

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 726 of 2013

Vijay Kumar Dewangan S/o Kirit Ram Dewanga, aged about 25 years Caste Kosta, R/o Village and Post Choriya, Police Station Saragaon, Revenue and Civil District Janjgir-Champa (C.G.).

---- Appellant

Versus

1. Mohd. Aziz Ansari S/o Mohd. Basir Ansari, aged about 45 years, R/o Sirki Mod, Dipka, Police Station Dipka, District Korba (C.G.)

Driver of the offending vehicle

2. Haydar Ali S/o Gulam Khan, aged about 50 years, R/o Pali Road, Dipka, Police Station Dipka, District Korba (C.G.).

Owner of the offending vehicle

3. Shri Ram General National Insurance Company Limited, R/o E/8, E.P.I.P.R. R.I.I.C.O. Industrial Area Sitapura Jaipur, Rajasthan, 302022, Bransh Office Maruti Heights, Near Sky Auto Mobile, G.E. Road, Raipur, District Raipur (C.G.).

Insurer of the offending vehicle

---- Respondents

For Appellant	: Ms Laxmeen Kashyap Advocate on behalf of Mr. P.K. Patel, Advocate
For Respondents No. 1 and 2	: None
For Respondent No. 3	: Mr. H.B. Agrawal, Sr. Advocate with Ms. Prabha Sharma, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

10/05/2019

1. This appeal has been filed by appellant/claimant (injured) under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 04/05/2013 passed by First Additional Motor Accident Claims Tribunal, Sakti District Janjgir-Champa, (C.G.) (hereinafter

referred to as 'Claims Tribunal') in Claim Case No.14/2012 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.3,10,091/- as compensation to the claimant in an injury case where the appellant sustained 60% permanent disability as per disability certificate issued by District Medical Board.

2. Brief facts for disposal of this appeal are that on 21/06/2010, at about 8.15 P.M., when appellant was travelling on his motorcycle Hero Honda Splendor Plus bearing registration No.CG11-BA-0917 (hereinafter referred to as 'motorcycle') from village Adbhar to Choriya. When he reached near village Suvadera, one Truck (Trailor) bearing registration No.CG04-JB-7020 (Old Registration No.HR-47-8239) (hereinafter referred to as 'offending vehicle') driven by respondent No.1 suddenly stopped the offending vehicle without use of any indicator. On account of sudden stopping of offending vehicle on center of the road, appellant dashed the offending vehicle on its back side, due to which, appellant sustained grievous injuries over his head, spinal bone and other parts of body. Looking to injuries, he was immediately taken to Community Health Centre, Sakti, from where, he was referred to CIMS, Bilaspur, thereafter he was shifted to Dr. Bhimrao Memorial Hospital, Raipur where he took treatment as indoor patient from 22/06/2010 to 18/07/2010 and undergone operation. Due to lying on bed, he suffered with Bedsore on his hips, for which, he was again admitted to Mission Hospital, Champa from

30/07/2010 to 09/08/2010. From the date of accident, appellant took continues treatment from various hospitals, but he could not cure. The appellant suffered paraplegia in lower part of body from his waist and he also lost control over his nature's call.

3. On account of permanent disability of paraplegia on lower part of body appellant filed claim application under Section 166 of M. V. Act before competent Claims Tribunal for grant of compensation claiming Rs.25,92,500/- on various heads.
4. Respondents No.1 and 2 who are driver and owner of offending vehicle, even after service of notice, did not choose to appear before learned Claims Tribunal and were proceeded *ex parte*.
5. Respondent No.3/Insurance Company submitted its reply to claim application and denied all the claims made by appellant as also the facts adverse to it. It was pleaded that accident took place due to self negligence of driver of motorcycle i.e. appellant himself. It was further pleaded that at the time of accident, appellant was not possessing valid and effective driving licence to drive the motorcycle and there was contributory negligence on the part of appellant, that on the date of accident, driver of offending vehicle was also not possessing valid and effective driving licence. There was violation of conditions of insurance policy, therefore, Insurance Company is having no liability to pay the amount of compensation.
6. On appreciation of pleadings and evidence placed by respective parties on record, learned Claims Tribunal held that the disability of

appellant to the extent of 60% as mentioned in disability certificate issued by the District Medical Board and while assessing income of appellant as Rs.3,000/- per month, awarded a total sum of Rs.3,10,091/- as compensation on all heads.

7. Learned counsel appearing for appellant submitted that learned Claims Tribunal committed an error in assessing the disability of appellant to the extent of 60% only ignoring the fact that due to said disability, appellant has suffered 100% loss on earning capacity as he is unable to perform any kind of work. She further submitted that due to injuries appellant suffered paraplegia on lower part of body and learned Claims Tribunal has not awarded suitable amount of compensation on other non-pecuniary heads. She lastly submitted that learned Claims Tribunal committed an error in not awarding any amount towards medical expenses or future treatment etc.
8. Per contra, learned counsel appearing for respondent No.3/Insurance Company supported the impugned award and submitted that learned Claims Tribunal has rightly assessed the amount of compensation on the basis of disability certificate issued by District Medical Board.
9. I have heard learned counsel appearing for parties and perused entire record carefully.
10. The award is not challenged by any of the respondents which goes to show that the finding recorded by learned Claims Tribunal with respect to negligent act of respondent No.1 i.e. driver of offending vehicle and thus the same has attained finality.

11. To prove the disability of appellant, he submitted disability certificate issued by District Medical Board, Janjgir-Champa vide Ex. P-1. From perusal of Ex. P-1, it would show that appellant suffered post traumatic spinal injuries with paraplegia with lower and bladder involvement. To prove the disability certificate, appellant examined Dr. A.K. Jagat as AW-1, who stated in his evidence that on examination of appellant, he found that appellant-Vijay Kumar Dewangan suffered severe spinal injury, due to which, his both legs become paralytic (paraplegia) and he lost control over his nature's call. He further stated that looking to the disablement on the lower part of body, he issued the disability certificate mentioning 60% permanent disability. In cross-examination, he categorically stated that there is no possibility of recovery of appellant from the injuries and percentage of disability.
12. Appellant-Vijay Kumar Dewangan examined himself as AW-2, wherein he specifically stated that due to accidental injuries, he is unable even to walk or move and he is forced to lay down on bed. He further stated that due to injuries, he has no control over his nature's call as he suffered paralysis below waist and thereby he became 100% disabled. He lastly stated that prior to accident, he was doing the work of cloth Weaver, but due to paralysis, he is unable to perform any kind of work.

13. In the matter of **Jakir Hussein v. Sabir and others**¹, Hon'ble Supreme Court held as under :-

“15. Further, with respect to the permanent disablement suffered by the appellant, Mr. K. Parameshwar, the learned amicus curiae, has rightly submitted that the appellant was examined by Dr. P.K. Upadhyay in order to prove his medical condition and the percentage of permanent disability. The doctor who has treated him stated that the appellant has one long injury from his arm up to the wrist. Due to this injury, the doctor has stated that the appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment was taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalised for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30%

¹ (2015) 7 SCC 252

and 55% respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact namely that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed.

16. In *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343, this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability.....”

14. In view of aforementioned evidence available on record with respect to nature of injuries and the part of body affected by injuries, in the opinion of this Court, appellant though suffered 60% disability as per

the disability certificate, but he suffered 100% loss of earning capacity as he is unable to perform any kind of work.

15. Undisputedly, appellant sustained 60% permanent disability due to post traumatic spinal injuries with paraplegia with lower and bladder involvement, which is apparent from disability certificate (Ex. P-1), In the facts and circumstances of the case, the learned Claims Tribunal has awarded a total sum of Rs.3,10,091/- including Rs.2,59,200/- towards loss of future earning, Rs.3,000/- towards special diet, Rs.5,000/- towards physical and mental agony and Rs.3,000/- towards conveyance expenses, 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, age, marital status etc. and how the body of the injured is affected by the injury.

17. Undisputedly, in the case in hand, the appellant has suffered 60% permanent disability and 100% loss of earning capacity because due to the injuries sustained, he is unable to perform the nature of work which he was earlier doing. It is not only that but he became totally bedridden.
18. In view of the above, now it is to be considered that what would be just compensation which the appellant is entitled for.
19. Before learned Claims Tribunal, appellant has pleaded that he was doing the work of cloth Weaver and thereby earning of Rs.250/- per day, but not produced any evidence with respect to place of work, employer under whom he was working or any documentary evidence with respect to his salary or income. The appellant has failed to prove his income as pleaded in claim application, therefore, in the facts and circumstances of case, income of appellant is to be assessed on notional basis. The date of accident was 21/06/2010, therefore, looking to minimum wages rate prevailing in the Districts and State, it will be proper to hold engagement of appellant in labour work and his income to be assessed to Rs.4,000/- per month.
20. Considering the facts and circumstances of case, I hold the income of appellant on the date of accident to be Rs.4,000/- per month i.e. Rs.48,000/- per annum. By adding 40% of the aforesaid income towards future prospects ($48,000 \times 40\% = 19,200$), yearly income of

appellant comes to Rs.67,200/- (48,000 + 19,200). At the time of accident, deceased was aged about 25 years, therefore, in view of ratio laid down in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**², multiplier of 18 would be applicable in the present case. After applying multiplier of 18, total loss of income of appellant comes to Rs.12,09,600/- (67,200 x 18). In addition, appellant is also entitled for an amount towards medical bills which he incurred as well as amount of conveyance during his visit to different hospitals. Looking to the nature of injuries and medical documents available on record with respect to his treatment at Ladikar Hospital, Bilaspur, I deem it fit and appropriate to award Rs.50,000/- in total on medical expenses.

21. Apart from aforementioned pecuniary damages, appellant is also entitled for non-pecuniary damages i.e. pain and suffering, loss of amenities in life, loss of prospects of marriage, attendant, special diet and conveyance expenses. This issue has been considered by Hon'ble Supreme Court in the matter of **R. K. Malik and Another v. Kiran Pal and Others**³, 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

² (2009) 6 SCC 121

³(2009) 14 SCC 1

stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy.

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".

22. Further, Hon'ble Supreme Court in the matter of **R.D. Hattangadi v.**

M/s Pest Control (India) Pvt. Ltd. and others⁴ 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

4 AIR 1995 SC 755

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

(emphasis supplied)

23. In the case at hand, there is ample piece of evidence that appellant suffered 100% loss of earning capacity due to paralysis suffered by him below the waist, he is unable to move. Learned Claims Tribunal also recorded in the award that he was carried by four persons and catheter was also implanted with the appellant. Looking to the condition of appellant and law laid down by Supreme Court in the aforementioned cases, appellant is entitled for Rs.1,00,000/- towards pain and suffering, Rs.1,50,000/- loss of amenities in life and prospects of marriage and Rs.1,00,000/- towards attendant and conveyance expenses.
24. On the basis of above calculation, appellants is entitled for a total compensation of Rs.16,09,600/- (12,09,600 + 50,000 + 1,00,000 + 1,50,000 + 1,00,000).

25. For the foregoing reasons, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. Appellant is entitled for total compensation of Rs.16,09,600/- instead of Rs.3,10,091/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge