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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 818 OF 2013**

Tulsi Ram Sarthi, S/o Dashrath Ram Sarthi, aged about 36-37 years,
Occupation Employee of Coal Washer Plant at Dongamahua,
Tamnar Tahsil Tamnar, District Raigarh, Chhattisgarh.

---- Appellant**Versus**

1. Md. Sharif Khan, S/o Nasir Khan, Occupation Vehicle Driver, R/o Beedpara, P.S. City Kotwali, Tahsil and District Raigarh, Chhattisgarh.
2. Smt. Vimla Devi Agrawal, W/o Vinod Kumar Agrawal, Occupation Owner of the Vehicle, R/o Gauri Shankar Mandir Chowk, Raigarh, District Raigarh, Chhattisgarh.
3. Bajaj Allianz General Insurance Company Limited, Shivmohan Bhawan, Vidhan Sabha Road, Pandari, Raipur, Tahsil and District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Mr. Abhishek Saraf, Advocate.
For Respondent No.2	:	Mr. Ravindra Agrawal, Advocate.
For Respondent No. 3	:	Mr. Amit Buxy, Advocate on behalf of Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

24/01/2019

1. By this instant appeal, appellant/claimant (injured) assailed the legality, validity and propriety of the impugned award dated

25.04.2013 passed by the Motor Accident Claims Tribunal, Raigarh, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.102/2009, whereby the learned Claims Tribunal partly allowed the claim application filed by appellant/claimant and awarded a sum of Rs.35,000/- as total compensation on account of loss of one eye in a motor accident.

2. Brief facts for disposal of this appeal, are that, on 11.06.2009, at 11.30 AM, the appellant/claimant was coming from Tamnar to Raigarh along with his relative Raghuvar Kalate by motorcycle when they reached near Jhingol turning at that relevant time, one jeep i.e. Mahindra Scorpio bearing registration No. CG13/C/3281 (hereinafter referred to as 'offending vehicle') dashed the motorcycle on which the appellant/claimant. In the said accident, appellant/claimant sustained injuries over his right forehead and right eye along with other parts of the body. Appellant/claimant was admitted to Kirodimal Government District Hospital, Raigarh and he took treatment continuously for several days. During course of treatment, his right eye was removed. Due to the accidental injuries sustained by the appellant/claimant, he could not continue on his work for several months. His face also became disfigured.
3. On matter being reported, a criminal case was registered against respondent No.1 for offences punishable under Sections 279 and

337 of Indian Penal Code. After investigation, charge sheet has been filed.

4. Due to the aforesaid injuries sustained by appellant/claimant, he filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal claiming Rs.24,33,200/- in total as compensation on all heads.
5. Respondents No. 1 who is driver of the offending vehicle, even after service of notice, did not choose to appear before the learned Claims Tribunal and remained *ex parte*.
6. Respondent No. 2 who is owner of the offending vehicle denied the fact of accident as well as all claims made in the claim application and pleaded for dismissal of the claim application.
7. Respondent No. 3/insurance company denied all the claims made by the appellant/claimant as also the fact adverse to it. It has been pleaded that no accident occurred from the vehicle insured by it. It has been further pleaded that the accident took place due to the negligence on the part of the driver of the motorcycle. It has been further pleaded that on the date of accident, the offending vehicle was running in violation of conditions of insurance policy, therefore,

the insurance company is having no liability to pay the amount of compensation, if any, awarded by learned Claims Tribunal.

8. After considering the pleadings, evidence and material available on record, learned Claims Tribunal arrived at a finding that the offending vehicle was involved in the accident and the accident took place due to rash and negligent driving of the driver of offending vehicle. The learned Claims Tribunal has also given specific finding that there was no evidence with respect to the violation of conditions of the insurance policy and held the insurance company liable for payment of a sum of Rs.35,000/- as compensation to the appellant/claimant on all heads.
9. Learned counsel appearing for appellant/claimant submitted that learned Claims Tribunal committed an error in not awarding any amount of compensation by applying the multiplier system. He further submitted that the learned Claims Tribunal has also not considered that the appellant/claimant sustained permanent physical disability as the right eye of the appellant/claimant was removed in the motor accident. He further submitted that the appellant/claimant was not able to perform his duties as he was doing earlier. He lastly submitted that the learned Claims Tribunal has not awarded suitable amount of compensation in the facts and circumstances of the case, which may be enhanced suitably.

- 10.** On the other hand, learned counsel appearing for respondents No.2 and 3 respectively, supported the award impugned. They submitted that though the appellant/claimant has sustained permanent disability by removing of his one eye, but no specific evidence brought on record by the appellant/claimant that he is unable to perform the work which he was doing earlier. They further submitted that the learned Claims Tribunal has adequately awarded compensation to the appellant/claimant on the basis of material available on record.
- 11.** I have heard learned counsel appearing for the parties and perused the record carefully.
- 12.** The award is not challenged by any of the respondents which goes to show that the finding recorded by the learned Claims Tribunal with respect to negligent act of respondent No. 1 i.e. driver of the offending vehicle was admitted.
- 13.** From perusal of the medical documents, it reveals that the appellant/claimant has taken treatment as indoor patient from 11.06.2009 to 19.06.2009 and operation of the right eye of the appellant/claimant took place on 15.06.2009. It is evident from the evidence of Tulsi Ram Sarthi (AW-1) as well as evidence of Dr. Meena Patel (AW-2), Medical Officer of District Hospital, Raigarh that right eye of the appellant/claimant was removed in the operation.

- 14.** From the aforementioned materials and evidence, the appellant/claimant proved before the learned Claims Tribunal that he sustained grievous injuries over his person i.e. forehead and right eye along with other parts of the body and injured eye was removed by operation in hospital.
- 15.** Undisputedly, appellant/claimant sustained permanent vision disability due to removal of his right eye which also led to disfiguration of his face which is apparent from photograph attached with clam application. In the facts and circumstances of the case, the learned Claims Tribunal has awarded a total sum of Rs.35,000/- including Rs.25,000/- towards physical and mental agony as well as disfiguration of his face, Rs.5,000/- towards loss of income during lying down period and Rs.5,000/- towards medical expenses as well as nature of the injury, which is definitely on the lower side.
- 16.** The object of the M.V. Act is to compensate the family of the victim or the injured suitably by awarding just and reasonable compensation. There are two modes of awarding compensation. One is towards pecuniary loss which the injured or family members/legal representatives of the deceased suffers and the other is towards the non-pecuniary damages. The non-pecuniary damages is to be awarded towards the mental pain and agony and loss of amenities of life etc. The assessment of loss and damages sustained by the

injured as non-pecuniary damages is difficult to assess, but cannot be assessed in a mechanical manner. But for arriving at a reasonable conclusion to award 'just compensation' to the injured, several factors are to be taken into consideration i.e. the injury of injured, the organ on which the injury sustained, permanent disability by loss of limb or any organ of the body etc. and how the body of the injured is affected by the injury.

- 17.** Undisputedly, in the case in hand, the appellant/claimant has lost his right eye completely which has been removed as per the evidence available on record causing disfiguration of his face. In addition to it, though the appellant/claimant has not specifically made any pleading or brought any evidence on record that due to loss of one eye, he is unable to perform the nature of work which he was earlier doing, but at the same time, it cannot be lost sight of the fact that the appellant/claimant sustained permanent disability due to removal of his right eye.
- 18.** In view of the above, now it is to be considered that what would be the just compensation which the appellant/claimant is entitled for.
- 19.** There is no specific evidence and material brought on record by the appellant/claimant to show that he has suffered permanent disability and he is unable to perform duties after the accident to which he was performing earlier. There is also no evidence to show that due to the

injury, there is loss of future earning capacity of the appellant/claimant and therefore, in the opinion of this Court, the appellant/claimant may not be entitled for any amount towards pecuniary loss i.e. loss of future income, but he will be definitely entitled for amount towards non-pecuniary damages in the facts of the case.

- 20.** No disablement certificate has been produced by appellant. To assess percentage of disability as provided in other law for loss of any organ or part of body due to the injuries sustained by any person the Schedule attached to Workmen's Compensation Act, 1923 (Employee's Compensation Act) provides in Part II of the Schedule I at Serial No. 25 mentions that loss of one eye without complication, the other being normal 40%. Now the question arises for consideration is what will be the just compensation to be awarded to the appellant. This issue has been considered by the Hon'ble Supreme Court in the matter of **R. K. Malik and Another v. Kiran Pal and Others**¹, in which, Hon'ble Supreme Court held as under :-

22. It is extremely difficult to quantify the non pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy.

¹(2009) 14 SCC 1

23. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life".

21. Undisputedly, the appellant/claimant who is aged about 37 years has lost his right eye. The right eye of the appellant/claimant has been removed from its place, due to which, appellant's face get disfigured. He has to live in the society with the said disfigured face for his whole life. The Hon'ble Supreme Court in the matter of **R.D. Hattangadi v. M/s Pest Control (India) Pvt. Ltd. and others**² held as under:-

17."When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000/- in respect of claim for pain

2 AIR 1995 SC 755

and suffering and Rs.1,50,000/- in respect of loss of amenities of life....”

(emphasis supplied)

22. The Hon'ble Supreme Court in the aforementioned judgment held that the amount towards pain and suffering and loss of amenity of life could be awarded by taking special circumstances of the victim into account. The Division Bench of this High Court has considered the issue with respect to award of compensation when the claimant lost his one eye in the matter of **Arvind Kumar Sharma v. Roshanlal and Others**³ and held as under:-

7.....“It would be clear from the aforesaid judgment of the Supreme Court that when the compensation is awarded for pain and suffering and loss of amenities of life, special circumstances of the victim have to be taken into account, including his age, the unusual deprivation he has suffered and the effect of accident of his future life. The Supreme Court has further observed that the amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that the different circumstances have to be taken into consideration. In the present case the appellant has completely lost his left eye. He was aged about 30 years at the time he suffered the aforesaid loss of one eye. He had about 30 years of active social life to live if not more. He is an Engineer in the Irrigation Department and was likely to move in official and social circles without one eye. Keeping these circumstances in mind, the loss that the appellant has suffered not only on account of pain and suffering but also on account of deprivation of one eye is to be assessed. Taking into account all these circumstances, we are of the view that the appellant was entitled to a sum of Rs.1,00,000/- towards pain,

3 2005 (2) CG.L.J. 19

suffering, mental and physical shock due to the injury caused to his left eye and Rs.2,00,000/- towards loss of amenities of vision of one eye, loss of confidence, discomfort and hardship for the remaining period of his life.”

(emphasis supplied)

23. The learned Claims Tribunal has awarded very meager amount of Rs.35,000/- towards damages due to physical and mental agony and disfiguration of face. In the facts and circumstances of the present case, in the opinion of this Court, the appellant/claimant is entitled for a sum of Rs.75,000/- towards pain and suffering, mental and physical shock due to the injury caused to his right eye and Rs.75,000/- towards loss of amenities of vision of one eye, loss of confidence, discomfort and hardship of the remaining period of his life. In addition to above, appellant/claimant will also be entitled for an amount of Rs.5,000/- towards medical expenses and Rs.5,000/- towards loss of income during laying down period, as awarded by the learned Claims Tribunal.
24. Now, the appellant/claimant will be entitled for a total sum of Rs.1,60,000/- as compensation instead of Rs.35,000/-. The respondents are, jointly and severally, liable to pay total compensation of Rs.1,60,000/- to the appellant/claimant. This amount of compensation shall carry interest @ 6% per annum from the date of application filed before the learned Claims Tribunal till its

realization as awarded by Claims Tribunal. The other conditions imposed by the learned Claims Tribunal shall remain intact.

- 25.** The appeal is partly allowed and the impugned award is modified to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh