

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1101 of 2013

- Brahmanand Kumar S/o Narendra Kumar Singh Aged About 23 Years R/o Janakpur, P.S. And Tah. Baikunthpur, Distt. Korea, Chhattisgarh

---- Appellant

Versus

1. Sher Khan, S/o Hasrat Aged About 27 Years R/o Gelhapani, North Chirmiri Colliery, P.S. Chirmiri, Tah. Manendragarh, Distt. Korea, Chhattisgarh (Driver of Bolero vehicle bearing registration No.CG16-B-0527)
2. Bihari Lal S/o Late Duleshwar Sahu R/o Naya Bazar Para, Mines Colony, 200 Katkona Colliery, Post- Katkona, P.S. Katkona, Tah. Baikunthpur, Distt. Korea, Chhattisgarh (Owner of Bolero vehicle bearing registration No.CG16-B-0527)
3. Reliance General Insu. Co. Ltd. S/o Regd. Off. Reliance Centre-196 Wall, Chandhirachand Marg, Belard Estate Mumbai- 400038, District : Mumbai, Maharashtra (Insurer of Bolero vehicle bearing registration No.CG16-B-0527)
4. Deependra Kumar Singh @ Neeraj Singh Dead S/o Chandrabhan Singh Aged About 32 Years R/o Mahalpara, Baikunthpur, P.S. And Tah. Baikunthpur, Distt. Korea C.G., District : Koriya (Baikunthpur), Chhattisgarh – **deleted since dead**

---- Respondents

For Appellant : Shri Anil Gulati, Advocate
For Respondents-1 and 2 : None appears
For Respondent- 3 : Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

06.05.2019

1. Appellant/ Claimant by this instant appeal has challenged the impugned award dated 02.08.2013 passed in Claim Case No. 106 of 2013 by learned Additional Motor Accident Claims Tribunal (FTC) Baikunthpur, district- Korea CG (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.1,51,200/- in an injury case.

2. Brief facts for disposal of this appeal are that on 28.04.2007 appellant was travelling in a Jeep bearing No.CG10A-2025 as a driver. The Jeep was owned by deceased Dipendra Kumar Singh. When appellant while driving the Jeep was going to Baikunthpur, at that relevant time when he reached near Dakaipara bridge, one Bolero Jeep bearing No.CG16 B-0527 (offending vehicle) driven by respondent- 1 dashed Jeep driven by appellant due to which one tyre of Jeep bursted and thereafter vehicle turned turtle. In the accident, appellant suffered grievous injuries on his person including fracture injury over elbow joint ie *ulna humerus* bone. Appellant took treatment from Holycross Hospital, Ambikapur but even after taking the best treatment at his approach, his fracture injury could not recovered in proper manner and he sustained permanent disability. Dr Rajendra Bansariya issued permanent disability certificate to the extent of 50% over his right hand.

3. Appellant filed claim application before competent Claims Tribunal mentioning therein that at the time of accident he was doing agriculture work as well as work of driver, thereby earning his livelihood but due to permanent disability sustained by him he is unable to do his work of driver and agriculture work. On the basis of above, appellant claimed Rs.21,20,000/- in total towards compensation.

4. Respondents- 1 and 2 who are driver and owner of offending vehicle denied the fact of any accident by it and stated that at the time of accident the Jeep driven by appellant was standing and it was hit by one unknown vehicle. Respondent- 3 /Insurance Company had not submitted its reply

to claim application and subsequently, after lapse of several hearings, their right to file reply has been closed by learned Claims Tribunal.

5. Learned Claims Tribunal while appreciating pleadings, framed three issues for consideration and after conclusion of trial, allowed claim application in part and awarded a total sum of Rs.1,51,000/- towards compensation by assessing permanent disability of appellant up to 15% only towards whole body.

6. Learned counsel for the appellant submitted that learned Claims Tribunal committed error in assessing disability of appellant to 15% without assigning any reason ignoring his disability certificate Ex.P/77 proved by Dr Rajendra Bansariya, AW3. He also argued that learned Claims Tribunal has not considered evidence of Dr Rajendra Bansariya AW3 and Dr Ashish Karan AW4 in its entirety. He further submits that Dr Ashish Karan AW4 in very specific terms stated that the bone where injury sustained by appellant has been crushed into pieces and he could not recover fully. He further argues that learned Claims Tribunal erred in not awarding any amount towards loss of amenities in life and very meagre amount has been awarded on all other heads ie pain and suffering etc.

7. Learned counsel for respondent- Insurance Company would support impugned award and further stated that learned Claims Tribunal rightly assessed permanent disability of appellant and awarded appropriate compensation on several heads which do not call for any interference.

8. I have heard learned counsel for the parties and perused records. Perusal of records would show that happening of accident and the manner

in which it took place are not disputed and no appeal has been preferred by respondent- Insurance Company challenging the findings recorded by learned Claims Tribunal.

9. Appellant filed discharge ticket (Ex.P/33) of Community Health Centre, Baikunthpur wherein it has been shown that date of admission as 28.04.2007 and date of discharge as 16.06.2007. From aforementioned document it is clear that appellant took treatment as inpatient for about more than 1 ½ month. Perusal of above discharge ticket would also show that appellant sustained three fracture injuries ie *Ankylosed Elbow Rt with healed #, Shaft humerus Rt with # Ulna Rt with # intercondylar humerus*. Perusal of discharge ticket would show that three fracture injuries have been sustained by appellant and period of treatment is also proved by documents. Appellant further took treatment at Holycross Hospital, Ambikapur as inpatient from 20th -29th November, 2007 which is evident from Ex.P/34, discharge report of that hospital, where appellant undergone surgery. Date of appellant's discharge from this hospital was on 29.11.2007. On perusal of aforementioned two documents ie Ex.P/33 and P/34, it is clear that appellant sustained grievous injuries over his right ulna and other parts of same hand. Even after this treatment when appellant could not cured fully, he presented himself before Medical Board for assessing disability sustained by him. Medical Board, Baikunthpur had issued permanent disability certificate to the extent of 50% showing appellant sustained 50% permanent disability.

10. Dr Rajendra Bansariya who issued disability certificate Ex.P/77 has been examined before learned Claims Tribunal as AW3. He stated that

there was no proper movement in hand of appellant. He also denied suggestion given to him by learned counsel for respondents that injury sustained by appellant could be cured after three years.

11. Dr Ashish Karan AW4, working in Community Health Centre, Baikunthpur specifically stated in his evidence that from 28.04.2007 to 16.06.2007 appellant took treatment as inpatient. He further stated that appellant suffered grievous injuries and his right hand ulna bone was crushed and therefore, he could not be cured fully. He denied the suggestion that appellant became disabled due to his own negligence, but stated the reason of becoming disabled due to severe injuries.

12. Learned Claims Tribunal taking into consideration aforementioned documents and evidence available on record, assessed permanent disability to the extent of 15%.

13. In view of aforementioned facts and circumstances and evidence available on record, question which arises before this Court is whether Tribunal assessed the disability of appellant correctly, and if not, what will be percentage of disability sustained for calculating amount of compensation on the head of loss of income due to permanent disability. The undisputed facts available on record would show that on the date of accident appellant was engaged as driver and driving vehicle of one Dipendra Kumar Singh, who was arrayed as non-applicant-4, who died during pendency of claim case. This fact has not been controverted by learned counsel appearing for respondents. From the above fact it is clear that appellant on the date of accident was also doing work of driver.

Appellant also submitted documents of agriculture property before Claims Tribunal which were marked as Ex.P/72 to 76 collectively, wherein description of land has been in the form of Khasra issued by competent authority. The said documents would show that agriculture property was recorded in the name of Jayraso, s/o Sundersai and Ex.P/75 would show land recorded in the name of Vijendra, s/o Ramswarup. In view of above documents which were exhibited and marked as annexures would show that there was agriculture property in name of family members of appellant and appellant being elder child in his family, has to do agriculture activities from time to time.

14. Nature of work and employment which appellant was doing prior to the date of accident cannot be questioned in view of documents filed and annexed as exhibits as mentioned above as well as copy of license which has been marked as Ex.P/78 which is issued by competent authority authorising appellant to drive motorcycle with gear or Light Motor Vehicle. Arun (AW/6) in his statement also stated that appellant was doing work of driver. Non-applicant-4, owner of vehicle which was driven by appellant also admitted in his pleading about appellant's engagement as driver. Non-applicant-4 died during pendency of application before learned Claims Tribunal.

15. In view of above, in opinion of this Court, nature of work of appellant as pleaded in claim application does not appear to be a false pleading and appellant successfully proved it by placing documentary and oral evidence on record. Insofar as the work of engagement as driver is concerned, other witnesses who have been examined in support of

appellant has categorically stated that on the date of accident appellant was working as driver who are Chayan Prakash AW5 and Arun AW6, and on the date of accident were travelling on the same vehicle which was driven by appellant.

16. Looking to the evidence of two doctors who are experts and stated that appellant sustained multiple fracture over his right hand and also stated by treating doctors the injury sustained by appellant in right hand was grievous injury as there was crushed fracture injury. The doctors also stated that appellant cannot be cured fully. Looking to the nature of work which the appellant was doing prior to the accident, his statement that he is unable to do any work from that hand, it cannot be presumed to be false and the work of driver or agriculturist can be performed by two healthy hands only.

17. Hon'ble Supreme Court has considered loss of income looking to nature of disability and engagement of work of injured for the purpose of earning his livelihood. It is not the case that any type of permanent disability is percentage of loss of income is to be calculated only on account of considering percentage of permanent disability mentioned in disability certificate. Looking to nature of work of injured even if the injured suffered permanent disability to the extent of 50%-60% as per medical certificate, even then, he may suffer 100% loss of income on account of his disability looking to his/her nature of employment. Hon'ble Apex Court considered this very aspect in plethora of judgments. One of those judgments is **Raj Kumar Vs Ajay Kumar and another** reported in 2011 (1) SCC 343, in which Hon'ble Supreme Court held as under :

“7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

Assessment of future loss of earnings due to permanent disability.

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to be incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents

injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

18. Issue of loss of income due to permanent disability has been again considered by Hon'ble Apex Court in the matter of **Jakir Hussein Vs Sabir and others** reported in 2015(7) SCC 252, has held as under :

"15.....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% 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..... 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.....”

19. Hon'ble Supreme Court has also considered the award of compensation on account of non-pecuniary damages to the injured on account of permanent disability suffered by him in the matter of **RD Hattangadi Vs Pest Control (India) Pvt Limited (1995)** reported in 1 SCC 551 has held as under :

“ No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. Money cannot renew a broken and shattered physical frame. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.”

20. Learned Claims Tribunal assessed permanent disability to the extent of 15% only without assigning any specific reason or base for arriving at the said finding. Right hand of any person is very important part of body to execute any work. Looking to the evidence of two treating doctors with respect to disability and nature of work of driver, appellant became 100% disabled as he suffered 100% loss of income. Loss of income is to be assessed looking to the engagement of injured/appellant and nature of his work on date of accident and not only considering the percentage of disability. Learned Claims Tribunal has only taken into consideration Section 4(B) of Employees Compensation Act, 1922 considerations for awarding compensation under Employees Compensation Act is somewhat different than awarding compensation under Motor Vehicle Act 1988. Consideration of percentage of disability provided under Employees Compensation Act may be one of the factors for consideration. Consideration of factors for calculation of compensation under both the aforementioned acts is entirely different. Claims Tribunal fell into error in only looking to the calculation of loss of income under Employees Compensation Act while deciding a case of compensation under Motor Vehicle Act.

21. Appellant failed to prove his income, therefore, learned Claims Tribunal rightly assessed income of appellant who was aged about 23 years on the date of accident as Rs.3,000/- per month which in the opinion of this Court, correctly assessed.

22. Income of injured appellant is assessed as Rs.3,000/- per month on notional basis and his yearly income would be Rs.36,000/-. As this Court

assessed permanent disability of appellant at 100%, his annual loss of income would be Rs.36,000/-. Age of injured appellant on the date of accident was 23 years and therefore, multiplier applicable would be 18, which makes compensation towards permanent disability as Rs.6,48,000/- (36000 x 18).

23. Learned Claims Tribunal awarded meagre amount on the head of pain and suffering and loss of amenities in life, which also required to be recalculated. In view of above discussion the impugned award passed by learned Claims Tribunal requires reconsideration and recalculation.

24. Appellant is also entitled to receive an amount towards pain and suffering and mental agony. Looking to the nature of injury and part of body which was affected due to permanent disability, everyday appellant has to undergo pain and suffering causing mental pain and agony. Appellant is aged only 23 years, therefore, in the opinion of this Court, he is entitled for Rs.20,000/- towards pain and suffering and mental agony is Rs.20,000/-. Appellant is unmarried and he has to live his whole life with disability suffered on his right hand (over elbow) therefore, in my opinion, appellant is further entitled for Rs.50,000/- on the head of loss of amenities of life.

25. Appellant is also entitled for amount awarded by learned Claims Tribunal Rs.9,000/- towards attendant, Rs.9,000/- towards special diet, Rs.20,000/- towards medical expenses, Rs.1,000/- for conveyance.

26. Now appellant will be entitled for Rs.7,77,000/- (648000 + 20000 + 20000+ 50000 + 9000 + 9000 + 20000 + 1000) (Rupees seven lakh

seventy seven thousand) in total instead of Rs.1,51,200/- as awarded by learned Claims Tribunal. Amount of compensation would carry 6% interest from the date of filing of application till its realisation.

27. Appeal is allowed in part and impugned award is modified to the extent as indicated above.

28. No other ground has been raised by the appellant.

29. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE