

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1013 of 2013**

- Daman Shikha S/o Raju Shikha, aged about 11 years, through Raju Shikha, son of Lalman Shikha, aged about 50 years, (Father & Legal Guardian) Resident of Kailash Nagar, Durg, P.S. Durg, District Durg C.G.

-----Appellant**VERSUS**

1. Dinesh Kumar Gajbhiye, S/o Kacharu Gajbhiye, aged about 44 years, Resident of Indira Nagar, Charauda, P.S. Bhilai-3, District Durg C.G. **----Driver**
2. Rakesh Kumar Gajbhiye, son of Shri Gajbhiye, Resident of Indira Nagar, V.M.Y. Charauda, P.S. Bhilai-3, Bhilai, Civil and Revenue District Durg. C.G. **-----Owner**
3. The National Insurance Company Limited, Thakkar Chamber, G.E. Road, Power House, Bhilai Durg, C.G. through: Branch Manager, Aakash Ganga, Supela, Bhilai, Durg District Durg C.G.

-----Respondents/ non-applicants

For Appellant	:	None.
For Respondent 3	:	Mr. Priyanshu Gupta, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

Per Parth Prateem Sahu, J.**09/06/2020**

1. No one appeared on behalf of the appellant-claimant even when the matter is taken up in the second round of hearing in post lunch session.
2. This case is listed as Targeted for Hearing and Disposal.
3. Looking to the pendency of the case of the appellant since 2013, taking into consideration that this appeal is only for enhancement of award which is to be considered by this Court based on the documents and evidence available on record and also considering the precedents of the Hon'ble Supreme Court on the issue involved as in this case, we have taken up the appeal for hearing in absence of learned counsel for the appellant.
4. This instant appeal has been filed by the appellant-claimant challenging the inadequacy of the impugned award dated 27-06-2013 passed by learned 5th Additional Motor Accident Claim Tribunal, Durg C.G. in Motor Accident Claim

Case No. 44/2012 whereby learned Claims Tribunal while partly allowing the claim application awarded a total amount of compensation of Rs. 1,26,188/-.

5. Relevant facts necessary for disposal of this appeal are that on 19-10-2011 at about 5:00 p.m. when appellant was standing on the road side in front of his house, one motor cycle bearing Registration No. CG 07 LP 5001 (hereinafter referred to as "offending vehicle") driven by Respondent 1/ Non-applicant 1 hit the appellant. In the aforementioned accident, appellant suffered grievous injuries over his right leg, neck and head alongwith other parts of body. He was taken to Jamul Hospital where his right leg was operated. The appellant-claimant filed claim application seeking compensation for the injury suffered by him including the permanent disability on account of rash and negligent driving of the offending vehicle by Respondent 1/ Non-applicant 1, claiming Rs. 17,00,000/- in total as compensation.
6. The claim application was resisted by Respondent 1 and 2/ Non-applicant 1 and 2 by submitting their reply to the claim application and mentioning therein that there was no negligency on the part of the driver of the offending vehicle. They have denied the pleadings of the claim application with respect to paragraphs 25 and 26 and further pleaded that on the date of accident, offending vehicle was insured with Respondent 3/ non-applicant 3, Respondent 1/ Non-applicant 1 driver of the offending vehicle was possessing valid and effective driving license to drive the vehicle.
7. Respondent 3/ Non-applicant 3-Insurance Company also submitted its reply to the claim application and while denying the pleading of the claim application pleaded that on the date of accident, Respondent 1/ Non-applicant 1 driver of the offending vehicle was not possessing valid and effective driving license, there was violation of conditions of insurance policy; the parents of the appellant are responsible for the accident as they had let their child (appellant) out of the house, playing on the road.
8. Learned Claims Tribunal on appreciation of the pleadings and evidence placed on

record by the respective parties held that the appellant suffered injuries in a motor accident with the offending vehicle driving rashly and negligently by Respondent 1/ Non-applicant 1, the negligence on the part of the appellant has not been found to be proved, there was no violation of conditions of insurance policy, the appellant suffered permanent disability and awarded a total sum of Rs. 1,26,188/- under following heads:

HEAD	COMPENSATION AMOUNT
1. Permanent Disability	Rs. 25,000/-
2. Medical Treatment and Medicines	Rs. 83,588/-
3. Discomfort, Inconvenience Caused	Rs. 5,000/-
4. Attendant Cost	Rs. 7,600/-
5. Conveyance, Food Nourishment	Rs. 5,000/-
Total Amount :-	Rs. 1,26,188/-

9. Though, no one appeared to represent the appellant even when the case is called for hearing in second round. We have gone through the entire record to evaluate whether in the facts and circumstances of the case and nature of injury suffered by the appellant, the Claims Tribunal awarded just and proper amount of compensation or not?
10. The appellant-claimant filed the Final Report (Ext. P-1), F.I.R.(Ext. P-2), MLC Report (Ext. P-3), Discharge Ticket of Jamul Hospital (Ext. P-6), Disability Certificate (Ext. P-8) and other medical bills and prescription issued by the concerned Doctor from Ext. P-10 to Ext. P-35. Ext. P-35 is case summary report of Jamul Hospital wherein it has been mentioned that the appellant was admitted on 19-10-2011 and discharged on 27-11-2011, thereby, he took treatment as an in-patient continuously for about 39 days. Perusal of documents would show that the appellant suffered fracture injury of Tibia M-3 of right leg, right leg of the appellant was operated on 22-10-2011 and second operation was done on 28-10-2011. Dr. Akhilesh Yadav, Orthopaedic Surgeon, District Hospital, Durg, who issued Disability Certificate (Ext. P-8) was also examined before the Claims Tribunal as witness AW-3 to ratify the Disability Certificate. Ext. P-8 and the

evidence of AW-3 has been accepted by the Claims Tribunal and held that the appellant suffered permanent disability on account of accidental injuries suffered by him. Father of the appellant Raju Shikha was examined as AW-1 before the learned Claims Tribunal who in his evidence has stated that all the treatment of his son was done at Jamul Hospital. Witness AW-1 in his evidence has stated that till date he had incurred expenditure of about Rs. 5 lakhs on different heads. It is also submitted that even on the date of recording of his statement, injured leg started swelling suddenly causing continuous pain. He stated that looking to the nature of injury, treatment of the appellant is going on, which may continue further and may cause expenditure of about Rs. 3 to 4 lakhs.

11. Now, in view of the above, we have to consider whether the Claims Tribunal awarded just and proper amount of compensation in the facts and circumstances of the case. Before proceeding with the case, it will be appropriate to consider the judicial pronouncement of the Hon'ble Supreme Court in the cases of permanent disability suffered by minors. The Hon'ble Supreme Court had considered the award of just and proper amount of compensation, looking to the permanent disability suffered by a child in the cases of **R.D. Hattangadi v. Pest Control India Ltd.** reported in **1995 (1) SCC 551**, **Michael v. Divisional Manager, Oriental Insurance Co. Ltd.** reported in **(2013) 14 SCC 774**, and **Mallikarjun v. Divisional Manager, National Insurance Co. Ltd.** reported in **(2014) 14 SCC 396**.
12. The Hon'ble Supreme Court in the case of **B.T. Krishanappa v. Divisional Manager, United India Insurance Co. Ltd.** reported in **(2010) 12 SCC 246** while taking note of the permanent disability has held thus:

“15. Long expectation of life is connected with earning capacity. If earning capacity is reduced, which is the case in the present situation, that impacts life expectancy as well. Therefore, while fixing compensation in cases of injury affecting earning capacity the Court must remember:

10. ... 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.”

[See R.D. Hattangadi v. Pest Control (India) (P) Ltd. and others, (1995) 1 SCC 551, at page 556, para 10].

Hon'ble Supreme Court in the case of **Michael (supra)** has held as under:

“14. Having bestowed our serious consideration and having noted the various disadvantages suffered by the appellant by virtue of the accident, we are convinced that the appellant is entitled for still higher amount than what has been granted by the Tribunal as well as the High Court on account of pain and sufferings as well as loss of amenities. As held by us earlier, though it will be impossible to make a precise assessment of the pain and suffering of the appellant considering the age at which the appellant met with the accident and the consequent disability and also taking note of the deprivation of better prospects in the life of the appellant due to the physical disability suffered, we determine the compensation in a sum of Rs. 4 lakhs as claimed by the appellant under the following heads:

Towards pain and sufferings and permanent disability Rs. 2,80,000 Towards medical expenses, conveyance, nourishing food and attendant charges Rs. 20,000 Towards loss of amenities Rs. 1,00,000 Total Rs. 4,00,000”

In another judgment of the Supreme Court, in the matter of **Mallikarjun (supra)**, has fixed the slab for awarding the amount of compensation in case of permanent disability and held thus:

“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and up to 30% to the whole body, Rs. 3 lakhs; up to 60%, Rs. 4 lakhs; up to 90%, Rs. 5 lakhs and above 90%, it should be Rs. 6 lakhs. For permanent disability up to 10%, it should be Rs. 1 lakh, unless there are exceptional circumstances to take a different yardstick.

13. If in the light of aforementioned pronouncements of the Hon'ble Supreme Court, the facts of the present case are considered, undisputedly, the appellant suffered fracture injury over his right leg Tibia M-3, he undergone for surgery twice as per

the documents available on record, he took treatment as an in-patient continuously for about 39 days and it is also stated by the Doctor AW-3 in his statement that his right leg was skewed, there was hardness in the knee joint and ankle joint. It was also stated that he will not be able to do heavy work with his right leg.

14. It is very difficult to assess the monetary loss with regard to the disability suffered by a minor child. In this case, the child is aged of 12 years but it is the duty of the Court/ Tribunal to award just and proper amount of compensation looking to the nature of injuries and disability suffered by the appellant-claimant and to award pecuniary and non-pecuniary damages both.
15. The learned Claims Tribunal has awarded very meagre amount on the heads of permanent disability, loss of enjoyment of life and pain and sufferings in the facts and circumstances of the case and also on other heads. Looking to the nature of injury suffered by 12 years' old boy causing permanent disability to the extent of 11% and skewing his right leg also, we deem it fit and proper to award Rs. 1 Lakh towards hardship, inconvenience, mental and physical shock on account of permanent disability; Rs. 20,000/- towards mental pain and sufferings; Rs. 5,000/- towards conveyance expenses; Rs. 25,000/- towards loss of amenities in life and loss of expectations in life; Rs. 83,588/- towards expenses incurred on medicine and medical treatment; Rs. 7,600 towards attendant cost; Rs. 5,000/- towards special diet, thus, makes total amount of compensation as Rs. 2,46,188/-. The said total amount of compensation will carry interest @ 6% p.a. from the date of filing of the claim application till its realization. Now, the appellant-claimant will be entitled for a total amount of compensation of **Rs. 2,46,188/-** instead of Rs. 1,26,188/- as awarded by the Claims Tribunal.
16. In the result, the appeal stands allowed in part and the impugned award passed by the learned Claims Tribunal is modified to the extent as indicated hereinabove.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge