AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 842 of 2013

The Oriental Insurance Co. Ltd. Through its Divisional Manager, Divisional Office 1st Floor, Rama Trade Center, Near Bus Stand, Larkspur (C.G.) 495001.

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Versus

1. Ranjan Haldhar, S/o Shri Balai Haldhar, aged about 29 years, Caste Basod, R/o village Kumharras, Sukama, Civil Distt. Dakshin Bastar, Dantewada, Revenue Distt. Sukma (C.G.).
2. Govind Kumar Thakur, S/o Phirturam Thakur, aged about 26 years, R/o village Arjunda, Tahsil Chhindgarh, P.S. Sukma, Civil Distt. Dakshin Bastar, Dantewada, Revenue Distt. Sukma (C.G.).
3. Shivdas Singh S/o Shri Ramashankar Singh, aged about 52 years, R/o Bagichapara, Sukma, Tahsil and P.S. Sukma, Civil Distt. Dakshin Bastar, Dantewada, Revenue Distt. Sukma (C.G.).

---- Respondents

For Appellant	:	Mr. R.N. Pusty, Advocate.
For Respondent No. 1	:	Mr. Alok Dewangan, Advocate.
For Respondents No. 2 and 3	:	None.

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

31/01/2019

1. By this instant appeal, the Insurance Company has challenged the legality, validity and propriety of the impugned award dated

29/06/2013 passed by Motor Accident Claims Tribunal, South Bastar Dantewada, C.G. (hereinafter referred to as 'Claims Tribunal') in Claim Case No.354/2011, whereby the learned Claims Tribunal partly allowed the claim application of the claimant and awarded a total sum of Rs. 10,83,672/- as compensation on all heads.

2. Brief facts for disposal of this appeal, are that, the claimant was working with Shivdas Singh, contractor as office clerk (*Munshi*). Shivdas Singh was a contractor working with the Essar Steel Company, Bacheli, District Dantewada. On 27/08/2009, at about 2.45 pm, when the claimant was travelling on a Mahindra Scorpio Jeep bearing registration No. C.G./18/D/0639 (hereinafter referred to as 'offending vehicle') driven by respondent No. 2, namely Govind Kumar Thakur and owned by respondent No. 3, namely Shivdas Singh and going for the work of his employer-Shivdas Singh, at that relevant time, due to rash and negligent driving of respondent No. 2, the offending vehicle met with an accident and dashed the electric pole. The electric pole fell down over the roof of the offending vehicle and the claimant sustained severe lacerated wound over his head. The claimant was immediately taken to District Hospital, Dantewada where he was given primary treatment and thereafter looking to the severeness of the injury sustained by him, he was refereed to the Maharani Hospital, Jagdalpur where he was admitted on 27/08/2009 at about 8.00 pm and during his examination, following injuries have been found on his body :-

> "Comminuted fracture of body of C6 vertebra with posterior displacement of fracture fragment causing thecal sac compression. Linear fracture of both laminae. Linear fracture of body and left lamina of C7 vertebra."

3. Looking to the seriousness of the injury sustained by the claimant, his employer-Shivdas Singh took him to the Seven Hills Hospital at Visakhapatnam for best treatment where he took treatment as in patient from 31/08/2009 to 19/09/2009 and also undergone surgery. The claimant even after getting the best treatment of his reach, he could not cure fully, but he become bedridden due to the injuries sustained by him and he was unable to move as well. Subsequently, he was examined by the District Medical Board, Dantewada where he has been declared to be 75% permanent impairment with a note that on the date of examination, the claimant was unable to stand and walk without support. This was the condition of the claimant even after taking the best treatment and getting himself examined before the District Medical Board on 18/04/2004.

4. As the claimant become 75% permanently disabled due to injury sustained by him in a motor accident on 27/08/2009, he became permanently bedridden and unable to stand or move without any support and was unable to work, therefore, he filed a claim application before the competent Claims Tribunal under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') claiming Rs.32,00,000/- in total on all heads as compensation.

5. Respondents No. 2 and 3 driver and owner of the offending vehicle submitted reply to the claim application and the fact of ownership of the vehicle as well as the employment of the claimant was admitted. It was also admitted that while returning after completion of work from Geedam, the offending vehicle met with an accident, in which, the claimant sustained injuries. They have further pleaded and admitted that the claimant was taken to Seven Hills Hospital at Visakhapatnam for treatment where the claimant was given treatment as indoor patient for about 20 days. It has been further pleaded that as on the date of accident, the driver of the offending vehicle was possessing valid and effective driving licence to drive the vehicle and on the said date, the offending vehicle was insured with the Insurance Company, therefore, the liability, if any, would be on the Insurance Company to pay the compensation if any awarded by the Claims Tribunal.

6. The Insurance Company submitted reply to claim application and denied the fact of accident as pleaded in the claim application and admitted by respondents No. 2 and 3 in their reply to the claim application. They have further denied the fact of treatment which the claimant took at different hospitals for the injuries sustained by him in motor accident, They further pleaded that on the date of accident, the driver of the offending vehicle was not having any valid and effective driving licence to drive the vehicle, therefore, due to violation of condition of insurance policy, the Insurance Company is not liable to pay any amount of compensation if awarded by learned Claims Tribunal.

7. Learned counsel appearing for the Insurance Company submitted that the learned Claims Tribunal committed an error in holding the claimant to be 100% disabled contrary to the disability certificate issued by District Medical Board, which mentions the disability to the extent of 75% only. He further submitted that with the disability of 75%, a person can perform some kind of work, therefore, the learned Claims Tribunal committed an error in awarding an amount accepting that the claimant became 100% disabled and cannot perform any work with the disability of 75%. He further submitted that medical bill (Ex. A-9) submitted by the claimant along with his claim application of Seven Hills Hospital at Visakhapatnam is only an estimated expenditure memo, which has been issued immediately after the claimant got admitted in the hospital. The amount mentioned in Ex. A-9 cannot be treated to be an expenditure incurred by the claimant towards his treatment. He further submitted that the photocopy of the discharge ticket which has been submitted before the learned Claims

Tribunal vide Ex. A-40A showing the date of admission of the claimant as indoor patient on 31/08/2009 and date of discharge is 19/09/2009 wherein the net payable amount has been mentioned as Rs.2,42,922/-. He further submitted that even otherwise, if the document is accepted as the discharge ticket of the claimant, then it shows that the total expenditure incurred by the claimant in treatment is Rs.2,42,922/-, but the learned trial Court has erroneously added Rs.1,56,750/- along with the amount actually incurred i.e. Rs.2,42,922/- and awarded a total sum of Rs.3,99,672/- towards medical expenditure. He further submitted that the amount which ought to be awarded towards medical expenditure is only Rs.2,42,922/- and not Rs.3,99,672/-. He further submitted that the learned Claims Tribunal committed an error in awarding medical expenditure as assessed by it to the claimant, whereas the medical bills have been issued in the name of the Senior Manager, Essar Steel Company Limited and not in the name of the claimant or any other members of family and relative, therefore, he argued that the medical expenditure incurred towards treatment of the claimant has been borne by the Essar Steel Company Limited and not by the claimant himself, therefore, the claimant cannot be entitled to be compensated towards the amount of medical expenditure.

8. Learned counsel appearing for the claimant submitted that after receiving notice of this appeal issued from this Court, the claimant has filed cross-appeal for enhancement of the amount of compensation on the grounds mentioned therein.

9. Learned counsel appearing for the Insurance Company raised an objection with respect to the cross-appeal filed by the claimant for enhancement of the award on the ground that the learned Claims Tribunal has appropriately assessed the income of the claimant as the documents annexed with the record shows that the claimant belongs to be a member of 'Below Poverty Line'.

10. On the other hand, learned counsel appearing for the claimant/respondent No.1 submitted that much more amount have been expended towards medical treatment, then the amount awarded by learned Claims Tribunal. He further submitted that the total medical expenditure though initially has been borne by Essar Steel Company Limited, but subsequently, it has been deducted from the running bills of the contractor under whom he was working and subsequently, the contractor received back the amount from the claimant, therefore, the claimant is entitled for all the expenditure incurred by him towards medical treatment. He further submitted that from perusal of disability certificate (Ex. A-40), it is evident that though the claimant sustained 75% of disability, but he is unable to stand or walk without any support and looking to the nature of work which the claimant was doing prior to the date of accident i.e. office clerk (*Munshi*) for which, the person working an office clerk has to visit different offices of the Government and Company as well as the sites where the work of contractor is going on. He has to travel each and every day for this purpose, therefore, the learned Claims Tribunal while considering the nature of work and disability, properly assessed the functional disability of the claimant and awarded an amount treating him to be 100% disabled to perform work. He further submitted that by the work of *Munshi* under the employment of the contractor-Shivdas Singh (AW-2), he was getting a salary of Rs.6,000/- per month, which was also admitted by the employer in his evidence before the learned Claims Tribunal, but the learned Claims Tribunal has illegally not considered the specific and admissible piece of evidence of employer without any reason. He lastly submitted that the learned Claims Tribunal awarded meager amount towards pain and suffering, convenience and special diet and not awarding any amount towards attendant, future prospects and loss of amenities of life.

11. I have heard learned counsel appearing for the parties and perused the record carefully.

12. So far as first contention raised by learned counsel for the Insurance Company with respect to assessing the disability by the learned Claims Tribunal of the claimant to the extent of 100% is concerned, I have perused the medical documents attached along with record vide Exs. A-4 to A-39, which clearly shows that claimant sustained comminuted fracture of body of C6 vertebra with posterior displacement of fracture fragment causing thecal sac compression, linear fracture of both laminae and linear fracture of body and left lamina of C7 vertebra. On account of aforesaid injuries, the claimant has been operated at Seven Hills Hospital at Visakhapatnam and he made his all endeavors to get himself fully medically cured, but when he himself find unable and sustained permanent disability on his person, then, he appeared before the Medical Board to assess the disability sustained by him. The claimant was examined by the Medical Board on 18/04/2012 after more than two years of the date of accident and on that date also, the Medical Board found the claimant to be disabled to the extent of 75% i.e. permanent physical impairment and in a note, it has also been mentioned that the claimant was unable to stand and walk without support. The said disability certificate was placed on record and got it proved by Dr. A. R. Gota (AW-3) vide Ex. A-40.

13. 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:-

> 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.
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> ***Assessment of future loss of earnings due to permanent disability.***
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> 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 the 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

1 **(2011) 1 SCC 343**

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 ability (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.”

14. Undisputedly, if the disability certificate issued by the District Medical Board is taken into consideration along with injuries sustained by the claimant as well as all medical documents wherein line of treatment is given to the claimant is considered, I am unable to accept the argument raised by learned counsel for the Insurance Company that the learned Claims Tribunal ought to have awarded the amount of compensation taking the permanent disability to the extent of 75%.

15. The claimant in his evidence has specifically stated before the learned Claims Tribunal that he is unable to perform any work due to the disability sustained by him. The Insurance Company, though cross-examined the claimant, but have not put any specific question with respect to his employment and earning by any other mode.

16. (AW-3) Dr. A.R. Gota, who was one of the members of Medical Board has been examined before the learned Claims Tribunal. He in his evidence has specifically stated that the claimant has sustained Quadri paralysis (paralysis) on both his hands and legs. From the above statement of (AW-3) Dr. A.R. Gota, it is clear that due to disability sustained by claimant, he is unable to perform the work of any nature for earning his livelihood.

17. The Hon'ble Supreme Court in the matter of **Jakir Hussein v. Sabir and others**[2]**,** has held as under :-

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2 **(2015) 7 SCC 252**

> 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…......
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> 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.........

18. In view of the medical documents available on record as well as the disability certificate issued by District Medical Board Ex. A-40 and evidence of (AW-3) Dr. A.R. Gota, in my considered opinion, learned Claims Tribunal has not committed any error while holding that the claimant became 100% disabled to perform any work with respect to earning his livelihood.

19. The next ground raised by learned counsel for the Insurance Company is that the learned Claims Tribunal committed an error by awarding Rs.1,56,750/- twice because the amount shown in Ex. A-9 (Rs.1,56,750/-) is only an estimate of expenditure and not the amount payable due to his treatment.

20. I have perused the document Ex. A-9 as well as discharge summery issued by the Seven Hills Hospital at Visakhapatnam, which is placed on record as Ex. A-40A wherein net payable amount has been mentioned as Rs.2,42,922/- in total.

21. In view of the above, learned counsel for the Insurance Company is correct in submitting that the amount of Rs.1,56,750/- is only estimate of expenditure to be incurred for the treatment which has been provided to the care-taker of the claimant/injured when he was admitted in the hospital, therefore, this cannot be taken as amount expended towards the treatment. In the opinion of this Court, learned Claims Tribunal has committed an error in adding Rs.1,56,750/- towards medical treatment which is erroneously done and not sustainable. The medical expenditure incurred at Seven Hills Hospital, Visakhapatnam is only Rs.2,42,922/- instead of Rs.3,99,672/- which the learned Claims Tribunal has taken into consideration for awarding the same to the claimant and the same is not sustainable.

22. Now the next question which has been raised by learned counsel for the Insurance Company that the medical expenditure was not borne by the claimant himself, but all the payment of expenditure has been made by the Essar Steel Company, which is also evident from the medical bills issued in the name of Senior Manager, Essar Steel Company Limited and therefore, claimants would not be entitled for the amount towards medical expenditure.

23. I have perused the evidence of the claimant as well as the employer, who in their evidence stated that though the amount was initially paid by the Essar Steel Company Limited, but subsequently, the same has been deducted from the running bills of the contractor and subsequently, the contractor has recovered the same from the family members of the claimant. In their evidence, they have categorically admitted that they have not filed any document in support of their arguments with respect to the deductions made by the Essar Steel Company Limited from the bills of the contractor nor the payment made by claimant or his family members to the employer.

24. In view of the fact that the claimant has failed to prove any documentary evidence before the learned Claims Tribunal with respect to the deduction of the amount of medial bills from the running bills of the contractor i.e. respondent No. 3, who is working with the Essar Steel Company Limited, in the considered opinion of this Court, the claimant would not be entitled for any amount of compensation towards the medical expenditure as awarded by the learned Claims Tribunal because the document shows that payment was made by Essar Steel Company Limited. The finding and award made by learned Claims Tribunal towards the head of medical expenditure i.e. Rs.3,99,672/- is liable to be set aside.

25. Now, this Court deals with the cross-appeal filed by the claimant for enhancement of the award.

26. The Insurance Company has specifically pleaded in the claim application as well as in cross-appeal that the claimant was employed with the respondent No.3/contractor as *Munshi* and thereby he was getting a salary of Rs.6,000/- per month. The claimant has produced his employer i.e. contractor as his witness to prove his salary, who stated in his evidence that he was paying Rs.6,000/- per month to the claimant towards salary for the work of *Munshi,* which the claimant was doing for him prior to the date of accident.

27. In view of the aforementioned categorical pleading as well as evidence available on record, the learned Claims Tribunal has committed an error in holding the income of the claimant to Rs.3,000/- per month without any basis. Definitely, the evidence available on record of respondent No.3/employer and the nature of care which the employer took towards his employee, the pleading and averment made by the claimant appears to be correct that on the date of accident, he was working with respondent No.3/employer as *Munshi*.

28. Now, the question which arises for consideration before this Court is what would be appropriate monthly income to be assessed looking to the nature of work and employment proved by the claimant before the learned Claims Tribunal.

29. Undisputedly, the accident took place in the year 2009, at that time, even uneducated unskilled labour was getting the wages more than Rs.100/- per day, whereas the claimant seems to be educated and performing the clerical work as pleaded and proved by examining the employer i.e. Shivdas Singh (AW-2), therefore, it would be appropriate to take income of the claimant to Rs.5,000/- per month in the facts and circumstances of the case.

30. Further, in view of the law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[3]**,** 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.

3 **AIR 2017 SC 5157**

31. In view of the 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 the claimant is taken as Rs.5,000/- per month and by adding 40% of the income towards future prospects i.e. Rs.2,000/-, the monthly income of the claimant would be assessed as Rs.7,000/- and yearly income comes to Rs.84,000/- (7000 x 12). At the time of accident, the claimant was aged about 26 years, therefore, in view of the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another[4],** multiplier of 17 would be applicable in the present case. After applying the multiplier of 17, total loss of income of the claimant comes to Rs.14,28,000/- (84,000 x 17). In addition to above, the claimant would further entitle for an amount towards attendant in view of the nature of disability and paralysis on both his hands and legs mentioned in disability certificate Ex. A-40 as also stated by Dr. A.R. Gota (AW-3) in his statement that the claimant has sustained paralysis on both his hands and legs. It may be very difficult to assess the amount to be awarded towards attendant in the facts and circumstances of the case, but keeping in mind the nature of disability of paralysis on his legs and hands, he may be permanently

4 **(2009) 6 SCC 121**

bedridden, therefore, taking the average amount to be incurred towards the person attending him as Rs.2,000/- per month and yearly expenditure of which comes to Rs.24,000/- (2,000 x 12). After applying the multiplier of 17, the amount towards attendant comes to Rs.4,08,000/- for which also claimant/injured is entitled for.

32. This Court is aware that the amount which is to be awarded to the claimant/injured should be 'just compensation' and not a bonanza. The award will be for pecuniary damages and non-pecuniary damages. The assessment of the amount of non-pecuniary damages is quite difficult and several aspects are required to be taken into consideration like nature of injury, age of injured etc.

33. Looking to the nature of injury (spinal injury), the claimant is also entitled for an amount towards pain and suffering for the injuries sustained by him which he would suffer for whole of the life which he has to go. Looking to his tender age of only 26 years on the date of accident, I presume it fit to award Rs.1,00,000/- towards pain and suffering. The claimant is also entitled for an amount towards loss of amenities in life, for which, I deem it proper to award Rs.50,000/- towards loss of amenities in life.

34. On the basis of above recalculation, the claimant will be entitled for total compensation of Rs.19,86,000/- instead of compensation of Rs.10,83,672/- as awarded by the learned Claims Tribunal. The amount already deposited by the Insurance Company would be adjusted from the amount of award as calculated by this Court. The amount of compensation shall carry interest @ 6% per annum from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

35. In the result, the appeal filed by the Insurance Company and the cross-appeal filed by the claimant are allowed in part. The impugned award is modified to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh