NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 536 of 2014

- Sandeep Pandey S/o Late B.R. Pandey Aged About 34 Years R/o Bhairamdev Ward, Panchrashta, Jagdalpur, Distt. Bastar Chhattisgarh

---- Appellant/claimant

Versus

1. Rameshwar Kashyap, S/o Sukhdev Kashyap Aged About 24 Years R/o Kachnar Block Development Bakawand, Tah. Jagdalpur, Present Address- Village- Bhatpal, Block Development, Bastar, Distt. Bastar, Chhattisgarh (Driver of the vehicle)
2. Bomla Baghel @ Bolam Baghel S/o Late Sude Baghel R/o Junaguda Block Development, District : Bastar(Jagdalpur), Chhattisgarh (Owner of the vehicle)
3. Iffco Tokiyo General Insu.Co.Ltd. S/o Branch Office, Raipur, Third Floor, 345-347 Lal Ganga Shopping Mall, G.E. Road, District : Raipur, Chhattisgarh 492001 (Insurer)

----Respondents

For Appellant	:	Shri PK Tulsyan, Advocate
For Respondents-1 and 2	:	None appears
For Respondent-3	:	Shri PR Patankar, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
02.12.2020

1. Appellant/claimant has preferred this appeal under Section 173 of the the Motor Vehicles Act 1988 challenging the impugned award dated 18.02.2014 passed by the Motor Accident Claims Tribunal, Bastar at Jagdalpur (for short, 'Claims Tribunal') in Claim Case-150 of 2011 whereby learned Claims Tribunal allowed the application under Section 166 in part and awarded Rs.5,20,600/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 10.10.2008 at about 11 pm, Sandeep Pandey was travelling on motorcycle of his friend

Tilak Panigrahi bearing No.CG 17E 2143 and going to Bastar. When they reached near village Metavada, one motorcycle bearing No.CG17K-5108 (for short, 'offending vehicle') coming from opposite direction dashed the motorcycle of Sandeep Pandey and caused accident. In the said accident, he suffered grievous injury over his right knee, waist, face and other parts of the body. He was taken to Maharani Hospital, Jagdalpur and accident was reported to concerned Police Station. He underwent operation of his waist but looking to the grievousness of the injuries, he was referred to higher hospital. Injured was taken to Seven Hills Hospital, Visakhapatnam, where he took treatment as inpatient and underwent operation thrice on 14.10.2008, 16.10.2008 and 20.10.2008. Even after several operations, his knee injury could not be cured for which he took treatment at Secunderabad also, where he underwent knee replacement surgery.

3. Thereafter, injured filed an application under Section 166 of the Act, 1988 seeking compensation of Rs.38,59,400/- on various heads, pleading therein that on the date of accident, he was aged about 32 years working with M/s BR Kapur, Geedam Road, Jagdalpur as Field Supervisor and earning Rs.8,600/- per month. After the accidental injuries suffered by him, he became permanently disabled and unable to do the work and further he became dependant upon others for his daily routine work.

4. NA1 and 2, who are driver and owner of offending vehicle did not appear before the Claims Tribunal even after service of notice, they were proceeded *ex parte*.

5. NA3 Insurance Company submitted reply to the claim application, while denying the pleadings made therein further pleaded that on the date of accident, vehicle was being plied in breach of policy conditions. NA1 was not possessed with a valid and effective driving license. Accident was a result of head on collusion between two motor cycles, but owner and Insurance Company of motorcycle driven by the claimant were not arrayed as party non-applicants, who are necessary party to the claim petition. If the Tribunal comes to the conclusion that the claimant is entitled for any amount of compensation, then, NA1 and 2 to be liable to satisfy the amount of compensation.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that the claimant suffered motor accidental injuries resulting in fracture of his knee bone, dislocation of waist and other injuries on forehead, leg etc., due to rash and negligent driving of offending vehicle by NA1. Learned Claims Tribunal further recorded a finding that NA1 was not possessed with valid and effective driving license; there was breach of policy conditions, exonerated the Insurance Company from its liability and fastened liability upon NA-1 and 2 driver and owner of offending vehicle to satisfy the amount of compensation and awarded Rs.5,20,600/- as total compensation.

7. Shri PK Tulsyan, learned counsel for the appellate submits that learned Claims Tribunal erred in applying three deductions while calculating the amount of compensation. He submits that learned Claims Tribunal deducted ½ of the yearly income towards personal and living expenses of the appellant/injured, which is contrary to settled principles of

law. He submits that the claim is an injury claim and there cannot be deduction towards personal and living expenses. Deduction to the extent of 50% is in cases of death claim of unmarried person. He submits that income of the deceased in its entirety is to be taken into consideration for the purpose of calculating the amount of compensation. It is further contended that the Tribunal further erred in assessing 70% of the amount of total 50% and thereafter, further deducted 50% of the said amount towards loss of earning capacity. Claims Tribunal first deducted ½ and further 70% of remaining ½ and again 50% of 70% of amount of compensation as assessed for awarding compensation towards loss of earning capacity, which is not sustainable. He contended that if the Claims Tribunal has arrived at a conclusion that appellant suffered 50% loss of earning capacity, then 50% of total amount of income is to be taken into consideration for awarding compensation towards loss of earning capacity. It is also contended that the Tribunal has not considered the Disability Certificate issued by the doctor mentioning therein that the appellant suffered permanent disability to the extent of 70% for the whole body and in view of Ex.A89 (Disability Certificate) available on record and evidence of AW2 Dr VK Jha, who issued Disability Certificate, loss of earning capacity ought to have been assessed as 70% instead of 50%. Shri Tulsyan further contended that the Tribunal erred in assessing monthly income of the appellant as Rs.3,000/- per month and Rs.36,000/- per annum, overlooking nature of occupation of applicant as pleaded and stated by him. He contended that appellant was working as Field Supervisor with M/s BR Kapur, Geedam Road, Jagdalpur, engaged in drilling and digging bore-wells. Ex.A 76 Certificate issued by director of the company is also placed on record showing income of applicant as Rs.7,200/- per month, but the Tribunal has not considered the said document and erroneously assessed his income as Rs.3,000/- per month. Tribunal though assessed loss of earning capacity to the extent of 50%, has not added any amount in the income towards future prospects of the injured. The appellant suffered loss of earning capacity which will definitely have its impact for whole of his life, hence, the amount of compensation towards loss of future prospects should have been awarded as held by Hon'ble Supreme Court in Case of **National Insurance Company Vs Pranay Sethi** reported in **(2017) 16 SCC 680**. The amount of compensation awarded on other heads is also very meagre. Claims Tribunal has awarded lump-sum amount of Rs.25,000/- towards conveyance, lodging and boarding of attendant, pains and suffering, special diet and not awarded any amount towards loss of amenities and joy in life. He lastly contended that learned Claims Tribunal even if has arrived at a finding that there is breach of policy conditions as NA1 who was driving the motorcycle without a valid and effective driving license, then while exonerating the Insurance Company from its liability, ought to have issued a direction to the Insurance Company to first satisfy the amount of compensation and thereafter, to recover the same from NA1 and 2 as held by Hon'ble Supreme Court in case of **Shamanna v. Oriental Insurance Co. Ltd.** reported in **(2018) 9 SCC 650** and **Parminder Singh vs New India Assurance Company Ltd** reported in AIR 2019 SC 3128.

8. Shri PR Patankar, learned counsel appearing for respondent-3/Insurance Company controverting the submissions made by learned

counsel for the appellant, submits that date of accident is 10.10.2008, appellant has not proved his occupation by placing any cogent and admissible piece of evidence on record, hence, the Tribunal is justified in assessing income as Rs.3,000/- per month on notional basis. He submits that the certificate produced on record by the appellant as Ex.A76 showing him to be working as supervisor with M/s BR Kapur and earning Rs.7,200/- per month, has not been proved in accordance with law. Learned Claims Tribunal justified in not accepting the document as evidence for assessing the income of appellant/claimant. He further contended that Claims Tribunal has awarded entire medical bills and even the appellant has not raised any ground in this appeal that any of the bills placed on record by the appellant is not considered. He further submits that learned Claims Tribunal erred in applying multiplier of 17 instead of 16 as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in (2009) 6 Supreme Court Cases 121.

9. We have heard learned counsel for respective parties.

10. True it is that the document Ex.A76 issued by the Company could not be proved in accordance with law by examining author of the document as witness, but then, looking to the age of appellant and date of accident, notional income fixed by the Claims Tribunal in the considered opinion of this Court is on lower side. Taking into consideration date of accident, age of the appellant, price index, wage structure, we find it appropriate to hold the income of appellant/injured for calculating the amount of compensation as Rs.4,000/- per month.

11. So far as the ground raised towards erroneous deduction is concerned, law is well settled in this regard that deduction towards personal and living expenses is only to be made while assessing the amount of compensation in a death case of a person and not in injury case. Case at hand is an injury claim filed by the appellant for the injuries and permanent disability suffered by him. If the claim is made by the claimant for the injuries suffered by himself, then, there cannot be any deduction towards personal and living expenses.

12. Deduction towards personal and living expenses on the deceased is to be deducted from income because in those cases, the consideration is of loss of dependency, ie the amount which the deceased use to expend upon family members after expending upon himself. In case of injury the injured is there who will require amount to be expended upon himself and therefore, expenditure will not reduce in any manner. The deduction made by learned Claims Tribunal towards personal and living expenses, in view of above, is not sustainable and it is hereby set aside.

13. The submission made by learned counsel for the appellant that the Tribunal while assessing loss of income on account of permanent disability suffered by the appellant ought to be assessed as 70% in view of Disability Certificate Ex.A89. In disability certificate issued with regard to the injuries suffered by the appellant on his right knee and further mentioned as "permanent physical disability in his right lower limb as (60%). In left lower limb as 30%. Total disability as 70% only". Claims Tribunal has further taken into consideration the evidence of AW2, doctor who proved the permanent disability certificate and further considered that appellant to be

able to perform the table work and assessed loss of earning capacity to the extent of 50%. When once the witness examined by the claimant himself has stated with regard to the part of body where the appellant suffered permanent disability nature of occupation and further clarified that what work the appellant can do, it cannot be said that the appellant could not able to do any of the work of any nature. Even before this Court learned counsel for the appellant has not made any submission that the appellant has suffered the nature of disablement so as to hold that he lost 70% earning capacity in view of the nature of occupation. Upon taking into consideration overall facts and circumstances of the case, part of the body where appellant suffered permanent disability, nature of occupation, we do not find any error or infirmity in the finding arrived at by learned Claims Tribunal that appellant suffered 50% loss of earning capacity. Hence, we affirm the said finding.

14. The submission of learned counsel for the appellant with regard to non-grant of any amount towards future prospects, Hon'ble Supreme Court has considered the issue with regard to addition of amount towards future prospects in case of **Pranay Sethi** (supra) and held thus:

> "59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. xxxxx"

15. In the case at hand, appellant suffered permanent disability affecting his earning capacity. If once it is proved that the appellant/injured suffered loss of earning capacity, then definitely it will affect his income for whole of his life. Hence, we are of the view that there shall be an addition of 40% of

the established income of the appellant towards future prospects for assessing total income of the appellant for the purpose of calculating the amount of compensation.

16. Learned Claims Tribunal awarded lump-sum amount of Rs.25,000/- towards conveyance, lodging and boarding of attendant, pains and sufferings, special diet which is definitely on lower side. Appellant suffered fracture injury over his right knee, ankle and dislocation of his waist. He took treatment as inpatient at Seven Hills Hospital, Visakhapatnam from 14.10.2008 to 22.10.2008. He further took treatment at Sunshine Hospital, Secunderabad as Inpatient from 23.02.2010 to 01.03.2010 as per the documents placed on record Ex.A3, there is mentioning of operation thrice on 14.10.2008, 16.10.2008 and 20.10.2008, which proves the submission made by learned counsel for the appellant that the appellant underwent operation thrice.

17. In view of aforementioned facts, nature of injuries and his treatment placed on record, we find it appropriate to award **Rs.25,000/-** towards pains and suffering; **Rs.10,000/-** for transportation expenses; **Rs.3,000/-** towards special diet and **Rs.5,000/-** for lodging, boarding and conveyance of attendant.

18. Learned Claims Tribunal has not awarded any amount towards loss of amenities and joy in life. Age of the appellant on the date of accident has been shown as 32 years. He has to live with 70% permanent disability on his person for whole of his life. Hence, we find it appropriate to award **Rs.25,000/-** towards loss of amenities and joy in life.

19. For the foregoing reasons, amount of compensation to be awarded to the appellant/claimant requires re-consideration and re-computation, which is as under:

a) Income of the appellant as assessed by this Court is Rs.4,000/- per month and Rs.48,000/- per annum.

b) By adding 40% towards loss of future prospects, total yearly income of the appellant comes to Rs.67,200/- {48000 + (48000 x 40/100)}

c) Appellant suffered 50% loss of earning capacity. Hence, his yearly loss of income comes to Rs.33,600/- (67200 x 50/100)

d) Appellant has been shown to be 32 years on the date of accident and appropriate multiplier would be 16 instead of 17 as applied by the Tribunal. Upon multiplying yearly loss of income with 16, appellant's total loss of income comes to Rs.5,37,600/-.

e) Apart from above total loss of income, appellant is entitled for Rs.3,38,499/- towards medical expenses, Rs.50,000/- for future treatment, (as awarded by Tribunal) Rs.25,000/- towards pains and suffering, Rs.25,000/- for loss of amenities and joy in life, Rs.10,000/- for transportation and conveyance, Rs.3,000/- for special diet and Rs.5,000/- towards attendant.

f) Now, appellant/claimant is entitled for a total sum of **Rs.9,94,099/-** instead of Rs.5,20,600/- as awarded by the Tribunal.

20. Aforementioned total amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation.

21. With regard to the submission made by learned counsel for the appellant that a direction to be issued to the Insurance Company to first pay the amount of compensation and thereafter, Insurance Company to recover the same from respondents 1 and 2, perusal of record of claim case would show that learned Claims Tribunal has exonerated the

Insurance Company from its liability on the ground that NA1, driver of offending vehicle was not possessed with valid and effective driving license. This finding of exoneration of Insurance Company has not been challenged by respondents 1 and 2 ie driver and owner of offending vehicle. The finding recorded by the Tribunal that Insurance Company cannot be held liable to satisfy the amount of compensation is perfectly correct and is in accordance with law. Issuance of Insurance Policy covering of the risk of appellant, who is a third party, is also not in dispute. The issue of not having valid and effective driving license with the driver of offending vehicle has been considered by Hon'ble Supreme Court in cases of **Shamanna** (supra) and **Parvinder** (supra) and while exonerating Insurance Company from liability issued a direction to the Insurance Company to first satisfy the amount of compensation and thereafter, to recover the same from owner and driver of offending vehicle.

22. Taking support of aforementioned *dictum* of Hon'ble Supreme Court, we find it appropriate to direct NA3/respondent-3 Insurance Company to first deposit the entire amount of compensation along with interest before the Claims Tribunal for its disbursement to the claimant/appellant and thereafter to recover the amount so deposited by it from respondents-1 and 2 ie driver and owner of offending vehicle in accordance with law.

23. For the foregoing reasons, appeal is allowed in part and the impugned award is modified to the extent as indicated herein above.

(PR Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

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