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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1020 of 2015

- Niraj Jagatramka, S/o Bhijbushan Jagatramka, aged about 39 years, Occupation- Business, R/o North Chakradhar Nagar, P.S. Chakradharnagar, Tahsil and District Raigarh (CG)

---- Appellant

Versus

1. Sukhdev Prasad Rai, S/o Swarup Prasad, aged about 40 years, R/o Great India Roadways, Ranihat Canal Road, College Square, P.S &Tahsil Cuttuck, District- Cuttuck Orissa Driver of Truck No. OR-05-E-5855.

2. Benudhar Mohanty, S/o Lt. Uchawo Mohanty, R/o Bajrikabati Road, Ranihat, Cuttuck, P.S, Tahsil & District- Cuttuck Orissa Owner of Truck No. OR-05-E-5855.

3. The Oriental Insurance Company Ltd. registered office Ashafali Road, New Delhi, through Branch Manager, The Oriental Insurance Company Ltd., Raigarh, Nayaganj, Itwari Bazar, P.S Kotwali Tahsil & District Raigarh (CG) Insurer of Truck No. OR-05-E-5855.

---- Respondents

For Appellant	:	Mr. Arjun Lal Singraul, Advocate
For Respondent No.3	:	Mr. D.L. Dewangan, Advocate

Single Bench: Hon'ble Shri Justice Parth Prateem Sahu

Order On Board

03/11/2020

1. Claimant/appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by the learned 1st Additional Motor Accident Claims Tribunal, Raigarh (for short 'the Claims Tribunal') vide award dated 1.7.2015

passed in Claim Case No.46/07 thereby allowing application in part and awarding Rs.14,36,313/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 01.11.2006 appellant was travelling on car bearing registration number CG04-H-7270 from Raipur to Raigarh. On the way near village Jhalap at about 8 p.m. in the night, the car of appellant met with an accident with truck bearing registration number OR05-E-5855 (for short 'the offending vehicle'). In the aforementioned accident, appellant suffered fracture injury over his right hand, right eye, right leg penetrated in waist. He was immediately taken to Agrawal Hospital, Raipur where he took treatment as inpatient from 01.11.2006 to 8.11.2006. For better treatment, appellant went to Lilawati Hospital, Mumbai where he took treatment as inpatient from 9.11.2006 to 26.11.2006 and during this period total hip replacement surgery was done. Thereafter on 26.11.2006 he was admitted in Pali Hospital & Nursing Home, Mumbai where he took treatment till 3.12.2006. Upon returning Raigarh, appellant was again admitted in R.L. Hospital & Trauma Centre, Raigarh from 4.12.2006 to 26.12.2006.

3. Claimant/appellant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.65,80,000/- pleading therein that he expended Rs.16,00,000/- on his treatment, he suffered 40% permanent disability in accident; he claimed loss of income to the tune of Rs.28,88,000/-. It

was pleaded that after 10 years there will be a requirement of further treatment of hip joint replacement.

4. Non-applicant No.3-Insurer of offending vehicle, submitted reply to claim application and denied the pleadings made therein. It was pleaded that on the date of accident, non-applicant No.1-driver was not having valid and effective driving license. Amount of compensation claimed is highly exaggerated.

5. The Claims Tribunal on appreciation of pleadings and evidence placed on record held that accident took place on account of rash and negligent driving of offending vehicle by non-applicant No.1 in which appellant suffered 40% permanent disability and awarded Rs.14,36,313/- as compensation. The Claims Tribunal has also held that there was no breach of any of the conditions of insurance policy.

6. Mr. A.L. Singraul, learned counsel for appellant-claimant submits that the Claims Tribunal relying on the disability certificate (Ex.P-5 & P-6) has held that claimant suffered 40% permanent disability, but not awarded adequate compensation under 'loss of income'. The Claims Tribunal has awarded lump sum amount of Rs.1,00,000/- towards loss of future income. He further submits that the Claims Tribunal has also not awarded any amount towards future medical expenses, attendant and transportation expenses incurred in performing air journey from Raipur to Mumbai for treatment.

7. Per contra, Mr. D.L. Dewangan, learned counsel representing

respondent Insurance Company submits that the Claims Tribunal has considered and awarded entire medical bills placed on record. Appellant has placed on record document showing air journey from Raipur to Mumbai in connection with his treatment. The Claims Tribunal taking into consideration all the documents placed on record regarding travelling and stay, has awarded Rs.89,845/- towards travelling expenses and special diet, which cannot be said to be on lower side in the facts and circumstances of case. He submits that taking into consideration the nature of occupation of appellant, the Claims Tribunal has awarded Rs.1,00,000/- towards loss of future income, which is just and proper. Hence, the amount of compensation awarded by the Claims Tribunal is just and reasonable and does not call for any interference.

8. I have heard learned counsel for the parties and perused the record of claim case.

9. During the course of argument, learned counsel for appellant could not be able to point out from the records that which of the document available on record and showing incurring of expense on air travel has not been considered and awarded by the Claims Tribunal. Therefore, submission of learned counsel for appellant that the Claims Tribunal has not awarded fare of air journey performed in connection with treatment of claimant is not sustainable and is hereby repelled.

10. Next submission of learned counsel for appellant is that the Claims Tribunal has not awarded amount of compensation

under the head 'loss of income' occasioned to claimant on account of 40% permanent disability suffered by him. Perusal of the record would show that in order to prove income, appellant has placed on record income tax returns filed for the assessment year 2005-06 & 2007-08 as Ex.P-237 & Ex.P-242. Income tax return of Ex.P-237 was filed on 10.12.2007 i.e. after the accident, therefore, the same cannot be taken into consideration for the purpose of calculating loss of income. In the income tax return of Ex.P-242, total income of claimant/appellant is mentioned as Rs.87,893=30 paise, which includes income of Rs.80,104=80 paise from business/ profession. Appellant has not placed on record income tax return for the assessment year 2006-07. In Ex.P-237, which is the acknowledgement issued by Income Tax Department acknowledging receipt of income tax return for the year 2007-08, the gross total income of appellant is mentioned as Rs.1,21,681/-. In the computation statement of income (Ex.P-241) prepared by Tax Consultant, income of appellant from business or profession is shown as Rs.1,12,049/-. Taking into consideration aforementioned documents available on record, I am of the considered view that income of appellant from business or profession for the purpose of calculating loss of income can be taken little higher than income shown in Ex.P-237. Accordingly, giving some increase to the income of deceased as shown in Ex.P-242 i.e. Rs.80,104/- (for assessment year 2005-06), the income of claimant-appellant from business and profession is assessed as Rs.95,000/- p.a..

11. So far as loss of income suffered by appellant on account of 40% permanent disability suffered by him, as assessed in disability certificate, is concerned, appellant in his statement has stated that he is working as Broker/Commission Agent dealing in Iron and he is required to travel in connection with his profession, but on account of injury suffered by him, now he is unable to make movement. True it is that appellant has placed on record documents showing the medical treatment taken by him including the fact that he had undergone hip replacement surgery. But the doctor (AW-4) examined by claimant-appellant has not stated that after the accident, appellant is not in a position to travel any more for whole of his life. However, the doctor (AW-5), who had issued disability certificate in favour of appellant, has stated that appellant will face some problem in walking and he could not be able to walk freely as he was walking prior to accident. Appellant is not shown to be engaged in a work which requires continuous walking or physical labour. However, looking to nature of injuries suffered by claimant-appellant, it appears that he will certainly face difficulty in his movement and travelling and will not be able to move, walk and travel as he was doing prior to date of accident for some time, for which the Claims Tribunal has already awarded Rs.1,00,000/- towards future loss of income, which, in the opinion of this Court, looking to the nature of occupation of appellant and in absence of any

evidence establishing that claimant-appellant will not be able to do his business due to accidental injuries, is just and proper and does not call for any interference.

12. So far as submission made by learned counsel for appellant that the Claims Tribunal has not awarded any amount towards Attendant is concerned, perusal of the impugned award would show that the Claims Tribunal awarded Rs.75,000/- towards Attendant, which in the given facts and circumstances of the case, cannot be said to be on lower side.

13. In the case of **R.D. Hattangi vs. Pest Control (India) Pvt. Ltd. & ors** reported in **(1995) 1 SCC 551**, Hon'ble Supreme Court has held thus:-

> "9.Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non- pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."
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> 10.It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries

sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. 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.

12. 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 guesswork, 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."

14. In case of **Rajkumar Vs. Ajay Kumar & another** reported in **(2011) 1 SCC 343**, the Hon'ble Supreme Court has held thus:-

"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.

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. Decision 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- Item (ii) (a). We are concerned with that assessment in this case."

15. The Claims Tribunal has not awarded any amount towards loss of amenities & joy in life and loss of income during period of treatment. Looking to the nature of injuries suffered by appellant, treatment taken by him, age of claimant i.e. 32 years, I find it appropriate to award Rs.50,000/- towards loss of amenities in life & joy and Rs.25,000/- towards loss of expectation of life.

16. Looking to nature of injuries and period of treatment, it appears that appellant might not be able to do his work for a period of atleast five months from the date of accident and for which he is entitled for compensation under the head loss of income during period of treatment i.e. for 5 months. As this Court has assessed yearly income of appellant on the date of accident as Rs.95,000/-, his monthly income comes to Rs.7,916=66 paise, which is rounded off to Rs.7,917/-, and accordingly, an amount of Rs.39,585/- (7917 x 5) is awarded

as compensation towards loss of income during treatment period.

17. Appellant has not brought any specific and admissible evidence on record showing need of future treatment and in absence thereof, submission made by learned counsel for appellant that the Claims Tribunal has not awarded any amounts towards future medical treatment is not sustainable and is hereby repelled.

18. Accordingly, the appeal is allowed in part. The impugned award is modified to the extent that appellant-claimant will be entitled for Rs.50,000/- towards loss of amenities & joy in life; Rs.25,000/- towards loss of expectation of life and Rs.39,585/- towards loss of income during period of treatment, in addition to what has been awarded by the Claims Tribunal. In other words, now the appellant will be entitled for total compensation of Rs.15,50,898/- instead of Rs.14,36,313/- as awarded by Claims Tribunal along with interest @ 6% p.a. from the date of filing of claim application till actual payment is made.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-