NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 1187 of 2015

Gendaram Sethiya S/o Motiram Sethiya, Aged About 25 Years, Residence of Village Sitlawand Post Khorkhosa Thana Bhanpuri District Bastar, Chhattisgarh (Claimant).

---- Appellant

Versus

1. Sudarshan Ram S/o Vikram Ram, Aged About 35 Years, R/o Thanagudi Para Village Sitlawand Post Khorkhosa P.S. Bhanpuri District Bastar, Chhattisgarh (Driver).
2. Anand Nayak S/o Late Dharuram Nayak, R/o Manjula Para Sonarpal P.S. Bhanpuri District Bastar, Chhattisgarh. Correct address mentioned as above (Owner).
3. The National Insurance Co. Ltd., through Branch Manager Branch Office in front of Head Post Office Jagdalpur District Bastar, Chhattisgarh (Insurer).

---- Respondents

For Appellant	:	Shri Arjun Lal Singroul, Advocate
For Respondents No.1 & 2	:	None
For Respondent No. 3	:	Shri Shivendu Pandya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

27.10.2020

1. Appellant/claimant has preferred this appeal under Section 173(2) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 15.05.2015 passed by the Second Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in MACT No.135 of 2014 whereby learned Claims Tribunal allowed the claim application filed under Section 166 of the M.V. Act in part and awarded Rs.9,33,400/- as compensation in a

permanent disability case.

2. Facts relevant for disposal of this appeal, are that, on 15.02.2014, at about 6.00 PM, when appellant/claimant was travelling on a motorcycle bearing No.CG-17/KF/4944 (hereafter referred to as 'offending vehicle') along with non-applicant No.1 from Bakawand to his village Muli as a pillion rider, at that relevant time, non-applicant No.1 while driving the motorcycle rashly and negligently lost his control and caused accident. In the aforementioned accident, appellant/claimant suffered multiple grievous injuries on his right foot, knee along with other parts of the body. During the course of treatment, his right leg was amputated at Narayana Hospital, Raipur, due to which, appellant/claimant suffered permanent disability.

3. Appellant/claimant filed an application under Section 166 of the M.V. Act before learned Claims Tribunal pleading therein that on the date of accident, he was working as a Driver of Heavy Goods Vehicle under the employment of Sajjan Road Lines in the directorship of Nikunj Jain and earning Rs.7,500/- per month + Rs.100/- daily allowance; prior to the date of accident, he also worked as Driver of Follow Guard with Police Line Jagdalpur and experience certificate was issued to him from the Department; he also undergone training of Truck Driver from Directorate, Employment and Training, Chhattisgarh. It was further pleaded that due to

accidental injuries suffered by him, he became permanently disabled to the extent of 80% and claimed Rs.27,28,000/- as compensation on different heads.

4. Non-applicants No.1 and 2 submitted reply to claim application denying the fact of accident, but admitted the fact that Police of Bakawand has registered Crime bearing No.66/2014 for offence under Section 279 and 338 of IPC against non-applicant No.1. It was also admitted that on the date of accident, non-applicant No.1 was driving the offending vehicle and non-applicant No.2 was owner of the offending vehicle.

5. Non-applicant No.3/Insurance Company submitted reply to claim application denying the pleadings made therein and further pleaded that on the date of accident, non-applicant No.1/driver of offending vehicle was not possessing valid and effective driving licence; there was breach of policy conditions; application under Section 166 of the M.V. Act is not maintainable; insured has not paid premium on all heads under Section 64VV of the Insurance Act, hence, liability to satisfy the amount of compensation cannot be fastened upon it.

6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that appellant/claimant suffered injuries on account of

rash and negligent driving of motorcycle by non-applicant No.1, contributory negligence has not been found to be proved, breach of policy conditions could not be proved by the Insurance Company, insurance policy was 'Comprehensive Insurance Policy', appellant/claimant suffered 80% permanent disability on account of amputation of his right leg based on the disability certificate (Ex.A/13) issued by the District Medical Board, assessed the monthly income of appellant/claimant as Rs.4,500/- per month, awarded total compensation of Rs.9,33,400/- on different heads.

7. Shri Arjun Lal Singroul, learned counsel for the appellant/claimant submits that learned Claims Tribunal erred in assessing the income of appellant/claimant as Rs.4,500/- per month only overlooking the fact that date of accident was of 15.02.2014. Appellant/claimant has placed on record driving licence (Ex.A/71), certificate issued by Sajjan Road Lines (Ex.A/72) showing his employment and wages as Truck Driver and experience certificate issued by Vehicle Department of Police Line, Jagdalpur dated 16.08.2010 (Ex.A/77). He further submitted that learned Claims Tribunal has not awarded adequate amount of compensation towards other non-pecuniary damages as well as not awarded any amount towards loss of future prospects ignoring that it is a case of permanent disability to

the extent of 80%. It is contended that though permanent disability on account of amputation of right leg assessed by District Medical Board to the extent of 80%, but looking to the nature of occupation and employment of appellant/ claimant to be a Driver, it will be 100% loss of earning capacity because appellant/claimant cannot be able to drive any motor vehicle in future with the disability suffered by him. He places reliance on the judgments passed by Hon'ble Supreme Court in **Sanjay Kumar v. Ashok Kumar and Another** reported in **(2014) 5 SCC 330**, **Kala Devi and Others v. Bhagwan Das Chauhan and Others** reported in **(2015) 2 SCC 771**, **Jagdish v. Mohan and Others** reported in **(2018) 4 SCC 571**, **S. Suresh v. Oriental Insurance Company Limited and Another** reported in (**2010) 13 SCC 777, Anant son of Sidheshwar Dukre v. Pratap son of Zhamnnappa Lamzane and Another** reported in (**2018) 4 TAC 22**.

8. Per contra, Shri Shivendu Pandya, learned counsel for respondent No.3/Insurance Company supports the impugned award and submitted that learned Claims Tribunal in absence of prove of documents with regard to employment of appellant/claimant as Truck Driver rightly taken into consideration the income of appellant/claimant as Rs.4,500/- per month, which cannot be said to be erroneous. He further submits that learned Claims Tribunal

has awarded compensation on non-pecuniary damages also like pain and suffering, loss of amenities in life etc. and awarded just amount of compensation, which does not call for any interference.

9. I have heard learned counsel for the respective parties and perused the record carefully.

10. So far as the submission made by learned counsel for the appellant/claimant with regard to nature of employment as Truck Driver with Sajjan Road Lines is concerned, appellant/claimant has filed certificate on the letter head of Sajjan Road Lines (Ex.A/72) signed by its Proprietor, but this document has not been proved by examining the author of the document, hence, the employment and payment of salary of Rs.7,500/- cannot be taken as admissible piece of evidence. To appreciate the submission made by learned counsel for the appellant/claimant with regard to nature of occupation, appellant/claimant has filed driving licence as Ex.A/71, in which, he is authorized to drive 'Light Motor Vehicle, Motorcycle with Gear and Transport Vehicle'. In support of his pleadings and averments, appellant/claimant has further filed Identity Card issued by Directorate, Employment and Training, Chhattisgarh as Ex.A/78, in which, it is mentioned the Occupation/Trade of appellant/claimant to be 'Driver of Truck' and as per his registration, next date for renewal has been shown to be

July 2015.

11. Taking into aforementioned documents placed on record, one thing cannot be overlooked that appellant/claimant is having licence to drive offending vehicle; experience certificate was issued to be driver of Follow Guard and further his registration with Directorate, Employment and Training, Chhattisgarh that appellant/claimant was engaged in the work of motor driving.

12. So far as the income of appellant/claimant is concerned, it has not been proved by examining the author of document Ex.A/72. But then also, learned Claims Tribunal erred in assessing the income as Rs.4,500/- per month of an accident which took place on 15.02.2014. During that period, manual labourer could have earned more income than what is assessed by learned Claims Tribunal.

13. In view of above, taking into consideration the date of accident and the documents placed on record, I find it appropriate to assess the income of appellant/claimant as Rs.6,000/- per month treating him to be skilled labour/driver. On the date of accident, appellant/claimant is shown to be aged about 25 years, hence, there will be an addition of 40% of the established income towards future prospects for calculating the total monthly income in view of law laid down by Hon'ble Supreme Court in case of **National Insurance**

Co. Ltd. v. Pranay Sethi reported in **(2017) 16 SCC 680** and appropriate multiplier would be 17 as applied by learned Claims Tribunal.

14. So far as the submission made by learned counsel for the appellant/claimant with regard to percentage of loss of earning capacity, appellant/claimant has placed on record the disability certificate (Ex.A/13) issued by District Medical Board mentioning 80% permanent physical impairment showing the amputation of right leg above knee. In view of nature of permanent disability suffered by the appellant/ claimant, he will definitely not be able to work as Driver in future and for that, he suffered 100% loss of his earning capacity.

15. The issue with regard to loss of earning in case of amputation of leg of a driver has been considered by Hon'ble Supreme Court in case of **S. Suresh** (supra). In the aforementioned judgment, loss of part of lower limb by driver of the vehicle has been treated to be 100% loss of earning.

16. In view of facts and circumstances of the case where 80% permanent disability certificate was accepted to be proved by learned Claims Tribunal, in the considered opinion of this Court, loss of earning suffered by the appellant/claimant would be 100% instead of 80%.

17. Now, I will calculate the amount of compensation to be awarded to appellant/claimant, which is as follows :

The monthly income of appellant/claimant is taken as Rs.6,000/- per month and Rs.72,000/- per annum. By adding 40% of the income towards future prospects, the total annual income of appellant/claimant will come to Rs.1,00,800/- (72,000 x 40% = 28,800 and 72,000 + 28,800). On the date of accident, appellant/claimant was shown to be 25 years of age, therefore, in view of law laid down by Hon'ble Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, appropriate multiplier would be 17. By applying multiplier of 17, amount of compensation towards loss of income will come to Rs.17,13,600/- (1,00,800 x 17). Apart from above loss of income, appellant/claimant will be further entitled for a sum of Rs.70,000/- towards medical expenses, Rs.25,000/- towards pain and suffering, Rs.15,000/- towards nutritious diet, transportation and attendant etc.

Apart from above, though learned Claims Tribunal has awarded Rs.1,00,000/- towards loss of amenities in life, but looking to the object of M.V. Act that amount of compensation to be awarded to the claimant to be 'just compensation' and not a bonanza. As this Court has taken 100% loss of earning, I find it appropriate to award

Rs.25,000/- towards loss of amenities in life instead of Rs.1,00,000/-.

18. Now, the appellant/claimant is entitled for total compensation of Rs.18,48,600/- (17,13,600 + 70,000 + 25,000 + 15,000 + 25,000) instead of Rs.9,33,400/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 9% per annum from the date of filing of claim application till its realization. 50% of the enhanced amount of compensation shall be kept in Fixed Deposit with any Nationalized Bank for a period of five years and rest of the amount to be disbursed to the appellant. Other conditions imposed by the learned Claims Tribunal will remain intact.

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

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh