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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Miscellaneous Appeal (C) No.442 of 2006**

Nilay Kumar Jayswal, son of Deep Singh, aged about 42 years, resident of Rest House, Civil Line, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh

**---- Appellant**

**versus**

1. Vinod Khandelwal, son of Shri L. Khandelwal,
2. Meera Devi Khandelwal, W/o Shri Vinod Khandelwal,  
Both are R/o Sadar Bazar, Chameli Chowk, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh
3. The Oriental Insurance Company Ltd., Opposite of Amar Talkies, Dhamtari, Chhattisgarh

**---- Respondents**

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| For Appellant       | : | Ms. Indira Tripathi, Advocate |
| For Respondent No.3 | : | Shri Raj Awasthi, Advocate    |

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**Hon'ble Shri Deepak Gupta, Chief Justice**

**Judgment on Board**

**2.12.2016**

1. This appeal for enhancement of compensation by the claimant/Appellant is directed against the award dated 7.1.2006 passed by the Additional Motor Accidents Claims Tribunal, Dhamtari in Claim Case No.517 of 2002, whereby the Claims Tribunal has awarded compensation of Rs.1,19,000/- to the claimant.
2. The undisputed facts are that an accident took place on 29.8.2001. In this accident, the claimant suffered injuries and the main injury was fracture to the left hip joint. He was admitted in the hospital on 29.8.2001 and remained admitted there upto 26.9.2001. During his stay in the hospital, he was operated by Dr. Iqbal Parvez (PW-2) on 4.9.2001 and a surgical implant was inserted in his hip joint. The disability has been assessed at 40%. The Learned Claims Tribunal has assessed the income of the claimant/Appellant at Rs.15,000/- per

year and assessed compensation accordingly.

3. Learned Counsel for the Appellant submits that the Learned Claims Tribunal gravely erred in assessing the income of the Appellant only at Rs.15,000/- per year. She submits that the Appellant was aged about 42 years and it was his evidence that he used to work as Munshi and go to various shops to maintain their accounts. The Learned Claims Tribunal was of the view that since none of the owner of the shops where the Appellant/claimant was working as Munshi was produced, no reliance can be placed on the same. Even if that be so, one has to consider this fact that the claimant/Appellant was aged about 42 years and he had a family to support. He was an able bodied person and even in the year 2001, the income of any able bodied person would not be less than Rs.100/- to Rs.150/- per day. The Supreme Court has also held that where the claimant is aged between 40 to 50 years, 30% must be added to his income on account of future prospects. Even if a very conservative view is taken, a labourer in the year 2001 would have been earning Rs.150/- per day, but a labourer may not earn on each and every day. Therefore, I assess monthly income of the claimant/Appellant at Rs.3,500/- per month. Adding 30% for future prospects, the figure works out to Rs.4,550/- per month, which is rounded off to Rs.4,500/- per month.
4. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act, 1988 are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss

or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paisa.

5. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be just token damages. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote pertinent observations from a few.
6. The following observations of Lord Morris in his speech in **H. West & Son Ltd. v. Shephard, 1958-65 ACJ 504 (HL, England)** are very pertinent:

“Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By

common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.”

7. Lord Denning while speaking for the Court of Appeal in the case of **Ward v. James, (1965) 1 All ER 563**, laid down the following three basic principles to be followed in such like cases:

“Firstly, accessibility: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.”

8. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made.
9. In the case of **Mediana, (1900) AC 113**, Lord Halsbury held:

“Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation

establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. But, nevertheless, the law recognizes that as a topic upon which damages may be given.”

10. In **Perry v. Cleaver, 1969 ACJ 363 (HL, England)**, Lord Morris of Borth-y-Gest held thus:

“To compensate in money for pain and for physical consequences is invariably difficult but no other process can be devised than that of making a monetary assessment.”

11. In **Phillips v. Western Railway Co., (1874) 4 QBD 406**, Field, J., while emphasizing that damages must be full and adequate, held thus: “You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered.” Besides, the Tribunals should always remember that the measures of damages in all these cases “should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure”. 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”, should be kept in mind by the court in determining compensation in personal injury cases.

12. **Mc Gregor on Damages, 14th Edn.**, para 1157, referring to heads of

damages in personal injury actions states:

“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.”

**13. In Concord of India Insurance Co. Ltd. v. Nirmala Devi, 1980 ACJ**

**55 (SC)**, the Apex Court held:

“The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.”

**14. In R.D. Hattangadi v. Pest Control (India) Pvt. Ltd., 1995 ACJ 366**

**(SC)**, speaking about the heads of compensation, the Apex Court held thus:

“Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance;

(ii) loss of earning of profit up to the date of trial;

(iii) other material loss.

So far as non-pecuniary damages are concerned, they shall include:

(i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, un or sit; (iii) damages for loss of expectation of life, i.e. on account of injury the

normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

- 15.** In **Rajkumar v. Ajay Kumar, (2011) 1 SCC 343**, the Apex Court laid down the heads for which compensation is to be awarded for personal injuries, as follows:

“6. The heads under which compensation is awarded in personal injury cases are the following:

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). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

- 16.** In **Sanjay Verma v. Haryana Roadways, (2014) 3 SCC 210**, the Apex Court granted compensation under the heads of medical expenses,

future treatment, pain and suffering, cost of attendance etc.

- 17.** I now proceed to determine the just compensation payable under the Motor Vehicles Act by applying the aforesaid principles.
- 18.** As far as the present case is concerned, I have assessed the income of the Appellant/claimant at Rs.3,500/- per month. He was admitted in the hospital for about one month. He could not have jumped from the hospital bed and started working. It would not be unreasonable to expect that he could not have worked for another two months keeping in view the nature of injuries. Therefore, I assess the loss of income for three months which works out to Rs.10,500/-. The claimant/Appellant remained in hospital for 29 days. During this hospitalisation, he would have required an attendant round the clock. This Court can take judicial notice of the fact that the condition of Government Hospitals in our country is such that at least two attendants are required to look after a patient round the clock. It is settled law that the tortfeasor must pay compensation even for the gratuitous service rendered by the friends and family members of the patient. I assess the cost of one attendant at Rs.150/- per day and for two attendants the cost at Rs.300/- per day and for 30 days the cost comes to Rs.9,000/-.
- 19.** Next comes the question with regard to the cost of medicines. The claimant/Appellant has placed on record the bills for medicines which amounts to Rs.28,380/-. In addition thereto, the patient/claimant must have spent some amount for transportation and visit to the hospital. Therefore, I award a sum of Rs.35,000/- for medicines.
- 20.** Next comes the question with regard to loss of future income. Though loss of dependency has been assessed at 40%, that cannot be termed to be the loss of earning. Each case has to be decided on its own

facts. It is not necessary that the percentage of disability must be equal to the loss of earning capacity. It depends on the facts of each case. To give an example if an official working in a Bank suffers an injury which caused amputation in his leg and if he continues to work in the Bank, the disability does not lead to loss of earning capacity. Compensation may have to be awarded under various other heads, but the compensation under the head of loss of future earning capacity will not be that much. On the other hand, if a Coolie suffers amputation of the leg, as far as he is concerned, the disability would be 100% because he would be incapable of earning any amount. Each case has to be decided on its own facts and the Claims Tribunal must take all relevant factors into consideration.

**21.** As far as the present case is concerned, the claimant/Appellant himself claims that he was working as a Munshi in three business establishments. His work of Munshi will not come to halt because of the 40% disability. At the same time, his efficiency will be reduced because he will not be able to walk as efficiently as earlier and he may not be able to handle the same amount of work. Taking all these facts into consideration, I assess the loss of income at 15% of the total income of Rs.4,500/- per month, which is Rs.675/- per month or Rs.8,100/- per year. Since the claimant/Appellant was aged about 45 years, the relevant multiplier would be 14 and the compensation under this head works out to Rs.1,13,400/-.

**22.** Now, coming to the non-pecuniary loss, the claimant/Appellant has suffered serious injury, which would cause to pain and he cannot walk like a normal human being and, therefore, I award Rs.25,000/- for future discomfort and loss of amenities of life. The claimant/Appellant must have undergone pain and suffering and remained hospitalised for 29 days. Therefore, I award Rs.25,000/- for pain and suffering.

The total amount of compensation comes to (Rs.10,500 + Rs.9,000 + Rs.35,000 + Rs.1,13,400 + Rs.25,000 + Rs.25,000 =) Rs.2,17,900/-, say Rs.2,18,000/-. On the total amount of compensation, the claimant/Appellant shall also be entitled to interest @ 9% per annum from the date of filing of the claim petition till payment of the full amount of compensation. Needless to say that the insurance company shall be entitled to adjust/deduct the amount, if any already paid or deposited by it.

- 23.** The appeal is allowed in the aforesaid terms. The award of the Claims Tribunal is enhanced from Rs.1,19,000/- to Rs.2,18,000/- with interest as aforesaid.

Sd/-  
**(Deepak Gupta)**  
**CHIEF JUSTICE**