NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 165 of 2015

Reserved on 22.10.2019
Pronounced on 15.11.2019

- Krishna Chandrakar, S/o Toran Lal Chandrakar Aged About 36 Years, R/o Village- Khapparwada, P.S.-Anda, Tahsil-Gunderdehi, District-Durg- C.G., (**Claimant**)

---- Appellant

Versus

1. Shivnarayan Deshmukh, S/o Gayaram Deshmukh, R/o Village Kuthrel, P.S. - Anda, Tahsil And District- Durg- C.G., (**Driver**)

2. Nemichand, S/o Punaram Yadav, R/o Village Matwari, P.S.- Anda, Tahsil And District- C.G., (**Owner**)

3. Bhartiya Axa General Insurance Company Ltd. S/o Through Claim Manager, Shanti Nagar Road, Devendra Nagar, Near Commercial Complex, Raipur- C.G., (**Insurer**)

---- Respondents

For Appellant	:	Shri Vedant Bhelonde appears along with Shri P.R.Patankar, Advocate.
For Respondents No.1 & 2:		Shri Ajay Chandra appears along with Shri A.N.Pandey, Advocate.
For Respondent No.3	:	Shri Vaibhav Maheshwari appears along with Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

C.A.V.Order / Award

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 19.11.2014 passed by the 6th Additional Motor Accident Claims Tribunal, Durg (for short, the Claims Tribunal) in Motor Accidents Claim Case No.68/2012, by which, the Claims Tribunal, has allowed the claim in part by awarding total amount of

compensation to the tune of Rs.5,41,811/- with interest @ 6% per annum from the date of filing of Claim Petition till its realisation. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 09.11.2011, the Applicant Krishna Chandrakar was returning to his home at village Khapparwada by his bullock-cart and as soon as he reached near the Rice Mill, his bullock-cart was dashed vehemently from its back side by the offending vehicle "Tata Magic" bearing its registration No.C.G-07-T-2142 which was owned by Non-Applicant No.2 Nemichand and insured with Non-Applicant No.3-Bhartiya Axa General Insurance Company Limited. At the relevant time, it was being driven in a rash and negligent manner by its driver, namely, Shiv Narayan Deshmukh. As a result of which, the alleged accident occurred and the bullock-cart of the Applicant was damaged completely while he was injured seriously and suffered permanent disability to the extent of 23%.

3. On account of the aforesaid accident, the Applicant instituted a claim petition enumerated under Section 166 of the Act of 1988 alleging therein that he was working as a Food Operator in B.E.C. Foods Private Company and used to earn Rs.5,000/- per month and claimed total amount of compensation to the tune of Rs.17,10,000/- under various heads.

4. While denying the aforesaid claim, it is pleaded by Non-Applicants 1 & 2, driver and owner of the vehicle in question, that the Applicant himself was responsible for the alleged accident and pleaded further that the vehicle in question was insured with Non-Applicant No.3, therefore, in case of any liability being fastened, the same could be indemnified by the said insurance company. While, Non-Applicant No.3 contested the claim mainly on the ground that the driver of the offending vehicle was not possessing the effective and valid driving license, therefore, no liability could be fastened

upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the accident occurred on 09.11.2011 due to rash and negligent driving of the driver of the offending vehicle, owing to which, the Applicant was injured badly suffering permanent disability to the extent of 15%. It held further that the driver of the offending vehicle was holding the valid and effective driving license and the insurance company has failed to prove that it was being used in violation of the insurance policy. In consequence, while assessing the monthly income of the Applicant as Rs.4,800/- by considering the pay certificates (Ex.P-266 and Ex.P-267) issued by the Vasudha Facility Solution Private Limited and that by applying the multiplier of 15, assessed the future loss of earning capacity to the tune of Rs.1,29,600/- and considering further the medical bills (Ex.P-24 to Ex-192 and Ex-P.238 to Ex.P-264) observed that a sum of Rs.4,02,911/- has been incurred by the Applicant towards medical expenses. The Claims Tribunal has awarded further sum of Rs.2,000/- each with regard to the expenses relating to the transport and diet, Rs.4,300/- towards attendant for the period of 43 days of his hospitalization. Thus, the total pecuniary amount of compensation has been assessed to the tune of Rs.5,40,811/-. It awarded further a sum of Rs.1000/- as non-pecuniary damages on account of his pain and suffering caused to him on account of the alleged accident. As a consequence, a total amount of compensation of Rs.5,41,811/- was awarded to the Applicant with 6% interest per annum from the date of filing of claim petition till its realisation while fastening the liability upon the insurance company.

6. Being aggrieved, the Applicant has preferred this appeal. Shri Bhelonde, learned counsel appearing for the Applicant submits that while awarding the amount of compensation, the Claims Tribunal has committed an illegality in assessing the permanent disability of the Applicant to the extent of

15% only whereas it ought to have been 23%, as shown in the disability certificate (Ex.P-269) which was duly corroborated by Dr. Kamlesh Yadav (A.W.2). He submits further that while calculating the loss of earning capacity, the loss of future prospects of his income ought to have been taken into consideration. It is contended further that owing to the alleged accident, the Applicant was admitted into the Hospital for a period of 13 months. However, loss of income during this period was not taken into consideration and thereby erred further in not awarding any amount of compensation either towards future medical expenses or loss of his amenities, which was required to be considered in the light of the judgment rendered in matter of "***Raj Kumar*** vs. ***Ajay Kumar and Another***" reported in **(2011) 1 SCC 343.** While inviting attention to the bills (Ex.P-237) amounting to Rs.14,700/- incurred by the Applicant towards repairing of his bullock-cart, it is submitted further that by awarding amount of compensation, the Claims Tribunal ought not to have ignored this much of amount as well. The Claims Tribunal has, thus, fallen in error in not awarding just and fair compensation payable to the Applicant. The award impugned is, therefore, liable to be enhanced and/or modified accordingly.

7. On the other hand, learned counsel for the respondents have supported the award impugned.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. It appears from the perusal of the record that the Claims Tribunal, while considering the pay certificates (Ex.P-266 and Ex.P-267) issued by the Vasudha Solution Private Limited, has assessed the monthly income of the Applicant as Rs.4,800/- and I do not find any infirmity in the same. Likewise, a sum of Rs.4,02,911/- incurred by the Applicant towards medical expenses has also been properly awarded, upon due consideration of the medical bills

(Ex.P-24 to Ex.P-192 and Ex.P-238 to Ex.P-264) furnished by the Applicant and it is, therefore, not required to be interfered as well. However, the finding, as recorded by the Claims Tribunal assessing the loss of earning capacity of the Applicant to the extent of 15%, appears to be unjustified and deserves to be interfered, as a bare perusal of the permanent disability certificate (Ex.P-269), vis-à-vis, the unrebutted statement of Dr. Kamlesh Yadav (A.W.2), it is evident that the alleged disability accrued to the Applicant was 23% with regard to his entire body. The Claims Tribunal has, therefore, erred in reducing the same to the extent of 15% and that too, without assigning any reason. The finding of the Claims Tribunal accordingly deserves to be and is hereby set aside and it is held that the Applicant has suffered permanent disability to the extent of 23% with regard to his entire body.

10. The loss of future prospects of the income of the Applicant is also required to be taken into consideration, in view of the principles laid down in the matter of ***"Sarla Verma (Smt.) and others –v- Delhi Transport Corporation and another"*** reported in (**2009) 6 SCC 121** and also in view of the principles laid down in ***"National Insurance Company Limited -v- Pranay Sethi"*** reported in **(2017) 16 SCC 680,** for awarding just and proper compensation payable to the Applicant. Keeping in mind the young age of the applicant, who was found to be between 35 – 40 years old, he is entitled to 40% of his actual income, i.e., Rs.1920/- (Rs.4800 x 40%) as future increase in his income, i.e., Rs.4,800/- + Rs.1,920/- = Rs.6,720/-. While applying the multiplier of 15, as taken by the Claims Tribunal, the total amount of compensation due to loss of earning capacity along with future prospects in income would thus come to Rs.2,78,208/- (Rs.6,720/- x 23/100 x 12 x 15), instead of Rs.1,29,600/- as assessed by the Tribunal.

11. Now, in order to consider further assessment of compensation, the guidelines laid down by the Supreme Court in the matter of **Raj Kumar** vs.

Ajay Kumar (supra) for awarding compensation in cases of disabilities occurred due to a motor accident are to be seen wherein at paragraph 6, it has been held as under :

> "**6.** The heads under which compensation is awarded in personal injury cases are the following:
>
> *Pecuniary damages (Special damages)*
>
> *(i)* Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
> *(ii)* Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
> *(a)* Loss of earning during the period of treatment;
> *(b)* Loss of future earnings on account of permanent disability.
> *(iii)* Future medical expenses.
>
> *Non-pecuniary damages (General damages)*
>
> *(iv)* Damages for pain, suffering and trauma as a consequence of the injuries.
> *(v)* Loss of amenities (and/or loss of prospects of marriage).
> *(vi)* Loss of expectation of life (shortening of normal longevity).
>
> In routine personal injury cases, compensation will be awarded only under heads (*i*), (*ii*)(*a*) and (*iv*). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (*ii*)(*b*), (*iii*), (*v*) and (*vi*) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

12. While applying the aforesaid principles to the case in hand and in view of the facts of the case involved herein, where it reveals from the record that owing to the alleged accident, the Applicant was injured badly and has suffered permanent disability to the extent of 23%, as observed herein above, and was admitted into the Sector-9 Hospital on 09.11.2011 where he was undergone treatment upto 12.11.2011. He was thereafter shifted to C.I.M.S. Hospital, Central India Institute of Medical Sciences, Nagpur and was treated there upto 20.12.2012. The Applicant was, thus, in Hospital for his treatment

for the period of 13 months. However, the loss of income during this period of treatment as required to be taken into consideration, in the light of aforesaid decision of the Supreme Court, was not taken into consideration. The Applicant is, therefore, entitled to a sum of Rs.4,800/- x 13 = Rs.62,400/- in this regard. That apart, looking to the injuries sustained by him, the Claims Tribunal ought to have awarded future medical expenses also, in view of the said decision. As the Applicant has suffered permanent disability to the extent of 23% and was in Hospital for the period of 13 months, therefore, I deem it proper to award a lump-sum of Rs.20,000/- with regard to future medical expenses, attendant charges, diet and conveyance charges. In addition to that, he is entitled to a sum of Rs.5,000/- towards pain and suffering caused to him in the alleged accident, while a sum of Rs.14,700/- towards repairing of bullock-cart, as he incurred the said amount, as evidenced by the bill (Ex.P-237). Further, it is necessary to award him an amount under the head of loss of amenities as the injuries caused have permanently disabled the Applicant to the extent of 23%, which thereby reduced his enjoyment of life and the full pursuit of all the activities, he was engaged in prior to the accident. I hereby award him a sum of Rs.30,000/- towards loss of amenities. Consequently, the total amount of compensation, the Applicant entitled to is as under:

	Head of Compensation		Amount
(i)	Loss of earning capacity along with future prospects of the income of the Applicant	:	Rs.2,78,208.00
(ii)	Loss of earning during treatment for the period of 13 months (Rs.4,800 x 13)	:	Rs. 62,400.00
(iii)	Expenses incurred towards Medical bills	:	Rs.4,02,911.00
(iv)	Future medical expenses, Attendant, diet and conveyance costs	:	Rs. 20,000.00
(v)	Towards mental agony, pain and suffering	:	Rs. 5,000.00
(vi)	Towards loss of amenities	:	Rs. 30,000.00
(viii)	For repair charges of bullock-cart under Ex.P.237	:	Rs. 14,700.00
	Total	:	Rs.8,13,219.00

13. The Applicant is, therefore, entitled to a sum of Rs.8,13,219/-, instead of Rs.5,41,811/-, as determined by the Claims Tribunal, with 6% interest per annum from the date of filing of claim petition till its realization from the Non-Applicants/Respondents. Rest of the observations made by the Claims Tribunal shall remain intact.

14. The appeal is accordingly allowed in part to the extent indicated herein above. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Anjani