National Insurance Company, consequently, the insurance Company is liable to make good the payment.

4. The Tribunal after assessment of evidence came to a finding that at the relevant time the vehicle was driven in rash and negligent manner and further has awarded an amount of Rs.3,09,602/- to the claimant appellant. The Tribunal has assessed the income of injured as Rs.1 lakh per annum and held that because of amputation, the claimant has sustained loss to the extent of 40% on account of functional disability as against the permanent disablement of 75% certified by the Medical Board Further the treatment expenses of Rs.1,05,429/- incurred at Seven Hills Hospital, Visakhapatnam was also awarded and in addition, Rs.4176/- towards medical expenses; Rs.5000/- for mental pain and suffering; Rs.5000/- for loss of amenities; Rs.5000/- for attendant charges and Rs.5000/- for transportation charges were also granted and thereby a total compensation of Rs. 3, 99,602/- was awarded.

5. Learned counsel for the appellant submits that though the quantum of

income which is proved by the tax returns filed by the claimant would go to show that an amount of Rs.2,91,816/- was earned by the injured in the year 2007-2008 vide Ex.P-18 which was subsequently reduced to Rs.1,37,867/- in the year 2008-2009 as per Ex.P-19, but the Tribunal has taken the annual income of deceased as Rs.1,00,000/-. It is further submitted that just six months before the accident the income of claimant was shown as Rs.2,91,816/- in the tax return filed in the month of March, 2008, therefore, there was no occasion for learned Tribunal to hold the income to the extent of Rs.1 lakh. He further submits that though the permanent disablement was certified to be 75% vide Ex.20-C by the Medical Board, but the Tribunal has assessed the functional disability to the extent of 40%, thereby a default of double deduction in income as well as permanent disability has been committed by the learned Tribunal and accordingly prays for suitable enhancement of the award.

6. Per contra, learned counsel for respondent No.3 vehemently opposes the same and submits that in the facts and evidence available on record of the present case, the award passed by the Tribunal is just and reasonable which do not require any reassessment.

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

8. The only question which involved in the instant case is as to whether the quantum awarded by the Tribunal is liable to be enhanced ?

9. 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:

1. Loss of earning during the period of treatment;
2. 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)]

10. 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."

11. Hon'ble the 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.

12. A perusal of the statement of claimant would show that due to accident, he was admitted in hospital for the period from 14.09.2008 to 22.10.2008 at Seven Hills Hospital, Visakhapatnam. The claimant has further stated that because of the accident, apart from amputation of leg above the knee, all the teeth were broken which consequently had resulted in severe disfigurement and also caused difficulties in chewing food and drinking water. Dr. V. K. Jha, in this case was examined as A.W.3. He proved the disability of appellant vide Ex.P-20-C and the disability is certified to the extent of 75%. The Tribunal has assessed the loss of income to the extent of 40% on account of functional disability. That part is not under any challenge by the Insurance Company. Therefore, the loss of income is taken as per the assessment of Tribunal to the extent of 40% on account of functional disability of the injured.

13. The appellant has placed on record the income tax return vide Ex.P-18 wherein, the income for the financial year 2007-2008 was shown to be Rs.2,91,816/- from which the tax deducted at source was shown to be Rs.27000/-. Likewise, the tax return of the year 2008-2009 submitted on 24th December 2008 is placed on record vide Ex.P-19 which shows

the income of injured as Rs.1,31,867/-. The Tribunal has assessed the income at Rs.1 lakh. Since the functional disability has already been held to be 40% by the Tribunal, in the opinion of this Court, there was no occasion to again hold the income of deceased as Rs.1 lakh when the income tax return shows otherwise. Just before six months of the accident, the income was shown as Rs.2,91,816/- vide Ex.P-18 and after deduction of Rs.27,000/- it works out to Rs. 2,64,816/-. Likewise, another tax return filed on 24th December vide .Ex.P-19 shows the income of claimant to be Rs.1,31,861/- for 9 months wherein the tax deduction is shown to be Rs.500/-. The claimant has stated that the accident took place on 14.09.2008 and he was admitted to hospital from 14.9.2008 to 22.10.2008 and due to accident he earned only Rs.1,31,867/- in the financial year 2008-09 that is for 9 months and since the accident had occurred, he could not further earn, therefore, considering both the amounts shown in the income tax return, in the opinion of this Court, it would be just and proper to hold the average income to be Rs.2 lakhs which was being earned by the claimant.

14. Since the claimant is shown to be aged about 63 years, consequently, the multiplier of 7 would be applicable as per ***Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121***. Therefore, the loss of income is assessed as Rs.14 lakhs (Rs. 2 lakhs x 7). Out of this amount, loss of income to the extent of 40% on account of permanent disability comes to Rs.5,60,000/-. The Tribunal has further awarded Rs.1,05,426/- towards treatment expenses incurred at Seven Hills Hospital, Visakhapatnam and Rs.4,176/- for medicine expenses. Therefore, the amount of Rs.1,09,602/- (1,05,426 plus 1,09,602) awarded under the pecuniary damages is further maintained.

15. A perusal of the award would show that nothing has been awarded relating to loss of earning during treatment/injury. Taking into fact the

nature of injury as the leg was amputated above the knee, in the opinion of this Court, since the claimant would have suffered with such ailment for minimum for 3 months, another sum of Rs.15,000/- is awarded for loss of earning during the period of treatment.

16. The Tribunal has awarded meagre sums on the head of non-pecuniary damages i.e., Rs.5000/- for pain and suffering and Rs.5000/- for loss of amenities of life which in the opinion of this Court are not just and reasonable amounts. Considering the age and statement of claimant that his teeth were broken and his right leg was amputated above the knee, in the opinion of this Court, an amount of Rs.50,000/- would be just and reasonable for pain and suffering or trauma and Rs.25,000/- for loss of amenities and disfigurement. In addition, Rs.5000/- granted by the Tribunal for attendant charges is maintained and the amount of Rs.5000/- granted towards transportation is also enhanced to Rs.20,000/-. Therefore, the total compensation to be reassessed is as under:

S.No.	**Heads**	**Calculation**
(i)	Loss of income (40% of Rs.14 lakhs)	Rs.5,60,000/-
(ii)	Treatment expenses as granted by the Tribunal	Rs.1,05,426/-
(iii)	Medical Bills as granted by the Tribunal	Rs. 4,176/-
(iv)	Loss of earning during treatment	Rs. 15,000/-
(iv)	For pain and suffering or trauma	Rs. 50,000/-
(v)	Loss of amenities and disfigurement	Rs. 25,000/-
(vi)	Attendant charges as granted by the Tribunal	Rs. 5,000/-
(vii)	Transportation charges	Rs. 20,000/-
	Total	**Rs. 7,84,602/-**

17. Thus the total compensation will be Rs.7,84,602/-. After deducting Rs.3,99,602/- awarded by the tribunal, the enhancement would be Rs. 3,85,000/-.

18. In the result, the appeal is partly allowed. The claimant will be entitled to the said sum of Rs. 3,85,000/- in addition to what is already awarded. The total compensation will carry interest @ 7% from the date of filing of the claim petition till the date of payment. No order as to costs.

19. 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