

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 724 of 2013

- Jackey Dewangan S/o Shiv Kumar Dewangan Aged About 18 Years R/o Patan, Tah. & P.S. Patan, Civil and Revenue Distt. Durg C.G.

---- Petitioner

Versus

1. Budhram Singh S/o Purshottam Singh Aged About 27 Years R/o Mahkakala, P.S. Utai, Tah. Patan, Civil and Revenue Distt. Durg C.G.
2. Gajendra S/o Deendayal Singh Goyal Traders, R/o Selud, P.S. Utai, Tah. Patan, Civil and Revenue Distt. Durg C.G.
3. National Insurance Company Ltd. Through The Branch Manager, Branch No. 1, Bhutani Complex, G.E. Road, Power House, Bhilai, P.S. Bhilai, Civil and Revenue Distt. Durg C.G.

---- Respondents

For Appellant	:	Shri Majid Ali, Advocate.
For Respondents No. 1 & 2	:	None.
For Respondent No.3	:	Shri Goutam Khetrapal, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

20/07/2017

This appeal arises out of the award dated 15.3.2013 passed by First Additional Motor Accident Claims Tribunal, Durg in Claim Case

No.75/2011 whereby in an injury case compensation of Rs.34,300/- has been awarded in favour of the appellant/claimant.

02. Brief facts of the case are that on 16.3.2010 the appellant/injured was sitting as pillion rider on the motorcycle which was being ridden by one Koushal. The said motorcycle was dashed by a truck allegedly being driven in a rash and negligent manner by respondent No.1, owned by respondent No.2 and insured with respondent No.3, resulting in number of injuries, including multiple fractures, to the appellant/injured. At the time of accident, the appellant was aged 18 years and was a student of Class 12th. He remained hospitalized from 16.3.2010 to 16.6.2010. During this period he was operated upon thrice and front portion of his left foot including three toes were amputated. The appellant suffered 38% to 40% permanent disability vide Ex.P/92 and P/13. With the aforesaid pleadings, the appellant/injured filed an application for grant of compensation of Rs.15 lacs under various heads.

03. The respondent/insurance company contested the claim case on general grounds.

04. The claims Tribunal considering the pleadings of the parties and evidence adduced in support thereof awarded compensation of Rs.34,300/- in favour of the appellant/injured by the impugned award. Hence this appeal for enhancement of the compensation.

05. Learned counsel for the appellant submits that the award impugned has been passed ignoring the basic principles governing the law of compensation. The Tribunal has not considered the pleadings

and evidence adduced in support thereof by the appellant in its correct perspective. He submits that permanent disability of the appellant has not been considered by the Tribunal and no amount has been awarded under this head. He submits that under other heads such as; loss of amenities, for mental pain and suffering, loss of matrimonial prospects, future medical expenses, conveyance, special diet, attendant, loss of education etc. the Tribunal has not awarded any compensation as required under the law. He further submits that in his school the appellant was a good athlete and had participated in various competitions but after amputation his entire sports career has been ruined.

In support of his contention, he has placed reliance on the judgments in the matters of ***Rakha Jain Vs. National Insurance Co. Ltd., (2013) 8 SCC 389; Neeta Vs. Divisional Manager, MSRTC, Kolhapur, (2015) 3 SCC 590; Nagrajappa Vs. Divisional Manager, AIR 2011 SC 1785; G. Gananam Vs. Metropolitan Transport, AIR 2009 SC 1167; Rajesh Vs. Rajveer and others, 2013 (2) ACCD 969 (SC) and Reshma Kumari Vs. Madan Mohan and others, 2013 (2) ACCD 977 (SC).***

06. On the other hand, supporting the impugned award it has been argued by learned counsel for the respondent/insurance company that the compensation awarded by the Tribunal is just and proper and needs no interference by this Court.

07. Heard learned counsel for the parties and perused the material available on record.

08. In injury case, deprivation to the body results in losses both in terms of financial and physical, entitling the claimant to claim damages, which may vary according to gravity of the injuries. The damages may be pecuniary and non-pecuniary but all this has to be converted into rupees and paisa. The Court has to make a judicious attempt to award the damages, so as to compensate the claimant for the loss suffered by him. The compensation should not be assessed conservatively. On the other hand, the compensation should also not be assessed in so liberal fashion as to make it a bounty for the claimant. There must be an endeavour to secure some uniformity and consistency. It is desirable that so far as possible comparable injury should be compensated by comparable awards. Uniformity is very important. To compensate for pain and for physical consequences is invariably difficult but no other method can be devised than that of making a monetary assessment.

09. In an injury case, the damages have to be assessed under two heads, pecuniary or special and general damages. Pecuniary damages may include expenses incurred on medical treatment, attendance, transportation, special diet etc. and actual loss of earning of profit to the date of trial and lastly future loss of earning. Non-pecuniary damages include damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future and 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.

10. It is also held by the Hon'ble Supreme Court in the case of

Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Co. Ltd. reported in **(2011) 10 SCC 756** while determining pecuniary and non-pecuniary heads, that some guess work is also permissible. Even it has been held in the case of ***Govind Yadav S. New India Insurance Company Ltd. (2011) 10 SCC 686***, that damages for loss of expectation of life i.e. on account of injury, the normal longevity of the person concerned is shortened can be awarded. In case of losses of marital prospects etc. compensation can be awarded. [See ***Raj Kumar Vs. Ajay Kumar and others, (2011) 1 SCC 343***]

11. According to the fact of the present case and the statement of the doctor and further at the time of examination of the witnesses, the Tribunal has itself found that the claimant has lost half of his foot of left leg and further he was operated thrice and remained in hospital from 16.3.2010 to 16.6.2010. As per Ex.P/92 and P/13 the appellant suffered 38% to 40% permanent disability. These documents have been duly proved by the witnesses. Disability has been defined in the case of ***Ram Chandrappa Vs. Manager, Royal Sunderam Alliance Insurance Company, (2011) 13 SCC 263*** that the term “disability” as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of part of the body. If the physical efficiency because of the injury has been substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was doing initially before the injury, he will be entitled to suitable compensation. Disability benefits are ordinarily granted on the basis of the character of the disability as

partial or total and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in every case.

12. Further, in case of ***V. Sudha Vs. Ganpati Bhat*** reported in ***(2013) 7 SCC 400*** it has been held that in routine personal injury cases compensation will be awarded only under the head - pecuniary damages but in serious cases of injury where there is specific medical evidence corroborating evidence of the claimant, compensation will be granted under non-pecuniary damages including of permanent disability, future medical expenses, loss of amenities and loss of expectation of life.

13. In the case in hand, admittedly there is amputation of left foot of the appellant from front portion and he is required to have artificial limb. The loss of limb causes lot of pain to any living being and thus in view of the above case law, the disability of the appellant should be looked upon for assessment of compensation. According to Dr. Akhilesh Yadav, who issued the disability certificate (Ex.P/92) the appellant suffered 38% permanent disability, which is the functional disability of one limb and in respect of the whole body, it can be taken as 25%.

14. For assessment of compensation, as admittedly the appellant was the student at the time of accident, taking into consideration the minimum wages notification of the year 2009-10, the notional income of the appellant is taken at Rs.200/- per day i.e. Rs.6000/- per month. After adding 50% towards future prospects, it comes to Rs.9000/- per month i.e. Rs.1,08,000/- per annum. In the present case, as per law

laid down in ***Sarla Verma Vs. Delhi Transport and others, (2009) 6 SCC 121***, multiplier of 18 would be applicable. As such, the total income comes to Rs.19,44,000/-. As the appellant suffered 25% permanent disability with regard to his earning capacity, he is entitled for Rs.4,86,000/- towards loss of future earning capacity.

15. Further, considering the pleadings of the appellant and the evidence adduced in support thereof, the fact that the appellant remained in hospital for three months and thereafter also remained bedridden for about four months; he was an athlete before the accident, on account of injuries suffered by him he is not able to walk with ease as before; in the considered opinion of this Court, he is also entitled for compensation under following heads:

- (i) For loss of income (for 7 months) : Rs.63,000/-
- (ii) For medical expenses : Rs.70,000/-
- (iii) For special diet, attendant & : Rs.50,000/-
transportation
- (iv) For pain and suffering : Rs.1,00,000/-
- (v) For loss of amenities including : Rs.1,50,000/-
loss of expectation of life and loss of
marital prospects.
- (vi) For future treatment and artificial : Rs.50,000/-
limb.

16. Thus, the appellant is entitled to get compensation of Rs.9,69,000/- from the respondents, jointly and severely. Since the

Tribunal has already awarded Rs.34,300/- as compensation, the appellant shall be entitled to get additional compensation of Rs.9,34,700/- with interest @ 9% per annum from the date of filing of the claim petition till its payment.

17. The appeal thus stands disposed of with modification in the impugned award to the extent indicated above.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge

Khan