

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 20/12//2016****Judgment Delivered on : 17 /03/2017****Miscellaneous Appeal No. 708 of 2002**

K.F. Fazaluddin Farooqui, S/o Shri M.U. Faruqui, Aged about 32 years,
R/o HIG 415 Padmanabhpur, Durg (C.G.)

---- Appellant**Versus**

1. Shri Jayant Mitra, S/o Shri P.K. Mitra, Aged about 28 years, R/o Model Town, Supela Chowk, Bhilai, District Durg (C.G.)
2. M/s B.S.B.K. Company, Balkishan Bhaktawar Kishan, Nehru Nagar, Durg (C.G.) **(Jeep Owner)**
(Respondents No.1 & 2 are formal respondents)
3. Divisional Manager, The New India Assurance Co., Power House, Bhilai, District Durg (C.G.) **(Contesting Respondent)**

---- Respondents

For Appellant	:	Shri Amiyakant Tiwari, Advocate.
For Respondent	:	Shri Shree Kumar Agrawal, Senior Advocate with Shri Anand Kumar Gupta, Advocate.

Hon'ble Shri Rajendra Chandra Singh Samant, J.**C.A.V. Judgment**

1. This appeal is preferred against the award dated 07-08-1999 passed in Claim Case No.179 of 1997 by Second Additional Motor Accident Claims Tribunal, Durg (for short 'the Tribunal'), for enhancement of the compensation.
2. It is not disputed that respondent No.2 is the registered owner of Jeep bearing registration No. MKT 396 and respondent No.1 was his employed driver. It was also admitted that respondent No.3 was the insurer of the

vehicle and the insurance policy was effective from 17-04-1995 to 16-04-1996. The appellant/applicant presented a claim petition under Section 166 of the Motor Vehicles Act (for short 'the Act') before the Tribunal, Bhilai alleging that at about 7-00 p.m. on 09-07-199 when he was riding a motorcycle bearing registration No. MP 24 B 6397, the offending vehicle Jeep bearing registration No. MKT-396, driven by respondent No.1 rashly and negligently dashed the appellant causing him grievous injuries on his leg and body and his motorcycle was also damaged. An offence was registered against respondent No.1 in the Police Station Supela and he was charge sheeted. It was stated that the appellant suffered compound fracture of tibia and fibula bones of his left leg. He has undergone long treatment and several operations, even then, he has been disabled permanently. The appellant had a business of rubber factory in Devada, District Rajnandgaon. Because of his disability, he is unable to do any work and has lost his business. He had to spend a huge amount for his treatment and also incurred expenditure on travelling, assistance, special diet etc. It was prayed that compensation be awarded under the heads of treatment, expenditure on assistance, travelling and special diet, loss of business, future treatment etc.

3. Respondents No. 1 & 2, apart from the above facts, denied the contents of the claim petition and stated that it was the appellant himself who was driving negligently and dashed against the stationery jeep from behind and hence, he himself is responsible for this accident. Denying liability for compensation, they prayed for dismissal of the claim. Respondent No.3 categorically denied each and every averment in the claim petition and denied the liability to pay compensation to the appellant.
4. The learned Tribunal after framing the issues, afforded opportunity to both the parties for leading evidence and submitting arguments and thereafter

the impugned award was passed. It was held that the appellant got injured and suffered permanent disablement because of the accident caused by rash and negligent driving of jeep by respondent No.1. No specific finding has been given regarding liability of respondent No.1 & 2 and respondent No.3 but respondent No.3 was held liable to pay compensation. The Tribunal by the impugned award held that the appellant was entitled for an amount of Rs.4,00,000/- as compensation in lump-sum with a direction to adjust/deduct the interim compensation, if any, was paid.

5. The grounds urged in appeal are that the compensation awarded by the learned Tribunal is too low which requires to be enhanced. The learned Tribunal has not appreciated the documents produced and proved by the appellant and the statements of the witnesses supporting his case. The learned Tribunal ought to have awarded compensation for medical expenses on the basis of proved receipts and cash memos to the extent of Rs.5,54,000/-. The learned Tribunal ought to have allowed reasonable expenses for future treatment to the tune of 1,00,000/-. It was proved by medical evidence that the appellant suffered disability due to the accident and his loss of earning capacity was 100%. His claim in this respect was denied by the learned Tribunal. The guidelines laid down by the Apex Court in the matter of **U.P. State Road Transport Corporation & others Vs. Trilok Chandra & others**; reported in (1996) 4 SCC 362 should have been followed, which were not followed by the learned Tribunal. The appellant has proved his income before the date of incident which was not taken in calculation and no multiplier was selected as per guidelines laid down in judicial pronouncements. Further, the industry of the appellant was closed and for this reason also, the compensation should have been awarded to the appellant for loss of his business. He should also have

been awarded compensation for loss of future prospects and life enjoyment as he had to lead a life of handicapped person, as always he will have to depend on assistance which was also needed to be compensated. It is prayed that the appeal be allowed and the compensation awarded by the learned Tribunal to appellant be enhanced to Rs.1,26,98,714/- with suitable direction.

6. It is submitted by learned counsel for the appellant that from perusal of the impugned award, it is apparent that the impugned award is passed without application of mind. The learned Tribunal failed to appreciate that the appellant had produced all the proofs regarding medical expenses for the treatment undergone by him subsequent to this accident which should have been taken into account for awarding compensation under the head of medical treatment. The learned Tribunal also failed to appreciate that the appellant had proved that he was permanently disabled and the loss of earning capacity was 100% which should have been taken into account for awarding compensation under the head of permanent disability. The appellant had proved that he was an industrial entrepreneur and he had to suffer loss and closure of business because of his disability which should have been taken into account for awarding suitable compensation. The appellant had proved his income prior to the date of accident which was not taken into account by the learned Tribunal and that should have been considered for calculating the compensation by applying the suitable multiplier. Loss of future income should have been determined and compensated in the award. Reliance has been placed on the judgments of the Supreme Court in the matters of **R.D. Hattangadi Vs. Pest Control of India**, reported in AIR 1995 SC 755, **Nizam Institute of Medical Science vs. Prashant**, reported in (2009) 6 SCC 1, **Rekha Jain vs.**

National Insurance Company Limited & others, reported in (2013) 8 SCC 389.

7. Learned Senior Advocate appearing for respondent No.3/Insurance Company has opposed the grounds in appeal and arguments submitted in this behalf. It is submitted that the learned Tribunal has rightly passed the award of compensation which does not suffer from any infirmity. The appellant has made imaginary claims which cannot be taken into account for awarding compensation, hence, there is no scope for interference by this Court.
8. This appeal is only for enhancement of the compensation amount awarded by the learned Tribunal. The findings of learned Tribunal that the appellant is disabled permanently because of the accident caused due to rash and negligent driving of respondent No.1 and that respondent No.2 was registered owner of the vehicle involved in the accident and further that respondent No.3 is liable for payment of compensation are not under challenge in this appeal, and as such, the only question for determination is whether the compensation awarded by the Tribunal is just and reasonable compensation?
9. On perusing the impugned award, it appears that the evidence adduced by the appellant regarding the expenses on medical treatment, his permanent disability and also about the loss of his business has been rejected without assigning any sufficient cause. Taking into consideration the facts that the appellant has suffered grievous injuries and permanent disability because of which he had to suffer mentally and physically and also expenses incurred for his treatment, an amount of Rs.4,00,000/- was awarded in lumpsum. Whether the evidence of the appellant was rejected rightly or wrongly needs consideration for which the evidence before the learned Tribunal is perused.

10. The appellant K.F. Fazaluddin Faruqui (AW-1) stated that because of the injuries suffered in the accident he had to undergo treatment in various medical institutions and the relevant documents in this regard are (Ex. P-1 to Ex. P-476) which includes medical expenses as well as other expenses incurred on attendant, transport etc. This statement was not challenged by any of the respondents, hence, the proof of the documents (Ex. P-1 to Ex. P-476) produced by the appellant was un rebutted. His statement was supported by M.U. Faruqui (AW-6) which remained unchallenged. Asif Hasan (AW-7) is the person, who accompanied the appellant number of times as attendant and he was paid for it, which was also unchallenged. Considering these un rebutted statements, the learned Tribunal should have taken this evidence in consideration for awarding compensation under the head of medical expenses. The reasons assigned for rebutting this evidence have not been mentioned in clear terms in the impugned award, specifically when the statement of the appellant and other witnesses was not challenged by the respondents and as such, the evidence in this regard should not have been discarded by the Tribunal. There is no calculation of the expenses mentioned in the said documents proved by the appellant, but the calculation of medical expenses on the basis of proved receipts and cash memos as mentioned in appeal, was of Rs.5,54,000/- which can be accepted and considered while awarding medical expenses to the appellant. Further, as mentioned in the appeal memo that expenses of medical attendant as well as special diet and transport mentioned as Rs.1,00,000/- can also be taken into account for awarding compensation under this head.

11. According to the appellant, the permanent disability caused to him has resulted in 100% loss of his earning capacity. K.F. Fazaluddin Faruqui (AW-1) has denied in his cross-examination that he can walk and do

business. Dr. A.D. Urgaonkar (AW-5) has stated that he has treated the appellant and he had lost the capacity of making use of his left leg because of injuries caused and that the bones could not be reconstructed. He opined that the appellant has suffered permanent disability of 60% and on its basis he has stated that the loss of earning was 100% according to his opinion. No question has been put in his cross-examination regarding his statement about the loss of earning of the appellant. Dr. Urgaonkar (AW-5) is only an orthopedic physician and expert in his field, hence, he cannot be regarded as expert of other fields in which he could opine regarding earning capacity of the appellant. It is very clear from the pleadings in the claim that source of income of the appellant was business, hence he did not have to exert himself physically or do any manual labour for his earning. While assessing loss of earning, it is specifically considered that the organ or the capacity the body lost was used or useful for earning, only in that case, the loss of physical capacity could have been taken into account.

12. In view of above, it is found that the loss of physical capacity of the appellant nowhere hamper his business prospects. According to the statement of K.F. Fazaluddin Faruqui (AW-1), he had established an industry in partnership with his brother and one another for which loan was taken from bank, which was to be repaid. He was the working partner and looked after the industry. He has also produced the documents of income tax returns/reports. It is clear from this statement that the appellant was only a 20% partner of this enterprise. To support his statements that he was working as partner no such document like partnership deed or any other document has been produced by him. A copy of acknowledgement of income tax return filed for the assessment year 1993-94 (Ex. P. 351) discloses that from R.G. brothers in the

capacity as working partner, the appellant received total salary of Rs.5,811/- and stock provided from other business was Rs.26,223/- including interest of Rs.1885/- thereby a total amount of Rs.30,150/- was his income in that year. Copy of income tax return for the assessment year 1994-95 (Ex. 352) discloses total income of Rs.32,120/-. Certificate given by the partner (Ex. P. 353) shows that the appellant had annual income of Rs.28,000/- in the year 1992-93, Rs.30,000/- in the year 1993-94, Rs.32,120/- in the year 1994-95 and Rs.49,720/- in the year 1995-96. This certificate was given on the basis of verification of income tax department. Copy of partnership deed (Ex. P-355) is on record which does not include any specific clause showing that the appellant was working as partner of the enterprise. There is no need to consider on the investments and other financial burdens with respect to the industry and the share of the appellant in that. The only criteria that has to be taken into account is the above assessed income and from the documents produced regarding income of the appellant it can be safely held that the appellant had income of Rs.30,000-40,000/- at the relevant time i.e. in the year 1995-96. Only this much evidence can be taken into account for considering the loss of appellant during the time when he was undergone treatment for loss of appellant from the date of incident.

13. In the case of **Nizam Institute Of Medical Sciences Vs. Prasanth S Dhananka And Ors.**, 2009 (2) SCC 688, 2009 CrLJ 3012, 2010 ACJ 38, the Apex Court assessing the damages on various heads observed in para 39 as follows:

39. We must emphasize that the Court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable..... ..”

14. In the case of **Rekha Jain Vs. National Insurance Co. Ltd.**, reported in 2013 (8) SCC 389, the Apex Court observed that it is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury cases the two main elements are the personal loss and pecuniary loss.

15. In **R.D. Hattangadi v. Pest Control (India) Private Limited and Ors.**, (1995) 1 SCC 551 speaking about the heads of compensation, the Apex Court has held thus:

"9. Broadly speaking while fixing an 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 is 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 profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in 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 the 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."

16. In the case of **Raj Kumar vs Ajay Kumar & Anr**, reported in (2011) 1 SCC 343, the Apex Court dealt with the general principles relating to

compensation in injury cases. The Apex Court observed in paragraphs 5, 6 and 7 as follows:

“5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. 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. (See C. K. Subramania Iyer Vs. T. Kunhikuttan Nair, 1970 AIR(SC) 376, R. D. Hattangadi Vs. Pest Control (India) Ltd., 1995 1 SCC 551 and Baker Vs. Willoughby, 1970 AC 467).

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.

17. The Apex Court also reiterated the principles in **Sanjay Kumar vs Ashok Kumar and anr.** 2014 (5) SCC 330, 2014 ACJ 653.

18. As it is medically proved that the appellant suffered permanent disability of 60% on his left leg which implies that the other limbs and body of the appellant are normal and healthy and functional in full capacity which reduced the disability of his left leg in his overall performance to 30% only. Although as per the proof on record, the appellant had been a businessman and may still be doing business, it needs no mention that business requires an application of mind even then there is some involvement of physical capacities for travelling, meeting, supervising and controlling etc. and for which 30% loss of earning capacity can be safely taken into account for considering his loss of earning because of his permanent disability. On taken into account that the appellant had annual income of Rs.40,000/- at the relevant point of time, the 30% loss from this income would be Rs.12,000/- p.m. The age of the appellant on the date of incident was 27 years. According to guidelines laid down in **Sarla Verma (Smt.) Vs. Delhi Transport Corporation & another**, report in (2009) 6 SCC 121, the multiplier of 17 would be applicable in this case

multiplying annual loss with above, a total of Rs.2,04,000/- can be awarded under the head of income to the appellant.

19. On the basis of findings given above appellant deserves to be awarded compensation under heads as follows:

- (i) Pecuniary damages regarding expenses on medical treatment Rs.5,54,000/-.
- (ii) Regarding expenses on assistant, transport, diet etc. Rs.1,00,000/-.
- (iii) For loss of earning in present and in future Rs.2,04,000/-.
- (iv) For pain and suffering Rs.1,00,000/-, and
- (v) For loss of amenities due to permanent disablement Rs.2,00,000/-

In total Rs.11,58,000/- in the just and appropriate compensation appellant is entitled for.

20. There is no need of granting compensation under any other heads as prayed by the appellant.

21. In the result, this appeal is allowed in part, the compensation awarded by the learned Tribunal is enhanced to Rs.11,58,000/-. Compensation if any, paid by the respondent No.3 shall be adjusted with the compensation awarded by this Court. Interest @ 9% per annum shall be payable on the balance amount of compensation after adjustment of previous payment, from the date of such deposit till the payment is made finally.

22. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE