

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 121 of 2014**

Durgesh Kumar Sahu son of Shri Haridhar Sahu, aged about 28 Years, resident of Ward No. 05, Sanjay Colony, Baloda Bazar, District Raipur C.G., (Now District Baloda Bazar-Bhatapara) (C.G.).

---- Appellant

Versus

1. Bhuneshwar Suryawanshi S/o Sukhi Ram Suryawanshi, aged about 34 Years, resident of Chiwat (Kosrangi), Police Station Kharora (C.G.), District Raipur, (Now Baloda Bazar-Bhatapara).
(Driver of Vehicle No. CG-04-J-9198)
2. Manish Jaiswal son of Rambharos Jaiswal resident of Bajrang Chowk, Baloda Bazar, Police Station and Tehsil Baloda Bazar, District Raipur, (Now Baloda Bazar Bhatapara) (C.G.).
(Owner of Vehicle No. CG-04-J-9198)
3. Manager, Royal Sundaram Branch Office, Raipur, District Raipur (C.G.), address Vanijya Bhawan, Devendra Nagar, Raipur (C.G.).
(Insurer of Vehicle No. CG-04-J-9198)

---- Respondents

For Appellant	: Mr. Amiyakant Tiwari, Advocate
For Respondents No.1 and 2	: None
For Respondent No.3	: Mr. Anupam Dubey, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

16/09/2019

1. This appeal has been filed by appellant/claimant 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 10/07/2013 passed by First Additional Motor Accident Claims

Tribunal, Baloda Bazar, District Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Accident Claim Case No.169/2011 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.7,73,194/- as compensation in an injury case.

2. Brief facts relevant for disposal of this appeal, are that, on 09/07/2010 at about 8.45 PM, appellant- Durgesh Kumar Sahu was travelling along with one Shri Shukla, who is working with BSNL Department, on the way, when Shri Shukla stopped for taking petrol on his vehicle, at that relevant time, appellant went to answer nature's call and while returning, he met with an accident with one Truck bearing registration No.CG-04-J-9198 (hereinafter referred to as 'offending vehicle').
3. In the aforementioned accident, appellant suffered grievous injuries over his person. He suffered fracture injury over his spinal bone. The appellant was immediately taken to the hospital at Balodabazar, from where, he has been referred to the hospital at Raipur. The accident was reported to the concerned Police Station, based on which, Crime No. 310/2010 was registered against non-applicant No.1 i.e. driver of offending vehicle for the offence punishable under Sections 279, 337, and 338 of IPC.

4. The appellant took treatment at Community Health Centre, Balodabazar, Dr. B.R. Ambedkar Memorial Hospital, Raipur, Shri Balaji Super Speciality Hospital, Raipur, Chandulal Chandrakar Memorial Hospital, Bhilai, Modern Medical Institute, Raipur, Christian Medical College, Vellore and Shree Narayana Hospital, Raipur, but he could not cure fully from his injuries and suffered paralysis on both of his legs due to spinal injury.
5. As the claimant become permanently disabled due to injury sustained by him in a motor accident on 09/07/2010, he became permanently bedridden and unable to stand or move without any support as well as unable to work, therefore, he filed a claim application before the Claims Tribunal claiming Rs.18,46,000/- in total on all heads as compensation.
6. Respondents No. 1 and 2 driver and owner of offending vehicle submitted reply to the claim application and denied the nature of accident pleaded in the claim application. It was pleaded that the motorcycle dashed with the offending vehicle and there was contributory negligence on the part of claimant. It was further pleaded that driver of offending vehicle was driving 'Heavy Goods Vehicle' for last 10 years and the owner of offending vehicle took driving test of non-applicant No.1. It was also pleaded that on the date of accident, driver of offending vehicle was possessing valid and effective driving

licence to drive the vehicle and on the date of accident, offending vehicle was insured with the respondent No.3/non-applicant No.3 Insurance Company, therefore, the liability, if any, would be on the Insurance Company to pay the compensation, if any compensation is awarded by the Claims Tribunal.

7. The Insurance Company submitted reply to claim application and denied the fact of accident as pleaded in claim application and pleaded that on the date of accident, driver of offending vehicle was not having valid and effective driving licence to drive the vehicle, therefore, there is violation of condition of insurance policy, and Insurance Company is not liable to pay any amount of compensation.
8. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that the accident took place due to rash and negligent act of non-applicant No.1; the appellant suffered 80% permanent disability, due to which, he suffered paralysis on his both legs; there was violation of conditions of insurance policy and awarded a total sum of Rs.7,73,194/- as compensation to the claimant including medical expenses incurred by the appellant in his treatment.
9. Learned counsel appearing for the appellant/claimant submitted that learned Claims Tribunal though rightly assessed the permanent disability to the extent of 80%, but committed an error in not

considering that the appellant has suffered 100% functional disability and thereby suffered 100% loss of income. He further submitted that learned Claims Tribunal committed error in not awarding any amount towards future prospects, not awarding any amount towards loss of amenities in life, not awarding any amount towards attendant and transportation. He further submitted that learned Claims Tribunal has erroneously awarded an amount of Rs.25,000/- towards pain and suffering, which is on the lower side in the facts and circumstances of the case as well as looking to the injuries and period of treatment of appellant/claimant.

- 10.** Per contra, learned counsel appearing for respondent No.3/Insurance Company submitted that learned Claims Tribunal, based on the disability certificate issued by the Medical Board, rightly held that the appellant suffered 80% permanent disability and correctly assessed the loss of income. He further submitted that learned Claims Tribunal awarded just and proper amount of compensation in the facts and circumstances of the case, which do not call for any interference.
- 11.** I have heard learned counsel appearing for the parties and perused records carefully.
- 12.** So far as first contention as it relates to the manner of accident which took place and permanent disability suffered by appellant on the part

of body and his suffering from paralysis on both of his legs due to accidental injuries on his spinal bone is not in dispute.

- 13.** So far as the next contention as it relates to loss of income assessed by learned Claims Tribunal to the extent of 80% is concerned, it is not in dispute that the Medical Board issued a disability certificate to the appellant due to permanent disability on his both legs only. For awarding the amount of compensation under the M.V. Act, not only the percentage of permanent disability suffered by the injured/claimant is to be taken into consideration, but to assess just and proper amount of compensation, it is to be looked into the nature of permanent disability and part of body which suffered permanent disability, and loss of income on account of functional disability. In the instant case, due to suffering from paralysis on both the legs, the appellant is completely bedridden and is also carrying catheter 24 hours continuously, which was not disputed.
- 14.** The appellant in support of his claim examined himself as AW-1, Dr. A.A. Saifi as AW-2, who in his evidence stated that appellant suffered fracture injury over his spinal bone and suffered permanent disability. He has also examined Dr. Pramod Tiwari as AW-3, who in his evidence stated that he is President of Medical Board, Balodabazar and due to the injuries suffered by appellant on his spinal bone i.e. bone No.C6 to D10, he suffered paralysis on his both legs. He

proved the disability certificate (Ex. A/29) issued by the Medical Board.

15. Looking to the evidence of Durgesh Sahu (AW-1), Dr. A.A. Saifi (AW-2) and Dr. Pramod Tiwari (AW-3), it is apparent that the appellant suffered permanent disability and due to his disability, he became bedridden and not able to move of his own. As per evidence of appellant himself, he is fully dependent upon the attendant i.e. his wife for his daily activities.
16. In view of aforementioned evidence available on record which remained uncontroverted, in the opinion of this Court, the appellant though suffered 80% disability but he suffered 100% loss of income.
17. The Hon'ble Supreme Court has taken into consideration the issue with respect to norms of calculating the disability affecting the earning capacity on the basis of permanent disability in the matter of **Raj Kumar v. Ajay Kumar and another**¹, in which, the Hon'ble Supreme Court held as under:-

“9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent

¹ (2011) 1 SCC 343

disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of

earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.”

- 18.** Reference in this connection can also be made to a decision of Hon'ble Supreme Court in the matter of **Jakir Hussein v. Sabir and others**², wherein it has been held as under :-

“16. In *Raj Kumar v. Ajay Kumar*, (supra), 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. Hence, the loss of earning is determined by us at Rs.54,000/- per annum. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in **Sarla Verma (Smt.) and others v. Delhi**

² (2015) 7 SCC 252

Transport Corporation and another³, the total loss of future earnings of the appellant will be at Rs.54,000 X 16 = Rs.8,64,000/-."

19. Reverting back to the facts of the present case where the appellant became bedridden and fully dependant upon the attendant and in the light of aforementioned law laid down by Hon'ble Supreme Court, in the considered opinion of this Court, appellant suffered 100% permanent loss of earning capacity and thereby suffered 100% loss of income. In view of above, the finding recorded by learned Claims Tribunal that appellant suffered 80% loss of income due to disability of the appellant is hereby set aside.
20. The next argument raised by learned counsel for appellant is that learned Claims Tribunal committed an error in not awarding any amount towards future prospects. In view of law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**⁴, the claimant is also entitled for the additional amount of 40% of the income towards future prospects as the claimant cannot said to be in a permanent employment and was below 40 years on the date of accident. In the instant case, on the date of accident, age of appellant is 28 years and therefore, 40% amount was added towards future prospects.

3 (2009) 6 SCC 121

4 AIR 2017 SC 5157

- 21.** Learned Claims Tribunal committed an error in not awarding any amount towards attendant in the facts and circumstances of the case. It is not in dispute that the appellant has become permanently bedridden which can also be determined from the evidence of Dr. A.A. Saifi (AW-2) and Dr. Pramod Tiwari (AW-3) that the appellant could not able to move of his own and he is fully dependant upon attendant for each and every work. The assessment of amount towards attendant is little-bit difficult, but nonetheless the appellant is entitled for an amount towards attendant, which this Court proposes to award a lump-sum amount of Rs.1,00,000/- towards attendant in the facts and circumstances of the case, particularly, looking to the age of appellant, i.e. only 28 years of age.
- 22.** Learned Claims Tribunal also committed an error in not awarding any amount towards loss of amenities in life. The Hon'ble Supreme Court has considered the award of compensation on the head of monetary loss and non-monetary loss and recently, it has been held in the matter of **Anant son of Sidheshwar Dukre v. Pratap son of Zhampannappa Lamzane and another**⁵, wherein Hon'ble Supreme Court held as under :

“12. In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be

5 (2018) 9 SCC 450

compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life, and enjoy those things and amenities which he would have enjoyed, but for the injuries.

13. The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident. This Court in **Yadava Kumar v. National Insurance Company Ltd.**⁶ explained “just compensation” in the following words (SCC p.345, para 15):

“15. It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a ‘just compensation’. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of ‘just compensation’ obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field.”

6 (2010) 10 SCC 341

- 23.** As on the date of accident, the appellant was only aged about 28 years and he has to live for whole of his life with the disability suffered by him and that too by lying on the bed, in the opinion of this Court, the appellant is entitled for Rs.1,00,000/-towards loss of amenities in life.
- 24.** The record of the case would show that appellant took treatment from different hospitals i.e. Community Health Centre, Balodabazar, Dr. B.R. Ambedkar Memorial Hospital, Raipur, Shri Balaji Super Speciality Hospital, Raipur, Chandulal Chandrakar Memorial Hospital, Bhilai, Modern Medical Institute, Raipur, Christian Medical College, Vellore and Shree Narayana Hospital, Raipur, but learned Claims Tribunal overlooked the continuous movement of appellant from one hospital to other and failed to award any amount of compensation towards conveyance/transportation. In the considered opinion of this Court, the appellant is further entitled to Rs.20,000/- towards conveyance/transportation.
- 25.** It is not in dispute that the appellant suffered injuries in accident, which took place on 09/07/2010 and as per medical documents available on record, it shows that the appellant was under treatment till 01/12/2011 vide Ex. A-32. Looking to the nature of injury i.e. fracture injury on spinal bone, for which, he has to undergo operation and further he suffered permanent disablement and he became bedridden, in the opinion of this Court, the appellant is

entitled for a sum of Rs.50,000/- towards pain and suffering instead of Rs.25,000/- awarded by learned Claims Tribunal.

26. Looking to the continuous treatment of appellant, he is entitled for a sum of Rs.20,000/- towards special diet.
27. Apart from the aforementioned amount of compensation on different heads, the appellant is also entitled for an amount towards medical expenses which is already awarded by learned Claims Tribunal i.e. Rs.52,269/-, Rs. 14,600/-, Rs.82,752/- and Rs.1,09,000/-.
28. In view of above, the amount of award assessed and calculated by the learned Claims Tribunal requires reconsideration and recalculation. This Court proposes to recalculate the award in following terms:-

The monthly income of claimant is taken as Rs.3,000/- per month and by adding 40% of the income towards future prospects i.e. Rs.1,200/-, the monthly income of claimant come to Rs.4,200/- (3000 + 1200) and yearly income comes to Rs.50,400/- (4200 x 12). At the time of accident, the claimant was aged about 28 years, therefore, in view of the matter of **Sarla Verma (Smt.)** (supra), multiplier of 17 would be applicable in the present case. After applying the multiplier of 17, total loss of income of claimant comes to Rs.8,56,800/- (50,400 x 17). In addition to above, claimant is also entitled for a sum of Rs.1,00,000/- towards attendant, Rs.1,00,000/-

towards loss of amenities in life, Rs.20,000/- towards conveyance/transportation, Rs.20,000/- towards special diet, Rs.50,000/- towards pain and suffering and Rs.2,58,621/- (52,269 + 14,600 + 82,752 + 1,09,000) towards medical expenses.

- 29.** On the basis of above recalculation, now the appellant/claimant will be entitled for total compensation of Rs.14,05,421/- instead of Rs.7,73,194/- awarded by the learned Claims Tribunal. The aforementioned amount compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.
- 30.** In the result, the appeal is allowed in part. The impugned award is modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge