

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 106 of 2013**

Mahadev, S/o. Cheranga, Aged About 23 years, R/o. Pujaripara, Dongriguda,
Kalepal, Distt. Bastar (C.G.)

---- Petitioner**Versus**

1. Avinash Kukrele, S/o. Vibhishan Singh Kukrele, Aged About 22 Years,
R/o. Near Ushribeda Thana, Umesh Kirana Store, P.S. Lohandi Guda,
Distt. Bastar (C.G.)
2. Laxmi Nivas Pandey, S/o. Laxman Prasad Pandey, Aged About 45 Years,
R/o. Mardu, P.S. Mordoom. Tah. Jagdalpur, Distt. Bastar (C.G.)
3. Branch Manager, The Oriental Insurance Co. Ltd., Sadar Bazar Road,
Jagdalpur, P.S. Jagdalpur, Distt. Bastar (C.G.)

---- Respondents

For Petitioners	:	Mr. Santosh Bharat, Advocate
For Respondent No.1 & 2	:	Mr. Subhash Yadav, Advocate
For Respondent No.3	:	Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****17/07/2015**

1. This is an appeal against the award dated 08.10.2012 passed in Claim Case No.53/2012 by the Court of Second Additional Motor Accident Claims Tribunal, Jagdalpur, District Bastar.
2. The claim case was filed by the appellant on the ground that on 14.02.2010 while he was moving on his Cycle near a place known as Tetarkhuti, Geedam Road, one Bolero vehicle driving by the original Non-applicant No.1, Avinash Kukrele, bearing registration No.C.G.17-D/0628 in rash and negligent manner dashed the Cycle and the claimant after the dash was dragged along with the Cycle with the wheels of the Jeep to quit a distance. So by such impact, he sustained severe injuries. The injuries

were on both the legs and the flesh came out. He sustained injuries on his testis which too came out alongwith the flesh of the thigh. The claimant was admitted to the Hospital from 14.02.2010 to 28.04.2010 and it is stated that the claimant at the time of accident was 23 years. It was stated that he was a mason and used to earn Rs.200/- per day whereby an amount of Rs.6000/- was earned in a month. It is further stated that after the accident, he is not able to perform his daily job and has become completely disabled. Consequently, an amount of Rs.16,70,000/- was claimed.

3. The Non-applicant No.1 & 2 (Driver & Owner) of the vehicle contended that the appellant himself dashed against the Jeep and at the relevant time the Jeep was driven in a moderate speed. It was further stated that at the relevant time, the vehicle was insured with the Non-applicant No.3, Insurance Company, consequently, the Insurance Company is liable to make good the amount of compensation.
4. The Non-applicant No.3, Insurance Company, also refuted the averments of the claim petition and stated that the Non-applicant No.1, Driver, did not have a valid and effective driving licence to drive the vehicle and the vehicle was being driven in breach of condition of the terms of policy and thereby the Insurance Company is not liable to pay the compensation.
5. The learned Claims Tribunal after evaluating the facts and evidence passed an award of Rs.1,29,775/- in favour of the appellant. The same is under challenge before this Court by the appellant/claimant. The Tribunal further held that at the time of accident, the offending vehicle i.e. Bolero Jeep was being driven in rash and negligent manner, consequently, the accident was caused. Such finding is not under challenge before this Court by either of the parties, consequently, the same is affirmed.
6. Learned counsel appearing for the appellant contended that taking into the evidence of the Doctor, it will go to prove that severe injuries was caused

to the appellant whereby he sustained severe damages to his private part leading him to be impotent for the entire life. It is contended that considering the age of the appellant that he was 23 years of age at the time of accident, it will have a serious impact for his entire life, which should have been considered by the learned Tribunal. It is further submitted that the amount granted for future medical expenses is also too meager which too also needs reconsideration. Therefore suitable enhancement of the award of compensation should be made.

7. Per contra, learned counsel appearing for the Insurance Company contended that as per the Doctor, there is no functional disability qua the work rendered by the appellant has been caused, therefore, the award which is being passed by the Tribunal do not require any reassessment. It is stated that the award is well merited which do not call for any interference by this Hon'ble Court.
8. I have heard learned counsel appearing for the parties, perused the evidence and documents on record.
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:
 - (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)]

10. Perusal of the evidence of claimant would go to show that because of the accident since the appellant was dragged alongwith the offending vehicle, he lost his testis, his private parts were completely damaged and entire penis also came out. He also sustained injuries on his thigh and the flash also came out from the thigh and alongwith that both hands were also severely injured. He was admitted to the Hospital for four months. The same is evident from the documents which is placed on record alongwith the claim petition. It is stated that after the accident, he was operated many a times at the Hospital and because of the injury caused in the private parts and stitches in the grafting, he has become completely impotent and he will loose his matrimonial life as he is a married man. The another witness is examined namely Dr. Vivek Joshi. He has proved the disability certificate. The said certificate is marked as Ex.A-10. According to such certificate, the appellant sustained injuries on penis, scrotum and other parts of the body, which are permanent in nature. The Doctor has stated that he being a member of Medical Board had examined the claimant and on examination he found that victim has become completely impotent, however, the other disability was reported to be “zero”.

11. The Tribunal has granted the compensation under the following heads :

Sl. No.	Head	Amount (Rs)
1.	For medical treatment.	12,775/-
2.	For special diet & attendant.	1,000/-
3.	For transportation.	1,000/-
4.	For future medical expenses.	5,000/-
5.	For pain & suffering.	20,000/-
6.	For loss of amenities of life.	30,000/-
7.	Damages for loss of expectation of life.	30,000/-

8.	For disablement.	30,000/-
----	------------------	----------

12. Under the head of expenses relating to treatment, the Tribunal has awarded Rs.12,775/- as per the medical bill produced and placed. Since the appellant was admitted to the Hospital for the period from 14.02.2010 to 28.04.2010 approximately 2 ½ months, therefore, the amount of diet and nourishing food of Rs.1000/- appears to be too meager, therefore considering the nature of injury caused and nature of disablement as some of the body parts are lost, the same is enhanced to Rs.10,000/-. Likewise, the amount of Rs.1000/- granted under the head of transportation is also enhanced to Rs.5,000/- considering the period of stay in Hospital for attendant and thereafter making visit by claimant to the Doctors. The Tribunal has granted Rs.5,000/- for future medical expenses. After going through the statement of the claimant as also the Doctor, it would reveal that the appellant may require the medical treatment in future as the part of the body have been damaged. Therefore, taking into the injuries caused, the future medical expenses of Rs.5000/- is further enhanced to Rs.25,000/-. Further, for disablement, the Tribunal has awarded Rs.30,000/- is enhanced to Rs.50,000/-.
13. The Tribunal has granted Rs.20,000/- for pain & suffering, Rs.30,000/- for loss of amenities of life and Rs.30,000/- for damages for loss of expectation of life. To reassess such amount, the statement of the claimant as also the statement of the Doctor would be relevant. The claimant had stated that while such accident happened, the entire scrotum has come out as also the penis was completely damaged and entire flesh also came out. Consequently, the private parts were stitches and grafting was also made. Reading the statement of the Doctor, it reveals that on examination, he found that the left scrotum was completely lost and penis was also attached with the scrotum. In such eventuality since the scrotum was operated and stitches were made over the thigh along with penis, the claimant become impotent to have a satisfactory matrimonial life.

14. The Hon'ble Supreme Court has occasioned to consider the likewise accident to assess the compensation when the person by the accident become impotent. It was in the case of ***G. Ravindranath v. E. Srinivas & Another***, reported in ***(2013) 12 SCC 455***. Taking into such analogy in this case, the appellant who was admitted to the Hospital from 14.02.2010 to 28.04.2010 and further the nature of treatment he has to meet out, in the considered opinion of this Court, an amount of Rs.25,000/- for pain and suffering is enhanced to Rs.1,00,000/-. Likewise, for amenities of life Rs.30,000/- is enhanced to Rs.2,50,000/- and the amount of Rs.30,000/- towards the loss of expectation of life is enhanced to Rs.1,00,000/-.

Therefore, the amount of compensation is reassessed as under :

S.No	Heads	Calculation
(i)	For medical expenses.	Rs. 12,775/-
(ii)	For special diet & attendant.	Rs. 10,000/-
(iii)	For transportation.	Rs. 5,000/-
(iv)	For future medical expenses.	Rs. 25,000/-
(v)	For pain & suffering.	Rs. 1,00,000/-
(vi)	For loss of amenities of life.	Rs. 2,50,000/-
(vii)	Damages for loss of expectation of life.	Rs. 1,00,000/-
(viii)	For disablement.	Rs. 50,000/-
	Total compensation awarded	Rs. 5,52,775/-

15. Thus, the total compensation is recomputed as Rs. 5,52,775/-. After deducting Rs.1,29,775/- as awarded by the tribunal, the enhancement would be Rs. 4,23,000/-. The claimant will be entitled to Rs.4,23,000/- in addition what is already awarded. The enhanced amount will carry interest @ 9% from the date of filing of the petition till its realization.
16. In the result, the appeal filed by the claimant is allowed to the above extent. No order as to costs.

17. The Registry is further directed to communicate the claimant in writing “the enhanced amount” 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