

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1624 of 2009

- Ambika Prasad Agrawal, S/o Ramkumar Agrawal, aged about 24 years, Occupation-Business, at present nothing has been done, R/o Orrissa Road, Kabir Chowk, Dipupara, Raigarh, Tahsil and District Raigarh.

---- Appellant (Claimant)

Versus

- Ramkumar, S/o Ramchandra Saini, aged about 32 years, Occupation-Driver, R/o Akbarpur Naka, Police Station Chhibramoh, District Kannauj (UP)
- Ramesh Kumar Maine, S/o Jagirlal, Sanjay Gandhi Transport Nagar, New Delhi.
- National Insurance Comapy Limited, Head Office, Registered Office-3,Midletar Street Kolkata, Through Divisional Manager, National Insurance Comapy Limite, Divisional Office,National Insurance Comapy Limited, Bilaspur (CG)

---- Respondents

For Appellant	:	Shri Vivek Tripathi, Advocate. Appellant is also personally present.
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Shri Gautam Khetrapal, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

Per P. Diwaker, J

21/07/2017

- Heard on I.A. No.1/17, application for permission to exhibit the photographs and disability certificate issued by the Medical Board.

2. For the reasons assigned in the application, it is allowed. Disability Certificate issued by the Medical Board is taken on record.
3. This appeal filed by the claimant/appellant arises out of the award dated 15.6.2009 passed by the 3rd Additional Motor Accident Claims Tribunal, Raigarh (henceforth 'the Claims Tribunal') in Claim Case No.44/07 whereby in an injury case compensation of Rs.4,89,780/- has been awarded to the claimant/appellant herein.
4. Facts of the case, in brief are that on 6.7.2005 in the morning the claimant/appellant was going to Panchgaon (Odisha) from Kabir Chowk, Raigarh and when he reached near Netanagar-Bhatenpali, the offending vehicle Truck bearing registration No.HR29-P-4937, being driven by respondent No.1 herein in a rash and negligent manner, came from the opposite direction and gave dash to the motorcycle of the claimant as a result of which his right leg was crushed. Report of the said accident was lodged with the concerned police station with brief narration as to how accident had taken place. A claim case was filed by the claimant/appellant claiming compensation to the tune of Rs.59,40,000/- under various heads, *inter alia*, pleading that after the accident, he was taken to K.G.H. Hospital, Raipur from where he was referred to Khemka Hospital, Raipur for better treatment. Looking to seriousness of injury, the claimant was referred to Bombay Hospital, Bombay where a rod has been inserted in his right leg after many surgeries. It has been further mentioned that due to the accident, the entire life of the claimant had been ruined as he had become permanently disabled. Therefore, the respondents are jointly and severally liable to pay the amount of compensation to the claimant/appellant herein.
5. Respondent No.3-Insurance Company contested the claim case and

denied its liability on the ground that the driver of the offending vehicle was not having valid and effective driving license to drive the said vehicle and thus there was breach of insurance policy and therefore the insurance company is not liable to pay any compensation.

6. The Claims Tribunal by the impugned award has awarded a compensation of Rs.4,89,780/- to the appellant under various heads such as medical expenses, loss of income and pain & suffering. It is this award which has been challenged by the appellant in this appeal.

7. Counsel for the appellant submits that;-

- the Claims Tribunal erred in law in awarding very negligible compensation for the injuries sustained by the claimant.
- no amount has been granted under the head "future treatment", loss of income during treatment etc.. Even the sum awarded under the head 'pain & suffering' is also on the lower side.
- The treating doctor has categorically deposed that the claimant has suffered permanent disability to the extent of 50% and there is nothing on record to discard his testimony. Even as per disability certificate dated 15.3.2010 issued by the Medical Board, District Raigarh the claimant has suffered 40% physically disablement and his condition is not likely to improve. However, nothing has been awarded by the Claims Tribunal under the head of permanent disablement while awarding the compensation and therefore impugned award passed by the Tribunal, is liable to be modified awarding just and reasonable compensation.
- the rate of interest awarded at the rate of 7% per annum from the date of application till payment is also very low and it requires upward revision and enhancement.

8. On the other hand, it has been argued on behalf of the counsel for respondent No.3 that the compensation awarded by the Claims Tribunal is already on the higher side and as such, the same is not required to be enhanced at all.
9. Heard counsel for the parties and perused the material available on record.
10. As regards the award of compensation towards medical expenses, the Claims Tribunal has rightly taken into consideration the entire documentary evidence i.e. medical bills/prescriptions filed on record and is justified in awarding Rs.4,59,782/- for expenses towards medicines. Therefore, the same does not call for any interference by this Court.
11. As regards the non-grant of compensation under the heading 'permanent disability, the Claims Tribunal has not awarded a single penny under this head on the ground that the disability certificate produced by the claimant/appellant herein has been given by the doctor who treated the claimant and not by any District Medical Board. Counsel for the claimant/appellant in support of his contention, has brought to our notice two medical certificates, one issued by the doctor who treated the injured and another one issued later by the District Medical Board, Raigarh. On perusal of the disability certificate dated 28.7.2006 issued by the treating doctor namely Dr. H.R. Jhunjhunwala, a renowned Orthopaedic of the country, we find that injured has suffered crush injury to his right leg, he underwent numbers of surgeries and that there is no possibility of implantation of mobile knee joints. According to treating doctor, who was examined on commission, the appellant has suffered 50% permanent functional disability in relation to his right leg being the case of compound fracture of condyle of right tibia involving right knee joints. The appellant

remain admitted in Bombay Hospital, Bombay from 20.7.2005 to 16.9.2005 and during this period the appellant was treated and operated. The treating doctor has admitted to have issued 50% disability certificate in favour of the claimant stating therein that there is 1½” shortening of right leg, there is no possibility to implant mobile knee joints and he has to walk with the help of a stick. Thus, the statement of the treating doctor is clear and is without any ambiguity, not only to the extent of disability suffered by the appellant but also on the chances of its recovery. Statement of the treating doctor about the gravity of injuries and effect thereof also gets support from the disability certificate dated 15.3.2010 issued by the District Medical Board, Raigarh wherein the disability of claimant has been determined as 40% and it further says that condition of claimant/appellant is not likely to improve and disability is permanent in nature. In the considered opinion of this Court, the certificate of disability given by the treating doctor after examination of the claimant has evidentiary value to determine the amount of compensation under the heading of 'permanent disability' as the same inspires confidence of this Court. This certificate should have been considered by the Claims Tribunal while determining compensation and by not doing so, committed a mistake.

In this connection, we may observe that there is no rule of thumb that only the certificate issued by the District Medical Board alone has evidentiary value to determine the amount of compensation and not the one issued by the doctor who treated the injured. Disability is a condition, which can be assessed by any qualified medical practitioner and the same is liable to be acted upon, subject, of course, it inspires confidence in the Court. In **Rajkumar v. Ajay Kumar** reported in **(2011) 1 SCC 343** it has been held that “.....*the Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in*

particular the extent of permanent disability. [Sections 168](#) and [169](#) of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the just compensation".

12. Now the question which arises for consideration of this Court is whether the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.
13. The claimant/appellant, who is personally present in the Court, has stated in his claim application that he was running a grocery shop and thereby earning Rs.1,00,000/- per annum. On a question being put to the appellant by this Court, he replied that presently he is assisting his father in the grocery shop. He has admitted that after the incident, he got married and is having two children. This shows that on account of injuries suffered by him in the said accident, he is not permanently prevented or restricted from discharging his previous activities and functions and he is still capable to fend livelihood for himself and his family members i.e. wife and two children. Thus, taking into consideration the fact that the appellant on account of crushing injury of right leg is unable to walk without crutches, the thickness of right leg is also reduced due to injuries

sustained by him in the accident and multiple surgeries were conducted on him and there is no chance of recovery of disability suffered by him, we determine the permanent functional disability of the appellant at 35% to assess the loss of income. Accordingly, we propose to recompute the compensation payable to the appellant.

14. As per pleadings of claim application, prior to accident the appellant was earning Rs.1,00,00/- p.a. by running a grocery shop, however, no document in this regard was produced by him. In the facts and circumstances of the case, it would be just and fair that the income of the appellant be taken as Rs.5,000/- per month, which he could have easily earned even by working as an unskilled labour. The appellant met with the accident in the year 2005 and age of the appellant at the time of accident was about 24 years and 35% disability, as assessed above, therefore, the multiplier of 18 shall be applicable in the facts and circumstances of case as per Schedule II of Motor Vehicles Act, 1988. Likewise, looking to the age of the deceased at that time of accident i.e. 24 years, loss of future income can be assessed to be 50% of his monthly income which comes to Rs.2,500/- per month. Hence, after considering all these factors, the compensation is Rs.7500 x 12 (annual income) x 18 (multiplier) x 35% permanent disability, which totals to Rs.5,67,000/- awarded to the appellant under the head of total loss of income.

15. In the present case, the Claims Tribunal has not awarded any sum under the head of 'loss of amenities'. We are of the opinion that this head must take into account all aspects of a normal life that have been lost due to the injury caused. This includes a variety of matters such as the inability to freely move or travel without assistance. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the

accident through his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. Therefore, while fixing compensation for pain and suffering as also for loss of amenities of life, the features like his age, marital status and unusual deprivation he has undertaken in his life has to be reckoned. Here in this case, the appellant had suffered grievous injuries in the said accident and now he cannot walk without the help of scratches. This must have affected the quality of his life considerably. According to claimant, he is still undergoing treatment and could walk only with the help of crutches. He further submits that he could not bend his knees and therefore unable to stand for long duration and is also unable to sit properly. In this situation, we are of the considered opinion that the appellant is entitled for a sum of Rs.1,50,000/- under the head of loss amenities.

16. The claimant has stated that at the time of accident he was running the grocery shop and due to the incident, he had to close his shop and therefore he is entitled for compensation of Rs.36,00,000/- under the head of loss of earning. However, the Claims Tribunal taking the period of three months, as the period during which the appellant could not perform his work, granted a sum of Rs.25,000/- to the appellant towards loss of income. But, from the medical documents available on record it is apparent that from the date of incident i.e. from 6.7.2005 to 16.9.2006 the appellant remained under the treatment and during this period he was forced to close his shop. Thus, it is clear that the claimant could not run his shop for 14 months and therefore, he is entitled to receive compensation for the loss of income during the aforesaid period. Hence, taking the period of 14 months, the appellant remained bed ridden, we are of the opinion that the appellant is entitled for a sum of Rs.1,05,000/- (7500 x 14) towards the loss of income.

17. Having seen the pathetic condition of right leg of claimant/appellant, who is personally present in the Court, from which even pus is coming out, we are of the opinion that he would certainly need future treatment. Further, the appellant has to use crutches throughout his life for mobility which he is required to periodically purchase. Hence a lump sum compensation of Rs.1,20,000/- is awarded to him towards future treatment.
18. So far as the compensation of Rs.2,000/- under the mental pain & suffering is concerned, considering the nature of injury and the disability suffered by the claimant/appellant, this Court feels that the pain and sufferings has become continuous and constant for the appellant and therefore the compensation under this head is enhanced to Rs.2,00,000/-.
19. The appellant/claimant had been under treatment continuously for months together at Bombay and also having regard to the severity of injury and the number of operations, the cost of transportation is quantified at Rs.1,50,000/-.
20. The appellant must have visited the doctor several times due to his medical problem, he must have also taken a special diet to recover from his problem and he may have required assistance to do his daily chores as he has received grievous injuries. Therefore, a lump sum amount of Rs.50,000/- is awarded under the head of special diet & conveyance. Considering that the appellant remain admitted for sufficient long period, he must have engaged some attendant or some family member must have looked after him during the period of hospitalization and confinement at home. Therefore, a lump sum amount of Rs.25,000/- is awarded towards the expenses of the attendant.

21. On the basis of aforesaid discussions, the compensation awarded is recomputed as under:-

Sl.N	Compensation under various heads		Awarded by this Court
1.	Medical Expenses	:	4,89,780/- (as awarded by Claims Tribunal)
2.	Loss of future income	:	Rs.5,67,000/-
3.	Loss of Amenities	:	Rs.1,50,000/-
4.	Loss of Income during hospitalisation.	:	Rs.1,05,000/-
5.	For Pain & Sufferings	:	Rs.2,00,000/-
6.	Future Treatment expenses	:	Rs.1,20,000/-
7.	Special Diet & Conveyance	:	Rs.1,50,000/-
8.	For transportation	:	Rs.1,50,000/-
9.	For attendant	:	Rs.25,000/-
	Total :		Rs.19,56,780/-

22. Thus, the total amount of compensation for which the claimant/appellant is entitled to receive comes to Rs.19,56,780/-. Since the Claims Tribunal has already awarded Rs.4,89,780/-, after the deducting the same the claimant/appellant is entitled for enhanced amount of Rs.14,67,000/-. This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization.

23. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(P. Diwaker)
Judge

Sd/-
(RP Sharma)
Judge