

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No.621 of 2007**

Chandra Prakash @ Chandra aged about 19 years S/o Dhamru
Netam R/o village Sardha Tahsil Bilha District Bilaspur Chhattisgarh

---- Appellant

Versus

1. Uma Shankar aged about 21 years S/o Shatrugan Markam R/o village Bitculi Thana and Tehsil Bilha District Bilaspur Hal Mukam village Sardha Tahsil Bilha District Bilaspur Chhattisgarh
2. Lochan Prasad S/o Balaram Nirmalkar aged about 53 years R/o village Sardha Thana Chakarbhata and Tehsil Bilha District Bilaspur Chhattisgarh
3. The United India Insurance Co. Ltd. T.P. Nagar Korba through Branch Manager Rajendra Chowk Bilaspur Chhattisgarh

---- Respondents

Miscellaneous Appeal (C) No.731 of 2007

The United India Insurance Co. Ltd. T.P. Nagar Korba through Branch
Manager Rajendra Chowk Bilaspur Tahsil and District Bilaspur
Chhattisgarh

---- Appellant

Versus

1. Chhotelal S/o Dhansingh Yadav aged about 22 years R/o village Sardha P.S. Chakarbhata Tahsil Bilha District Bilaspur Chhattisgarh
2. Uma Shankar aged about 21 years S/o Shatrugan Markam R/o village Bitculi Thana and Tehsil Bilha District Bilaspur Hal Mukam village Sardha Tahsil Bilha District Bilaspur Chhattisgarh
3. Lochan Prasad S/o Balaram Nirmalkar aged about 53 years R/o village Sardha Thana Chakarbhata and Tehsil Bilha District Bilaspur Chhattisgarh

---- Respondents

Miscellaneous Appeal (C) No.620 of 2007

Chhotelal aged about 21 years S/o Dhan Singh Yadav R/o village
Bitculi Thana and Tahsil Bilha District Bilaspur at present village
Sardha District Bilaspur Chhattisgarh

---- Appellant

versus

1. Uma Shankar aged about 21 years S/o Shatrugan Markam R/o village Bitculi Thana and Tehsil Bilha District Bilaspur Hal Mukam village Sardha Tahsil Bilha District Bilaspur Chhattisgarh
2. Lochan Prasad S/o Balaram Nirmalkar aged about 53 years R/o village Sardha Thana Chakarbhata and Tehsil Bilha District Bilaspur Chhattisgarh
3. The United India Insurance Co. Ltd. T.P. Nagar Korba through Branch Manager Rajendra Chowk Bilaspur Chhattisgarh

---- Respondents

And
Miscellaneous Appeal (C) No.784 of 2007

The United India Insurance Co. Ltd. T.P. Nagar Korba through Branch
 Manager Rajendra Chowk Bilaspur Tahsil and District Bilaspur
 Chhattisgarh

---- Appellant

Versus

1. Chandraprakash alias Chandra aged about 19 years S/o Dhamru Netam R/o village Sardha Tahsil Bilha District Bilaspur Chhattisgarh
2. Uma Shankar aged about 21 years S/o Shatrugan Markam R/o village Bitculi Thana and Tehsil Bilha District Bilaspur Hal Mukam village Sardha Tahsil Bilha District Bilaspur Chhattisgarh
3. Lochan Prasad S/o Balaram Nirmalkar aged about 53 years R/o village Sardha Thana Chakarbhata and Tehsil Bilha District Bilaspur Chhattisgarh

---- Respondents

For Appellant-Claimants	: Shri Parag Kotecha and Shri Waquar Naiyer, Advocate.
For Respondent-Driver and Owner	: Shri Goutam Khetrapal, Advocate.
For Respondent-Insurance Company	: Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

09.12.2016

1. These four appeals are being disposed of by one common judgment since they arise out of the one accident, in which two persons were injured. Both the injured persons have filed claim petitions claiming compensation.
2. Briefly stated facts of the case are that on 23.4.2005, two injured persons (Chandra Prakash and Chhotelal) were travelling in a trolley of the tractor bearing its registration Nos. CG10/A/7596 and CG10/A/7597 respectively. The said tractor trolley met with an accident and both the persons suffered injuries. They filed claim

petitions claiming compensation.

3. Claimant- Chandra Prakash filed Claim Petition No.79 of 2005, in which, the Learned Claims Tribunal awarded a sum of Rs.3,50,000/- as compensation and held that the Insurance Company was not liable to pay compensation amount but it directed the Insurance Company to pay the amount and recover the same from the owner and driver of the vehicle. Aggrieved by the said award, claimant- Chandra Prakash has filed MAC No.621 of 2007 and the Insurance Company has filed MAC No.784 of 2007.
4. Claimant- Chhotelal filed Claim Petition No.94 of 2005, in which, the Learned Claims Tribunal awarded a sum of Rs.50,000/- as compensation and held that the Insurance Company was not liable to pay compensation amount but it directed the Insurance Company to pay the amount and recover the same from the owner and driver of the vehicle. Aggrieved by the said award, claimant- Chhotelal has filed MAC No.620 of 2007 and the Insurance Company has filed MAC No.731 of 2007.
5. No appeal has been filed by the owner and driver of the vehicle.
6. The issues involved in these appeals are (i) whether the compensation awarded to the claimants is just compensation and (ii) whether the Insurance Company could be held liable to pay compensation when the claimants were travelling as gratuitous and unauthorized passengers in the trolley of the tractor.
7. First, I shall take up the issue with regard to the assessment of compensation.

8. 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.
9. 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.

10. 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.”

11. 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.”

12. 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.

13. 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.”

14. 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.”

15. 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.

16. **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 subdivided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.”

17. 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.”

18. 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, run 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.”

19. 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.”

20. 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.
21. I now proceed to determine the just compensation payable under the Motor Vehicles Act by applying the aforesaid principles.
22. As far as the case of claimant- Chandra Prakash is concerned, it stands proved on record that he was admitted in the hospital on 23.4.2005. He remained in hospital till 21.6.2005 as is evident from Discharge Certificate (Exhibit P/42). It also shows that during the period of hospitalization, left leg of the claimant was amputated below the knee. The claimant is a labourer and agriculturist. He remained in hospital for at least two months. During his stay in the hospital, he must 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. The principle of law is that a tortfeasor cannot take benefit of the benevolence shown by others. The wrong doer cannot claim that because others have been charitable his liability should be made less. Therefore, I assess the cost of one attendant at Rs.200/- per day and for two attendants the cost at Rs.400/- per day and as such, for 60 days, the cost of two attendants works out to Rs.24,000/-.

23. Next comes the question with regard to the medical expenses. The claimant has placed on record the bills and vouchers which amounts to Rs.9,772/-. In addition thereto, the claimant must have spent some other small sums, for which, the bills may not be produced. The Courts in India must take into consideration the fact that the claimants, especially those who are not in government service and are not entitled to reimbursement, normally do not keep the bills and vouchers and these are only obtained after they get legal advice. Therefore, the Tribunals must use their commonsense to understand what would be the expenses in such a case. Keeping in view all these factors, I assess compensation of Rs.20,000/- towards medical expenses including medicines and transportation etc.
24. Next comes to the question with regard to the loss of income of the claimant. The claimant is a labourer/agriculturist. In the year 2005, even a labourer would have earned Rs.150/- per day. Therefore, the income of the claimant is assessed at Rs.150/- per day i.e. Rs.4,500/- per month. The claimant was admitted in hospital for two months and

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 four months which works out to Rs.18,000/-.

25. The most important issue which has to be decided in this case is with regard to loss of future income. It is claimed on behalf of the claimant that since the claimant was an agriculturist and labourer, amputation of one leg virtually would mean that he cannot earn any more. It is true that as far as labourer is concerned, when he loses his one leg, his earning capacity is vitally affected but it cannot be said that he cannot earn anything. There are some jobs he may do even if he does not have a portion of left leg. Since the claimant belongs to working class and was a workman, I feel that it would be appropriate to follow the guidelines with regard to the loss of income in such cases as laid down in the Employees' Compensation Act, 1923.
26. Under the Employees' Compensation Act, if an employee loses a lower limb below the knee, the loss of earning capacity is 50%. The disability certificate shows the disability of 65%. Keeping in view the nature of job, I assess the loss of earning capacity at 60%. I have already assessed the income of claimant at Rs.4,500/- per month and keeping in view his very young age, 50% has to be added towards his future loss of income. Therefore, his income works out to Rs.6,750/- and 60% of the same works out to Rs.4,050/- per month i.e. Rs.48,600/- per year. Since the claimant was aged about 19 years, the relevant multiplier would be 18 and the compensation under this head works out to Rs.8,74,500/- rounded off to Rs.8,75,000/-.

27. Now, coming to the non-pecuniary loss, the claimant has suffered serious injury, which would cause to pain and he cannot walk like a normal human being and cannot imagine the agony of young boy who has loses his left leg. He will be dependent on a crutch or an artificial leg for the rest of his life and, therefore, I award Rs.75,000/- for future discomfort and loss of amenities of life. In addition thereto, I award Rs.50,000/- for future medical expenses.
28. The claimant remained in hospital for two months. He suffered great pain and suffering. Therefore, I award Rs.30,000/- towards pain and suffering.

The total amount of compensation comes to (Rs.2,400 + Rs.20,000 + Rs.18,000 + Rs.8,75,000 + Rs.75,000 + Rs.50,000/- + Rs.30,000/-) = Rs.10,70,400/-. On the total amount of compensation, the claimant 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.

29. As far as the case of claimant- Chhotelal is concerned, it stands proved on record that he was admitted in the hospital on 23.4.2005. He remained in hospital till 21.6.2005. He remained in hospital for at least two months. During his stay in the hospital, he must 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. Therefore, I assess the cost of one attendant at Rs.200/- per day and for two attendants the cost at Rs.400/- per day and as such, for 60 days, the cost of two attendants works out to

Rs.24,000/-.

30. The claimant placed on record the bills and vouchers which amounts to Rs.22,525/-. Keeping in view all the relevant factors, I award a sum of Rs.30,000/- towards medical expenses. No disability certificate has been placed on record and therefore, no amount is awarded under this head because no disability has been shown.
31. As far as his loss of income is concerned, the claimant is a labourer and he could not have worked for two months. In the year 2005, even a labourer would have earned Rs.150/- per day. Therefore, the income of the claimant is assessed at Rs.150/- per day i.e. Rs.4,500/- per month. The claimant was admitted in hospital for two months and 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 four months which works out to Rs.18,000/-.
32. The claimant remained in hospital for two months. He suffered great pain and suffering. Therefore, I award Rs.20,000/- towards pain and suffering. For removal of plates, he will have to perform some operation, and therefore another sum of Rs.15,000/- is awarded for future medical expenses.

The total amount of compensation comes to (Rs.24,000 + Rs.30,000 + Rs.18,000 + Rs.20,000 + Rs.15,000/-) = Rs.1,07,000/-. On the total amount of compensation, the claimant 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.

33. Now coming to the question as to who shall be liable to pay the compensation. The stand of the Insurance Company is that since both the injured persons were travelling in the trolley of the tractor and no passengers are allowed to travel in a trolley, therefore, the Insurance Company cannot be held liable to pay compensation.

34. On the other hand, Shri Goutam Khetrapal has drawn my attention to Section III of the insurance policy, which reads as follows:-

“The Company will indemnify the insured in the event of accident caused by or through or happening in connection with the use of the Vehicle against all sums including claimants' cost and expenses but not exceeding Rs.10,000/- in respect of any one claim or series of claims arising out of any one event and Rs.25,000/- during the year in which the insured shall become legally liable to pay in respect of:

- a) Death or bodily injury to any person including passengers while such passengers are mounting into or dismounting from or travelling in the Vehicle other than members of the insured's family or household or persons who at the time of the accident are engaged in and upon the service of the insured.
- b) Damages of property including goods or other property of passengers while being conveyed in the Vehicle other than property belonging to or held in trust or in the custody or control of the insured or any member of the insured's family or household.”

35. The insurance policy is a contract of insurance between the two parties. The Motor Vehicles Act, 1988 lays down certain minimum conditions which the Insurance Company must cover and these are in normal parlance called as Act Policy. They cover only those which under the requirement of the Act and nothing more.

36. In the present case, the condition referred to by Shri Goutam Khetrapal clearly shows that the Insurance Company has agreed to

indemnify the insured against all sums in respect of death or bodily injury to any person including passengers. Therefore, the Insurance Company with open eyes had entered into contract wherein it had agreed to cover risk of passengers also. However, as pointed out by Shri Pankaj Agrawal, the policy itself clearly states that the liability will be limited to Rs.10,000/- per passenger and would not exceed to Rs.25,000/- in all. Therefore, the terms of the policy, in my opinion, only provide that Rs.10,000/- is to be paid by the Insurance Company per passenger.

37. As far as passengers in Trolley are concerned, the law is now well settled that the Insurance Company is not otherwise required to cover the same. The Tractor Trolley is not meant to be used for carrying passengers and neither the registration certificate nor the policy of insurance shows any seating capacity in the Tractor or the Trolley. Therefore, the liability will have to be limited as per the contract.
38. Having held so, I am clearly of the view that the Insurance Company must deposit the entire amount of compensation and thereafter it may recover the same from the owner and driver of the vehicle. It is also made clear that for this purpose, it would not be required to file a separate suit, but can initiate certificate proceedings under Section 174 of the Motor Vehicles Act, 1988.
39. In view of the above, the appeals filed by the Claimants are partly allowed and the awards passed by the Claims Tribunal are modified. The compensation awarded to the Claimant-Chandra Prakash @ Chandra in MAC No.621 of 2007 is enhanced from Rs.3,50,000/- to Rs.10,70,400/- alongwith interest @ 9% per annum. The

compensation awarded to the Claimant- Chhotelal in MAC No.620 of 2007 is enhanced from Rs.50,000/- to Rs.1,07,000/- alongwith interest @ 9% per annum. It is further held that the Insurance Company shall deposit the entire awarded amount and as per the terms of the insurance policy, it is liable to pay only Rs.10,000/- in each case. It will therefore be entitled to recover the amount paid in excess of Rs.10,000/- alongwith proportionate interest from the owner and driver of the vehicle.

40. The appeals are disposed in the aforesaid terms.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE