

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1254 of 2012

Puranlal Hewar S/o Kamta Prasad Hewar Aged About 45 Years, R/o. Village- Seoni, P.S. Mandir Hasaoud, P.O. Mandir Hasaoud, Tah. And Distt. Raipur C.G.

---- Appellant

Versus

1. Captain Singh S/o Ghanpat Singh Bacheni Ward No. 03, Near Middle School, P.S. And Distt. Manendragarh Hariyana, Present R/o Sahib Road Lines, P.S. Amanaka, P.O. Raipur, Tahsil and Distt. Raipur, C.G.
2. Raj Kumar S/o Ram Kumar, R/o. Village And Post Kathod, Tah. And Distt. Manendragarh Hariyana.
3. The Chola Mandalam M.S. General Insu. Co.Ltd. Thru- Branch Manager, Branch Office, Vanijiya Bhawan, Sai Nagar, Devendra Nagar, P.S. Devendra Nagar, P.O. Raipur, Raipur, Tah. And Distt. Raipur C.G

---- Respondents

For Appellant	:	Shrt Shivendu Pandya, Advocate.
For Respondent No.3	:	Shri Rohitashava Singh, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

15/05/2019

- 1 By the instant appeal, appellant/claimant is challenging legality and validity of impugned award dated 06.09.2012 passed by learned 6th Additional Motor Accident Claims Raipur, C.G (for short 'the Tribunal') in Claim Case No.197/2011, whereby the Tribunal allowed claim application in part and awarded a total sum of Rs.6,60,000/- as compensation under all heads in an injury case.

- 2 Brief facts necessary for disposal of this appeal are that on 23.01.2009 at about 2:30 pm, appellant (injured) alongwith Hari Soni & Sanjay Katariya was going towards Mahasamund from Raipur on their bicycles and when they reached near Agriculture College, one Tractor (truck) bearing registration No.HR-66/A/1141, (hereinafter shall be referred to as “the offending vehicle”), driven by respondent No.1-Captain Singh, dashed their bicycles, on account of which they fell down and Hari Soni died on spot. Present appellant - Purnanlal Hwar sustained grievous injuries on his head, face & both legs. He was brought to Ramkrishna Hospital at Raipur where he remained admitted from 23.01.2009 to 27.02.2009 as indoor patient and during this period, his both legs were amputated.
- 3 Appellant/claimant on account of injuries sustained by him filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (for short ‘the Act of 1988’), before the Competent Claims Tribunal claiming Rs.15,00,000/- as compensation.
- 4 Respondent Nos. 1 & 2, driver and owner of offending vehicle, submitted their reply to claim application and denied all adverse averments made in claim application. They further pleaded that on the date of accident vehicle was insured with Insurance Company and it was being used in accordance with terms and conditions as mentioned in insurance policy.
- 5 Respondent No.2 owner of offending vehicle pleaded that he handed over offending vehicle to Respondent No.2 driver of offending vehicle after perusing and satisfying that license issued to him for driving Class

of vehicle mentioned in it, therefore, they prayed for dismissal of claim application against them.

- 6 Appellant/Insurance Company submitted reply to claim application and denied all adverse pleadings made in claim application. It was pleaded that no accident took place from alleged offending vehicle and there was non-compliance of provisions of Section 158(6) & 134(c) of the Act of 1988 as no information has been given to insurance company with respect to accident. It was further pleaded that on the date of accident, driver of offending vehicle was not having valid & effective driving license. As offending vehicle was being plied in breach of condition of insurance policy, therefore, insurance company is not liable to indemnify insured. It was also pleaded that appellant/injured himself was contributory negligent in accident as he himself was driving bicycle at the center of road.
- 7 Learned Claims Tribunal after appreciating pleadings and evidence of respective parties held that accident took-place due to rash and negligent driving of driver of offending vehicle (Tractor); injuries sustained by appellant was due to accident caused by offending vehicle; there was no violation of any of conditions of insurance policy as on the date of accident driver of offending vehicle was holding valid and effective driving license.
- 8 Learned Claims Tribunal while arriving at aforementioned findings allowed claim application in part and awarded a sum of Rs.6,60,000/- as compensation to the claimant.

- 9 Learned counsel for the appellant submits that though the Tribunal has held that injured/appellant suffered 100% loss of income as he lost both his legs in the accident, but failed to award any amount towards pains & suffering and loss of amenities in life. He further argues that the Tribunal committed error in not awarding any amount towards loss of future prospects when the Tribunal has assessed 100% loss of income of appellant. He further argues that the Tribunal awarded very meager amount under other conventional heads.
- 10 Per contra learned counsel for respondent No.3/Insurance Company supported the impugned award and pleaded that the Tribunal has not only awarded amount towards medical expenses but also under the head of pains and sufferings. He further submits that amount of compensation as awarded by Claims Tribunal is just and proper and it does not call for any interference.
- 11 I have heard learned counsel for the parties and perused the record.
- 12 So far as, findings recorded by the Tribunal with respect to loss of income of appellant i.e. 100%, and that there was no violation of conditions of insurance policy are concerned, the same were not challenged by the insurance company, and thus the same has attained finality. Therefore, now it is to be seen whether reasonable amount of compensation was awarded in facts and circumstances of this case to the claimants.
- 13 From perusal of impugned award it is clear that though annual loss of income of injured due to 100% permanent disability suffered by him was

estimated at Rs.42,000/-, but nothing has been added in this assessed income towards loss of future prospects. Hon'ble Supreme Court in catena of decisions including in **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** has held that in case the deceased, victim of motor accident, was self-employed or on a fixed salary, and below the age of 50 years, an addition of 25% of actual loss of income towards future prospects should be made. In the case at hand, at the time of accident injured/appellant was 45 years old and working on a fixed salary in Home Guard, therefore, 25% of the proved income needs to be added towards future prospects in the income of deceased.

14 Further, the Claims Tribunal has also not awarded any amount to the claimant for non-pecuniary loss i.e. for loss of amenities, pains & sufferings.

15 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.

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

¹(2009) 14 SCC 1

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".

16 The Hon'ble Supreme Court in the matter of **R.D. Hattangadi v.**

M/s Pest Control (India) Pvt. Ltd. and others² 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)

17 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:-

² AIR 1995 SC 755

³ 2005 (2) CG.L.J. 19

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, 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)

- 18 In the given facts and circumstance of case and in view of law laid down by Hon'ble Supreme Court in **Arvind Kumar Sharma v. Roshanlal, R.D. Hattangadi & Arvind Kumar Sharma v. Roshanlal's case** (supra) and looking to disability and injuries suffered by appellant with which he has to live his whole life. Appellant lost both of his legs and he has to creep. Appellant have to make extra expenditure towards conveyance for his movement etc. In the considered opinion of this Court, the appellant is also entitled for non-pecuniary damages i.e. pains & sufferings & loss of amenities in life.

- 19 As per pleadings made in claim application, the appellant remained admitted in hospital for a period of more than one month. Looking to injuries suffered by claimant, he would have certainly needed help of an attendant at least during his treatment period. Even if such assistance is rendered by a family member of injured, then also the claimant is entitled for compensation towards attendant. Therefore, in the considered opinion of this Court, the appellant is entitled for compensation under the head of attendant, diet and conveyance charges.
- 20 In view of above, this Court proposes to recalculate amount of compensation payable to the claimant/appellant.
- 21 Accordingly, annual loss of income to claimant/appellant is taken as Rs.42,000/-, as determined by Claims Tribunal, and since at the time of accident the claimant was 45 years old and working on a fixed salary, therefore, in view of the law laid down in the matter of **Pranay Sethi's case** (supra), 25% needs to be added towards loss of future prospects, which comes to Rs.10,500/- (25% of 42,000). Thus, total loss of income of claimant/appellant for the purpose of calculating compensation comes to Rs.52,500/- (42000 + 25% of 42,000). By applying multiplier of 14, as applied by Claims Tribunal, to annual loss of income, total loss of income would come to Rs.7,35,000/- (52500x14). Claimant/appellant is also entitled for an amount of Rs.1,00,000/- towards pains and sufferings and Rs.1,00,000/- towards loss of amenities in life. The claimant is further entitled for Rs.4,000/- towards attendant and Rs.2,000/- for diet & conveyance expenses of attendant. In addition, appellant is also entitled for an amount towards medical expenses as awarded by the Claims

Tribunal i.e. Rs.50,000/- and an amount of Rs.10,000/- towards future conveyance expenses.

22 In view of the above, now appellant/claimant will be entitled for additional sum of Rs.10,01,000/- instead of Rs.6,60,000/- as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rests of the conditions of impugned award shall remain intact.

23 In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

Sd /-
(Parth Prateem Sahu)

Judge