

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 06/09/2018****Order Delivered on 08 /10/2018****MAC No. 98 of 2014**

Akhilesh Devangan S/o Late Sharvan Kumar Devangan Aged About 34 Years
R/o Mathpara, Chandi Chauk, Thana- Kotwali, Civil Distt. Durg C.G.

---- Appellant**Versus**

1. Lalu Munda S/o Dhaniram Munda Aged About 58 Years R/o Bajrangpara R.S.S. Market, Power House, Bhilai, Thana- Bhilai-3, Distt. Durg C.G. (Driver of the offending vehicle)
2. Mukesh Meghwani S/o Bhingandas Meghwani R/o G.E. Road, Smt. Kamini Devi W/o Malkit Singh, Thana- Bhilai-3, Civil Distt. Durg C.G. (Owner of the offending vehicle)
3. Reliance General Insurance Company Limited, Through - Manager, Shop No. 412, 413, 4th Floor, Near Ravi Bhavan, Jai Stamabh Chauk, G.E. Road, Raipur, Distt. Raipur C.G. (Insurer of the offending vehicle).

---- Respondents

For Appellant : Shri Samir Singh, Advocate.

For Respondent No.3. : Shri Saurabh Sharma, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**CAV Order**

1. By the instant appeal, the appellant/claimant is challenging the legality and validity of the impugned award dated 31.08.2013 passed by the Fifth Additional Motor Accident Claims Tribunal, Durg, C.G (in short 'Claims Tribunal') in Claim Case No.15/2012, whereby the learned Claims Tribunal partly allowed the claim and awarded Rs.4,23,848/- as compensation.
2. Brief facts of the case for disposal of this appeal are that on 03.08.2011 at about 11 P.M when the appellant was returning his house from Ganjpara, Durg on bicycle, at the relevant time one Mini Bus bearing No.C.G 07/C/5360

(hereinafter referred to as 'offending vehicle') dashed his bicycle near Gopal Sweets at G.E. Road.

3. On account of aforementioned accident, the appellant came under the wheels of the offending vehicle and sustained grievous injuries over his body. He was immediately taken to the District Hospital from where he has been referred to Sector -9 Hospital, Bhilai. During course of treatment his left hand was amputated just below the elbow. The appellant got examined himself by one of the Medical Officer at District Hospital, Durg for assessing the disability occurred to him, due to injuries sustained by him, which was assessed as 60 percent permanent disability in Ex. P-26.
4. For the reasons, stated above, the appellant filed claim application before the Competent Claims Tribunal claiming Rs. 57,20,000 /-. on the grounds that prior to the date of accident, he was doing the work of Plumber, Electricians, Motor Winding and Fitting on contract basis and thereby, he was earning Rs. 13,000 /- per month but due to permanent disability sustained by him, he is unable to do his earlier work.
5. Respondent Nos. 1 & 2 who are owner and driver of the offending vehicle submitted their reply and denied all the adverse pleadings made in the claim application and also denied fact of accident. They further stated that on the date of accident offending vehicle was insured with respondent No.3/insurance company, therefore, the liability for payment of compensation if any was on Insurance Company.
6. Respondent No.3- Insurance Company submitted its reply and denied all the pleadings with respect to accident. It has been contended that the accident took place on account of negligence on part of the appellant himself. On the date of accident, driver of the offending vehicle was not having valid and effective driving license and, therefore, there was violation of conditions of insurance policy. The compensation claimed by the appellant was on higher

side. In these circumstances, the insurance company is not liable for payment of any compensation.

7. On the basis of pleadings of the parties, the Claims Tribunal has framed as many as five issues for consideration including the issues with respect to rash and negligent act of respondent No.1 (Driver) and contributory negligence of the appellant. After considering the pleadings, evidence and other material available on record, the Claims Tribunal arrived at a conclusion that the appellant himself was negligent to the extent of 25% as at the time of accident, he was found to have consumed liquor and further assessing the monthly income of the appellant to Rs.4,000/- per month and assessing the loss of income to the extent of 50% awarded Rs. 4,23,848 /- toward compensation.
8. Learned counsel for the appellant submits that the learned Claims Tribunal has not properly assessed the monthly income of the appellant and also committed an error in holding the appellant contributory negligent to the extent of 25% without there being any evidence. He further submits that the learned Claims Tribunal committed error in assessing loss of income at 50%, whereas, looking to the profession and work of the appellant, he sustained 100% disability and compensation ought to have been awarded considering the loss of income as 100%. He further submits that learned Claims Tribunal have also committed an error in not awarding any amount towards the loss of future prospect.
9. Per contra, learned counsel appearing for Respondent No.3/Insurance Company supports the impugned award and argued that the learned Claims Tribunal rightly assessed the loss of income of the appellant considering the functional disability in performing his work. He further submits that as the income of the appellant has not been found to be proved by the learned Claims Tribunal and, therefore, the Claims Tribunal has taken into consideration the nominal wages for assessing the income of the injured/ appellant.

10. I have heard learned respective counsels appearing for the parties and perused the records.

11. The appellant was examined as Aw-1 and placed on record, the discharge summary report Ex. P-5, which clearly mentions that crushed injuries of his left forearm (lower 1/3) and further mentions that during treatment, his left forearm was amputated on 04.08.2011. With respect to the injury sustained by the appellant and treatment taken by him, he has examined on his behalf Dr. Vivek Sinha, (AW-2) Senior Medical Officer, Department of Orthopedic of Sector -9 Hospital, Bhilai District- Durg, who has specifically stated in his statement that the appellant was admitted in hospital on 03.08.2011 and his left hand below elbow was amputated. He also stated that the appellant remained admitted in his hospital from 03.08.11 to 09.08.2011 and stitches of the wound were removed on 16.08.2011.

12. From the aforementioned facts, it is clear that the appellant's hand was amputated due to the injuries, sustained by him in accident took place on 03.08.2011. The appellant also examined Dr. Akhilesh Yadav, Medical Officer of District Hospital, Durg, who issued the disability certificate Ex.P-26. The disability certificate of the appellant shows that the appellant sustained permanent disability to the extent of 60%, whereas Dr. Akhilesh Yadav stated in his statement that the disability of the appellant's is 50% for whole body. The statements of both the doctors remained uncontroverted in cross-examination.

13. Learned Claims Tribunal arrived at a conclusion that though the permanent disability certificate is with respect to 60% but looking to the nature of work and profession of the appellant's both the hands are required simultaneously to execute any work. The appellant become 100% disabled to do his earlier work. The learned Claims Tribunal arrived at a conclusion as mentioned above that the appellant became 100% disabled to perform his earlier work but, taken into consideration only 50% towards loss of income due to disability sustained by

the appellant which appears to be erroneous in the facts and circumstance of this case. The appellant in his pleadings and evidence has specifically stated prior to the date of the accident he was doing work of Plumber, Electricians, Motor Winding and Fitting and for execution of such work both the hands are required to work. The work which the appellant was performing prior to the date of the accident, could not be executed or completed by use of one hand.

14. In the matter of **Raj Kumar Versus Ajay Kumar & Anr** reported in **(2011) 1 SCC 343** the Hon'ble Supreme Court while considering the effect of permanent disability on the earning of the injured has held as under :-

"14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

15. In another judgment between **Mohan Soni Versus Ram Avtar Tomar & Ors**, reported in **(2012) 2 SCC 267** the Hon'ble Supreme Court has held as under :-

“ 12. In light of the aforesaid decisions, we find it extremely difficult to uphold the decision of the High Court and the Tribunal based on the finding that the loss of the appellant's earning capacity as a result of the amputation of his left leg was only 50%. It is noted above that the appellant used to earn his livelihood as a cart puller. The Tribunal has found that at the time of the accident his age was 55 years. At that age it would be impossible for the appellant to find any job. From the trend of cross-examination it appears that an attempt was made to suggest that notwithstanding the loss of one leg the appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb etc. should not take into account such indeterminate factors.

13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his

livelihood and by virtue of such change he was deriving a certain income ”

16. In the matter of **Mohan Soni** (Supra) where the driver sustained permanent disability in an accident, the Hon'ble supreme Court has assessed the loss of income to the extent of 100 percent.
17. In view of above law laid down by the Hon'ble Supreme Court and considering facts and circumstances of the case in hand, it is evident that left hand of the appellant was amputated below elbow which was proved by examining Doctor AW-2 who further clarified in his statement that even after using the artificial limbs the appellant will not be able to perform his earlier nature of work which shows that the appellant sustained disability in the nature of 100% loss of income and therefore, the findings recorded by the Tribunal to the extent that the appellant sustained only 50% permanent disability and due to which loss of income to the extent of 50% of income due to the said permanent disability is not sustainable and is liable to be set aside.
18. The next arguments raised by the appellant with respect to the assessment of the monthly income of the injured/appellant. It is evident from the record that the appellant was performing the work of Plumber, Electricians, Motor Winding and Fitting and therefore, he was performing the job of technical nature and comes in category of skilled labour therefore, the monthly income cannot be assessed at the rate of unskilled labour. Looking to the nature of the work and also looking to the date of accident on which, the appellant sustained permanent disablement it would be appropriate to assess monthly income of the appellant as Rs. 5,000/- per month, moreso, when the appellant was performing his work in one of the industrial cities of the State of Chhattisgarh i.e. Bhilai, Distt- Durg, C.G.
19. The next ground for consideration is whether the injured appellant will also be entitled for loss of future prospect. The appellant sustained amputation of his left

forearm. The doctor stated 50% permanent disability for whole body. From the facts of the case and the nature of employment in which appellant was engaged prior to the date of accident, the consequence of disability towards loss of income would be 100%. He became 100% permanent disabled as he cannot perform his work which he was doing before accident because the same cannot be performed by use of one hand only. The Hon'ble Supreme Court in the case of **Yadav Kumar Versus Divisional Manager, National Insurance Company limited and Anr** reported in **2010 10 SCC 341** has held as under :-

“17. The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation.

18. Going by these principles, as we must, this Court is constrained to observe that in this case the approach of the High Court in totally refusing to grant any compensation for loss of future earning is not a correct one”

20. The law with respect to the award of future prospect has been recently laid down by the Supreme Court in the matter of **Yadav Kumar** (supra) and

applying the said law to the facts of present case, as the appellant was 35 years old on the date of accident, he is also entitled to 40 percent of monthly income towards loss of future prospect. The next argument raised by the counsel for the appellant with respect to committing an error by holding the appellant to be contributory negligent to the extent of 25 percent is concerned, the medical documents shows that at the time when the injured/appellant was brought to the hospital he had consumed excessive liquor and driving of any motorcycle after consuming liquor is also against law and therefore, in the considered opinion of this Court learned Claims Tribunal was justified in holding that the appellant was also responsible for the accident. For the aforementioned reason, I do not find any infirmity in the approach of Tribunal holding appellant contributory negligent to the extent of 25%.

21. In view of the aforementioned discussion, the compensation awarded by learned Claims Tribunal is set aside. The compensation is recalculated as under.

22. As held in above paras that the appellant was doing the work of Plumber, Electrician, Motor Winding and Fitting, which comes under the category of skilled labour, and thus his monthly income is assessed as Rs.5,000/- per month, the yearly income would be Rs.60,000/- and by adding 40% towards future prospects to it i.e. Rs.24,000/- ($60000 \times 40/100$), the total yearly income would come to Rs.84,000/- ($60,000 + 24,000$). As the age of the appellant/injured was 35 years at the time of accident, the appropriate multiplier would be of 17 and by applying it to the annual income, the net loss of income would come to Rs.14,28,000/- ($84,000 \times 17$). The appellant will also be entitled for Rs.50,000/- towards loss of amenities in life. The appellant will be further entitled to Rs.9,000/- (3000×3) towards loss of earning during period of treatment i.e. 3 months; he is also entitled for Rs. 21,248/-, rounding of Rs. 21,250/-, towards medical expenses; Rs.4,000/- towards pain and suffering; Rs.1600/- towards attendant and Rs.4,000/- towards special diet & conveyance.

23. From the above-mentioned amount of compensation, 25% of amount is to be deducted towards contributory negligence of the appellant himself in the accident, which comes to Rs.3,79,462.50 paise (rounded off as Rs.3,79,462/-) $(1517850 \times 25/100)$ and after deducting this amount, the appellant is entitled for total compensation of Rs.11,38,388/- $(1517850 - 379462)$. Now the appellant will be entitled for Rs.11,38,388/- (rounded off) as compensation in place of Rs.4,23,848/-.
24. The aforementioned amount will carry 7% interest as awarded by the learned Claims Tribunal from the date of filing of application till the actual realization is made. Rest of conditions imposed by the learned Claims Tribunal will remain intact.
25. The appeal is allowed in part to the extent indicated above.

Sd /-

(Parth Prateem Sahu)

Judge