

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1234 of 2012

- Sayyad Haidar Ali @ Sayyad Ali, age 27 yrs, S/o Late Sayyad Nisar Ali, r/o Maudaha Para, P.S. Maudahapara, Raipur, Distt. Raipur, Chhattisgarh

---- Appellant

Versus

1. Shankar Lal Dewangan, S/o Dwarika Prasad Age 25 Years Om Motor Garage Near Railways Crossing, Ring Road, Telibandha, Near Airtel Office, Tah. And Distt. Raipur, Chhattisgarh (Driver of Scorpio)
2. Ritesh Agrawal S/o Roshan Lal Agrawal R/o P.O. Basana, Distt. Mahasamund C.G (Owner of Scorpio)
3. The Oriental Insu.Co.Ltd. S/o Thru- Divisional Manager, Divisional Office, No. 2, Chawla Complex, Devendra Nagar, Raipur, Tah. And Distt. Raipur C.G. (Insurer of Scorpio)
4. Rakesh Sharma S/o Visan Das Sharma Aged About 29 Years Thru- Office Senani 38 Vahini, Bharat Tibbat Sima Police Bal, Grih Mantralaya, Govt. Of India, Patralaya, Kharora Camp, Raipur C.G (Driver of Gypsy)
5. The Competent Officer S/o 38th Battalion, Bharat Tibbat Sima Police Bal, Grih Mantralaya, Govt. Of India, Patralaya, Kharora Camp, Raipur C.G (Occupier of Gypsy)
6. The Incharge Officer S/o Office of 38th Battalion, Bharat Tibbat Sima Police Bal, Grih Mantralaya, Govt. Of India, New Delhi N.C.R (Owner of Gypsy)

---- Respondents

For Appellant	: Shri Amiyakant Tiwari, Advocate
For Respondent- 3	: Shri Sudhir Agrawal, Advocate
For Respondents- 4 and 5	: Shri Raj Kumar Gupta, Advocate
For other Respondents	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

12.04.2019

1. Appellant/claimant has challenged the impugned award dated 31.07.2012 passed by learned 3rd Additional Motor Accident Claim Tribunal, Raipur (for short, 'Tribunal') in Claim Case No.229 of 2011, whereby learned Tribunal partly allowed the claim of compensation and awarded a sum of Rs.6,32,579/-.

2. Brief facts for disposal of this appeal are that on 05.11.2009 at about 9 pm when appellant was repairing one Scorpio Jeep bearing No.OR 14J-1003 on road, at that relevant time, one Gypsy bearing No.CH 01-G1-1863 driven by respondent- 4 Rakesh Sharma dashed Scorpio Jeep due to which appellant sustained injuries on his hand, leg, head and waist along with other parts of body. Appellant was taken to Mekahara Hospital, Raipur where he was treated as inpatient from 05.11.2009 to 01.12.2009. During the course of treatment, appellant's right leg above knee was amputated and it was grafted by skin of his left leg. Appellant sustained permanent disability due to aforementioned accident.

3. Appellant for the reasons stated above, filed claim application before competent Claims Tribunal claiming compensation of Rs.29,10,000/- stating therein that prior to date of accident, he was working as motor mechanic in *Mahmood Mistri Kallu* garage but after accident, he was unable to perform his earlier work and thereby suffering continuous financial loss.

4. Respondent- 2 who was owner of Scorpio even after notice did not appear before learned Claims Tribunal and remained *ex-parte*.

5. Respondent- 1 Shankarlal, pleaded that he is owner of Om Motor Garage. Scorpio came to his motor garage for repairing and after repairing, he along with other mechanics- appellant and one Sheikh Afzal took the vehicle to VIP Road for trial. While taking trial, some mechanical defect occurred in the vehicle therefore, it was parked on road side. Appellant after opening its bayonet, was trying to find out defect. At that relevant time indicators of Scorpio were on. He further pleaded that at that relevant time,

respondent- 4 Rakesh Sharma, driver of Gypsy in intoxication condition, dashed Scorpio which was parked on roadside due to which appellant, Afzal and Shankarlal sustained injuries. FIR was lodged through Afzal. He on the date of accident was possessing valid and effective driving license and the vehicle was insured with respondent- 3 Insurance Company.

6. Respondent- 3 Insurance Company submitted its separate reply and pleaded that respondent- 1 was driver of Scorpio and respondent- 2 was its owner, and vehicle was insured with respondent- 3 Insurance Company. It was also pleaded that respondent- 1 was not possessing valid and effective driving license and therefore, there was violation of conditions of Insurance Policy.

7. Respondents- 4, 5 and 6 submitted reply and denied all pleadings made in the claim application against them and pleaded that Scorpio was parked at centre of road and at the time of accident, appellant/claimant was repairing Scorpio. Parking lights and back lights were not on. It was also pleaded that appellant, respondent- 1 and Afzal were responsible for accident.

8. Learned Claims Tribunal while appreciating the pleadings, evidence and other material available on record, held that there was negligence on the part of drivers of both the vehicles (Scorpio and Gypsy), assessed disability of appellant to the extent of 50% to whole body and awarded a total sum of Rs.6,32,579 as compensation by assessing income of appellant at Rs.6,000/- per month.

9. Learned counsel for appellant argued that learned Claims Tribunal committed error in assessing permanent disability to the extent of 50% only which is contrary to disability certificate issued by Dr.PK Gupta, wherein disability of appellant was assessed to the extent of 80%. He further argued that looking to nature of work ie Motor Mechanic, which the appellant was doing on the date of accident, his functional disability be assessed as 100%. He further argued that learned Claims Tribunal not awarded appropriate amount towards non-pecuniary damages and in view of law laid down by Hon'ble Supreme Court in the matter of **TO Anthony Vs Karvarnanand others** reported in 2008 (3) SCC 748 Tribunal could have directed that respondents- 4 & 6 are jointly and severally liable for payment of compensation to claimant.

10. Per contra learned counsel for respondent- 3 Insurance Company argued that learned Claims Tribunal rightly assessed 50% of permanent disability suffered by appellant and correctly calculated amount of compensation. He further argued that looking to permanent disability of claimant, compensation awarded to him was just and proper.

11. I have heard learned counsel for the parties and perused records. Fact of accident and injuries sustained by appellant in the said accident were not disputed by the parties. Even Ex.P/7 ie copy of FIR which was lodged on 05.11.2009, immediately after two hours of accident was not disputed wherein it was mentioned that when appellant was opening bayonet of Scorpio for finding out the defect, at that relevant time, other vehicle Gypsy dashed it from backside with high speed. In FIR it was mentioned that appellant sustained injuries in the said accident and he was

admitted in Hospital. In Discharge ticket Ex.P/15 issued by Mekahara Hospital, Raipur, date of admission of appellant is shown as 05.11.2009 and date of discharge is mentioned as 01.12.2009. It was also mentioned that appellant's right lower limb got traumatic amputation. District Medical Board issued permanent disability certificate vide Ex.P/138. Dr PK Gupta was examined as AW-2, who in his evidence admitted that he was working as an Orthopaedic Specialist at Medical Board, Raipur since 2001. On 22.12.2009 he being member of Medical Board, examined appellant and permanent Physical impairment Certificate showing his disability to the extent of 80% was issued. He also stated that said disability certificate issued by him was not with respect to whole body, but it is only with respect to right leg. Doctor in his cross examination further specifically stated that appellant would not be able to walk and move on his own even with help of artificial leg and there cannot be reduction in his percentage of disability and the same cannot be minimised.

12. From the aforementioned evidence available on record, it is clear that appellant sustained injuries in accident due to which he suffered permanent disability of his right leg and it was to the extent of 80% as per medical board certificate Ex.P/138 which was proved by Dr PK Gupta, AW-2. Now question arises before this Court is what will be the percentage of loss of income of appellant due to aforementioned permanent disability suffered by him. The appellant prior to date of accident was working as motor mechanic. Looking to the nature of his work/ job he would require both his legs because unless and until he stands on his own legs without any support he would not be able to perform all work of motor mechanic.

13. The issue with regard to assessment of loss of income of injured appellant due to suffering of his permanent disability by particular part of body has been considered by Hon'ble Supreme Court in the matter of **Raj Kumar Vs Ajay Kumar and another** reported in 2011 (1) SCC 343 in which it has been 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 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.”

14. Reference in this connection can also be made to a decision of Hon'ble Supreme Court in **Jakir Hussein Vs Sabir and others** reported in 2015 (7) SCC 252 wherein it has been held as under :

“16. In [Raj Kumar v. Ajay Kumar](#) {2011(1)SCC343}, 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 & Ors. v. Delhi Transport Corporation & Anr.](#){2009 (6) SCC 121}, the total loss of future earnings of the appellant will be at Rs.54,000 X 16 = Rs.8,64,000/-.”

15. Yet in recent case of **Anant son of Sidheshwar Dukre Vs Pratap son of Zhampanappa Lamzane and another** reported in 2018 (9) SCC 450, Hon'ble Supreme Court has 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 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 vs National Insurance Company Ltd](#) {(2010) 10 SCC 341} 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.”

16. Hon'ble Supreme Court in aforementioned judgments categorically held that while awarding compensation, it has to be seen that what will be the effect of disability sustained by injured on part of body towards his earning capacity.

17. In the instant case, appellant suffered permanent disability of his right leg and it was amputated above knee. Now he is unable to perform his earlier work ie motor mechanic with same efficiency due to his permanent disability and therefore, he suffers loss of future income. The appellant is a poor man, employed in a motor garage owned by some other persons. He was being paid only on the basis of his ability to do all kind of works in a motor garage. After becoming disabled by way of amputation of his right leg above knee, he became unable to do all kind of work of mechanic alone which he was earlier doing. In the facts and circumstances of case and considering law laid down by Hon'ble Supreme Court, I have no hesitation in holding that appellant suffered 80% disability for earning his livelihood.

18. In view of above, finding recorded by learned Claims Tribunal that appellant suffered 50% disability for earning livelihood is not sustainable and it is hereby set aside.

19. Next question for consideration is whether learned Claims Tribunal has awarded sufficient amount towards non-pecuniary damages sustained by appellant. The Claims Tribunal awarded only Rs.50,000/- towards pain & suffering due to permanent disability and no amount was awarded towards loss of amenities of life.

20. Undisputedly, appellant/claimant was aged about 40 years and his right leg was amputated above knee and he has to live in the Society with aforementioned permanent disability for his whole life. Hon'ble Supreme

Court in the matter of **R.D. Hattangadi vs M/s Pest Control (India) Pvt. Ltd. and others** reported in AIR 1995 SC 755 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 and suffering and Rs.1,50,000/- in respect of loss of amenities of life....”

(emphasis supplied)

21. In light of aforementioned law laid down by Hon'ble Supreme Court and looking to the discomfort which the appellant has to suffer for whole of his life who belongs to a down trodden community, I deem it fit and proper to further award Rs.50,000/- towards loss of amenities of life.

22. Next issue for consideration is that whether learned Claims Tribunal was correct in holding owner, driver and Insurance Company of both the vehicles involved in accident to be liable for payment of amount of compensation.

23. Last submission made by learned counsel for the appellant is that learned Claims Tribunal committed error in directing respondents- 3 and 5 to pay amount of compensation 50% each.

24. It appears from perusal of sub-para-1 of para-22 of impugned award where learned Claims Tribunal very specifically mentioned that liability of payment of compensation was on respondents- 3 and 5, 50% each and also made them liable jointly and severally. Even in the matter of **TO Anthony Vs Karvarnan and others** reported in 2008(3) SCC 748, Hon'ble Apex Court categorically held that when there is involvement of two or more vehicles in any accident, the claimant(s) can file claim application against any one of the vehicles involved in the accident. Relevant portion of judgment is reproduced here below:

“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.”

25. In view of above, respondents-3 and 5 are jointly and severally liable for payment of amount of compensation to appellant and amount of compensation awarded by learned Claims Tribunal requires reconsideration and recalculation.

26. There is no documentary evidence of age of appellant. His date of birth was mentioned differently in his medical documents, but learned Tribunal assessed his age as 40 years. His income was assessed as Rs.200/- per day though he claimed it as Rs.300/- per day. Appellant has proved his employment and earning as mechanic in garage of Shiekh Mehmood, by examining him as AW- 3, who in his statement stated that there is no documentary evidence with respect to payment of wages of deceased. Therefore, in the opinion of this Court learned Claims Tribunal rightly assessed income of deceased at Rs.200/- per day. The wage assessed by learned Claims Tribunal cannot be said to be disproportionate looking to the nature of employment ie of skilled labour when there is no proof of income.

27. Taking income of appellant as Rs.200/- per day and Rs.6,000/- per month, his yearly income comes to Rs.72,000/-. As permanent disability of appellant is assessed at 80%, his annual loss of income would come to Rs.57,600/- $\{72000 - (72000 \times 80/100)=57600\}$. Appellant is aged about 40 years, therefore, he is entitled for future prospects @ 40% of his income. After adding 40% of his income towards future prospects, his yearly loss of income comes to Rs.80,640/- $\{57600 + [57600 \times 40/100]\}$. Multiplier of 15 would be applicable in this case which makes total loss of income as Rs.12,09,600/- (80640×15) .

28. Apart from above, appellant is also entitled for medical expenses of Rs.24,000/-, for medicines Rs.7,299/-, for diet Rs.5,280/-, for attendant Rs.6,000/- and Rs.50,000/- for pain and suffering, as assessed by learned Claims Tribunal and Rs.50,000/- towards loss of amenities in life as he has to live his whole life with permanent disability occurred to him due to accident.

29. Now appellant is entitled for a total sum of Rs.13,52,179/- (Rupees thirteen lakhs fifty thousand one seventy nine) towards compensation. This amount of compensation is to be paid by respondents- 3 and 5 jointly and severally and it will carry 6% interest from the date of application till its realisation. Other conditions imposed by learned Claims Tribunal will remain intact.

30. Appeal is allowed in part and award passed by learned Claims Tribunal modified accordingly.

31. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE