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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1018 of 2015

- Dilip Sahu S/o Shri Hariram Sahu, aged about 28 years, R/o village Baigandabri, Police Sttion Kasdol, District Baloda Bazar-Bhatapara C.G.

----Appellant/Claimant

VERSUS

1. Bhojram Sahu @ Ballu S/o Shri Shyamlal Sahu, aged about 29 years R/o Durga Chowk Nayapara, Baloda Bazar, Police Station & Tahsil Baloda Bazar, District Baloda Bazar-Bhatapara C.G. **–-------Driver**
2. Shakun Bai Verma W/o Shri Goverdhan Prasad Verma, R/o behind Pital Factory, Ward no. 7, Baloda Bazar, District Baloda Bazar-Bhatapara C.G.

–-----------Owner

3. The New India Insurance Company Limited Shanti Kunj Civil Line Baloda Bazar, District Baloda Bazar-Bhatapara C.G.

-----------Respondents

For Appellant : Mr. S.P. Sahu, Advocate
For Respondent 3 : Mr. B.N. Nande, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

09/11/2020

1. Appellant-claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") seeking enhancement of the amount of compensation awarded by Motor Accident Claims Tribunal, Baloda Bazar in claim case no. H-74/2014 dated 15-05-2015 whereby learned Claims Tribunal allowed the application filed under Section 166 and Section 140 of the Act of 1988 in part and awarded Rs. 26,78,000/- as compensation in a permanent disability case.

2. Facts relevant for disposal of this appeal are that on 07.10.2013 claimant Dileep Kumar Sahu was going on a motor cycle bearing registration no. CG 04CK 3214 to Kasdol from Baloda Bazar, when he reached near Magarchaba turn, one bus bearing registration no. CG 04E 1333 (henceforth “offending bus”) driven rashly and negligently by non-applicant 1 dashed the motor cycle of appellant-claimant and caused accident. In the said accident, claimant suffered grievous fracture injuries over his right leg and grievous injury on his left leg. During course of treatment his leg was operated thrice and ultimately his right leg was amputated from above knee. Accident was reported to concerned police station based upon which crime was registered against non-applicant 1 and after completion of the investigation charge-sheet was submitted before the Court of jurisdictional Magistrate. Appellant-claimant has filed an application under Section 166 of the Act of 1988 pleading therein that on account of motor accidental injuries suffered by him, he has to undergone treatment for long time, during the course of treatment his right leg was operated on different occasion thrice and due to non-recovery of wound, his right leg was finally amputated from above knee due to which he became permanently disabled and claimed compensation of Rs. 65,50,000/- on different heads. He pleaded that he has completed his graduation, became national player of Wushu Martial Art Championship, Chhattisgarh State Government has deputed him as coach of Sub Junior National Wushu Championship, he has participated in several national events of Wushu Martial Art and in future he could have become international prayer of Wushu Martial Art.

3. Non-applicant 1 and 2 driver and owner of the offending bus submitted reply to the claim application and while denying the pleadings made therein further pleaded that the driver, owner and Insurance Company of the motor

cycle have not been arrayed in the claim application as party non-applicants, in absence of which claim application is not maintainable. On the date of accident, non-applicant 1 was possessing valid and effective driving licence, non-applicant 2 owner of the bus was possessed of all relevant document and it was insured with non-applicant 3. Non-applicant 2 has engaged non-applicant 1 as driver after perusing the driving licence placed before him.

4. Non-applicant 3-Insurance Company submitted reply to the claim application, while denying the pleadings made therein further pleaded that non-applicant 1 was not possessed with valid and effective driving licence, there was breach of policy conditions. Accident was not reported to Insurance Company and has prayed for its exoneration.

5. Claims Tribunal on appreciation of pleadings and evidence brought on record by the respective parties held that claimant/ appellant suffered grievous motor accidental injures on account of rash and negligent driving of the offending bus by non-applicant 1. Claimant suffered permanent disability. Breach of policy conditions could not be proved, while awarding Rs. 26,78,000/- as compensation fastened liability upon non-applicants jointly and severally to satisfy the amount of compensation.

6. Mr. S.P. Sahu, learned counsel for the appellant submits that the Claims Tribunal has awarded meagre amount of compensation. He submits that the appellant suffered 70% of permanent disability but looking to the occupation as coach of martial art his loss of earning capacity is 100% but the Claims Tribunal has awarded the amount of compensation calculating the loss of earning capacity to the extent of 70% only. He further contended that the Claims Tribunal has not awarded any amount of compensation towards

future prospects even after recording the age of the appellant as 28 years only. He contended that the amount of compensation be enhanced suitably.

7. Per contra, Mr. B.N. Nande, learned counsel for Respondent 3-Insurance Company submits that the appellant is an educated person and has passed his graduation, as per his own case he has an ability to do some other work and the Claims Tribunal ignoring the aforementioned aspect has assessed the loss of earning capacity on higher side. He further contended that the Claims Tribunal has awarded sufficient amount of compensation for the injury, amputation of right leg of the appellant. The amount of compensation is just and proper which does not call for any interference.

8. I have heard learned counsel for the appellant as well as learned counsel for the Respondent-Insurance Company and also perused the record of the case.

9. Claims Tribunal has awarded Rs. 26,78,000/- as compensation and fastened liability jointly and severally upon non-applicants including the Insurance Company is not put to challenge by them under any of the ground if available to them.

10. This appeal has been filed by the appellant-claimant seeking enhancement of the amount of compensation on the grounds mentioned therein. Sofar as the first submission made by the learned counsel for the appellant that the Claims Tribunal has not awarded amount of compensation considering his loss of earning capacity to the extent of 100% is concerned. Perusal of claim application would show that the appellant has pleaded that apart from the coach of Wushu Martial Art, he was working as Field Officer with Ganpati Pesticides Pvt. Ltd., Durg and earning Rs. 30,000/- per month.

Claims Tribunal has accepted the permanent disability as assessed by doctor of Medical Board *vide* Ext.P-1(a) where it is mentioned as 70% permanent disability. Looking to the age and nature of employment of the appellant and further considering Schedule 1 under the Employees Compensation Act, I do not find any error in the finding recorded by the Claims Tribunal that he suffered 70% of loss of earning capacity. The submission of the learned counsel for the appellant that loss of earning capacity to be treated as 100% is not sustainable.

11. Sofar as the other submission made by the learned counsel for the appellant that the Claims Tribunal erred in assessing the income and not awarding any amount towards future prospects. Perusal of the award would show that the Claims Tribunal considered the income of the appellant as Rs. 10,000/- per month. Appellant has not proved the income by placing cogent and admissible piece of evidence. The amount of compensation is calculated without adding any amount towards future prospects for assessing the salary/ income of the appellant. Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680** has held that where a person is below 40 years of age and is not in permanent employment then there will be addition of 40% of the established income towards future prospects for computing the amount of total compensation.

12. In the case at hand, the income of the appellant has been assessed as Rs. 10,000/- per month ie. Rs. 1,20,000/- p.a., by adding 40% towards future prospects, total yearly income of the appellant will come to Rs. 1,68,000/- [Rs.1,20,000+40% of Rs. 1,20,000]. Age of the appellant is shown as in between 26-30 years, hence the Claims Tribunal has rightly applied the

multiplier of 17 which makes the total income of the appellant as Rs. 28,56,000/- [Rs.1,68,000x17]; as it has been held that the appellant suffered 70% loss of earning capacity, therefore, 70% of the total amount makes the amount as Rs. 19,99,200/- [70% of Rs. 28,56,000/-] which is awarded to the appellant towards the head of loss of earning capacity in the future. Claims Tribunal has awarded just amount of compensation on other heads for which the appellant-claimant is entitled for.

13. Now the appellant-claimant will be entitled for Rs.19,99,200/- towards the loss of future earning capacity due to permanent disability, Rs. 6,10,000/- towards medical expenditure, special diet and transportation, Rs. 1,00,000/- towards pain and sufferings, Rs. 2,40,000/- towards loss of earning during the treatment period, Rs. 1,00,000/- towards future medical expenditure, Rs. 2,00,000/- towards non-pecuniary damages on account of permanent disability. Now the appellant-claimant will be entitled for total sum of **Rs.32,49,200/- [Rs.19,99,200 + Rs.6,10,000 + Rs.1,00,000 + Rs.2,40,000 + Rs.1,00,000 + Rs.2,00,000/-]** as compensation instead of Rs. 26,78,000/- as awarded by the Claims Tribunal. The aforesaid amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization.

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

Sd/-
(Parth Prateem Sahu)
Judge

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