

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 849 of 2015

- Amar Singh S/o Ramji Sahu Aged About 44 Years R/o Village Parsada, P.S. Anda, Tahsil Gunderdehi, District Durg Chhattisgarh

---- Appellant/Claimant

Versus

1. Nandkishore Yadav S/o Shri Vishnu Yadav Aged About 31 Years R/o Satti Choura, Ganjpara, Durg, P.S. Durg, Tahsil And District Durg Chhattisgarh (Driver)
2. Pamod Mishra S/o Parmeshwar Mishra Aged About 30 Years R/o House No. 258, Bajrang Chowk, Nayapara, Durg, Tahsil And District Durg Chhattisgarh (Owner)
3. Branch Manager, Shriram General Insurance Company Limited, House No. 258, Ward No. 1, Nagapara, Bhilai, Tahsil And District Durg Chhattisgarh(Insurer)

---- Respondents/Non-Applicants

For Appellant	: Shri Vinod Kumar Sharma, Advocate
For Respondent-3/Insurance Company	: Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

03.11.2020

1. This is Claimant's appeal under section 173 of Motor Vehicle Act, 1988 seeking enhancement of compensation awarded by the 3rd Additional Motor Accidents Claims Tribunal, Durg (For short, 'Claims Tribunal') in Claim Case No.433 of 2011, whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 in part and awarded a total sum of Rs.4,74,000/- as compensation in a permanent disability case.

2. Facts relevant for disposal of this appeal are that on 03.05.2011, claimant/appellant was returning to his village Parsada from village Kutre on Motorcycle bearing No.CG07 LW 8925 along with his brother Rajkumar. Appellant himself was driving the Motorcycle and his brother was travelling as a pillion. When they reached near village Khaparwada,

at that relevant time, one Metador bearing No.CG 10 A 3157 (hereafter, referred to 'offending vehicle'), coming from Gunderdehi, driven by NA1 rashly and negligently, dashed the Motorcycle and caused accident. In the aforementioned accident, both the riders of Motorcycle suffered grievous injuries over their person. They were taken to Government Hospital, Durg, where they took treatment till 09.05.2011. Looking to the nature of injuries suffered by the appellant, he was referred to MEKAHARA Hospital, Raipur, where he took treatment as inpatient from 09.05.2011 to 31.05.2011. During the course of treatment, his right leg was amputated and he became permanently disabled person.

3. Appellant has filed application under Section 166 of the Act of 1988 seeking compensation of Rs.18,18,000/-, pleading therein that on the date of accident, appellant was working as contractor of cattle fodder and firewood. He was earning Rs.9,000/- per month, but on account of amputation of his right leg above knee, he suffered permanent disability to the extent of 80%. It was further pleaded that on account of permanent disability suffered by him, he is unable to carry on his work which he was doing prior to the accident and deprived of his earning.

4. NA1 and 2, driver and owner of offending vehicle submitted reply to the claim application pleading therein that the accident is result of negligence on the part of claimant himself. On the date of accident, offending vehicle was insured with NA3/Insurance Company. As such, liability to pay amount of compensation would be upon NA3 and the amount of compensation is highly exaggerated.

5. NA3/Insurance Company submitted reply to the claim application pleading therein that the accident was a result of self negligence on the part of claimant. The accident was not informed by the owner of offending vehicle to the Insurance Company, which is mandatory under the Act of 1988. Issuance of Insurance Policy for the offending vehicle has been denied. NA1 was not possessed with valid and effective driving license, there is no valid permit and fitness, thus there was breach of Policy conditions.

6. Upon appreciation of pleadings and evidence brought on record, learned Claims Tribunal held that NA1 while driving the offending vehicle rashly and negligently caused the accident; in the said accident, claimant suffered permanent disability; there is no breach of Policy conditions by assessing income of claimant as Rs.3,000/- per month, awarded Rs.4,74,000/- as total compensation on different heads.

7. Shri Vinod Kumar Sharma, learned counsel for the appellant submits that learned Claims Tribunal though assessed loss of earning capacity to the extent of 80%, but has awarded very meagre amount of compensation. Learned Claims Tribunal, overlooking the nature of occupation, pleaded and stated by the appellant, has assessed his income as Rs.3,000/- per month only, which is on lower side. No amount is added towards future prospects though the appellant on the date of accident, was only 44 years of age, suffering permanent disability to the extent of 80% and loss of income. He further submits that Claims Tribunal has not awarded any amount towards loss of amenities and joy in life and awarded meagre amount of compensation on pecuniary and non-pecuniary heads

in the facts of the case. He submits that amount of compensation be suitably enhanced.

8. Per contra, Shri Deepak Gupta, learned counsel for the Insurance Company while supporting the impugned award, submits that the Tribunal while considering that the appellant failed to prove his occupation and earning, has rightly assessed his income on notional basis taking into consideration the date of accident. He further submits that Claims Tribunal has awarded just compensation, on almost all heads for which, appellant is entitled for; the amount of compensation cannot be said to be on lower side, hence does not call for interference.

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

10. Challenge in this appeal is only with regard to the quantum of amount of compensation awarded to the appellant, where the appellant suffered 80% permanent disability on account of amputation of his right leg above knee.

11. Learned Claims Tribunal has assessed loss of earning capacity of the appellant to the extent of 80% taking into consideration Ex.P23, Permanent Disability Certificate issued by the Medical Board, on account of amputation of his right leg above knee.

12. So far as the assessment of income of the claimant by the Tribunal as Rs.3,000/- per month is concerned, Tribunal has recorded a finding that appellant failed to place on record any admissible piece of evidence with

regard to his occupation. Upon going through the record, it would reveal that appellant in support of the pleadings, examined himself as AW1 and no other person was examined by him to prove his occupation of Contractor of cattle fodder and firewood. In these circumstances, Claims Tribunal has not committed any error in holding occupation of the appellant to be a manual labourer. But income of manual labourer on the date of accident will be much more than what is assessed by the Tribunal. In absence of any specific proof with regard to income of a person, it is appropriate to assess the income taking into consideration the wage structure, nature of occupation, price index and cost of living, etc. Taking into consideration the date of accident 03.05.2011, and also the above aspects, I find it appropriate to assess income of the appellant as Rs.4,000/- per month.

13. Hon'ble Supreme Court has considered award of future prospects of 25% of established income, where, the deceased/injured is above 40 years and below 50 years of age in case of **National Insurance Company Limited Vs Pranay Sethi and others reported in (2017) 16 SCC 680**. Taking into consideration that the appellant suffered 80% loss of earning capacity as assessed by the Tribunal, there will be addition of 25% of his established income towards future prospects for calculating the total income of the appellant.

14. Learned Claims Tribunal awarded **Rs.10,000/-** towards medical expenses in lump-sum in absence of any other documentary evidence, which in the opinion of this Court, is just and proper. The Claims Tribunal has awarded Rs.10,000/- towards pain and suffering which in the facts of

the case, where the appellant took treatment for a period of one month, nature of injuries, and further, amputation of his right leg above knee, I find it appropriate to award **Rs.50,000/-** towards pain and suffering instead of Rs.10,000/- as awarded by learned Claims Tribunal.

15. Claims Tribunal has awarded Rs.3,000/- for attendant, Rs.5,000/- for special diet and Rs.5,000/- for transportation expenses. So far as the award on the head of special diet, it appears to be just amount of compensation but the amount awarded on the head of attendant and transportation requires to be enhanced. No amount is awarded under the head of loss of amenities and joy in life.

16. For the foregoing reasons, amount of compensation for which the appellant is entitled for requires re-computation, which is as under:

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

b) By adding 25% of the established income of the claimant towards future prospects, his yearly income comes to Rs.60,000/- $\{48000 + (48000 \times 25/100)\}$.

c) On the date of accident, appellant was aged about 44 years, hence, upon applying multiplier of 14 to his annual loss of income, total loss of income comes to Rs.8,40,000/- (60000×14) .

d) Appellant suffered 80% loss of income. Now, 80% of total loss of income comes to Rs.6,72,000/- $(840000 \times 80/100)$

e) Apart from above, the appellant/claimant will be further entitled for Rs.10,000/- towards medical expenses, Rs.50,000/- towards pains and suffering, Rs.50,000/- for loss of amenities and joy in life, Rs.10,000/- for transportation, Rs.5,000/- for special diet and Rs.4,000/- for attendant and Rs.16,000/- towards loss of income during period of treatment.

17. Now, the appellant/claimant is entitled for a total sum of **Rs.8,17,000/-** (672000 + 10000 + 50000 + 50000 + 10000 + 5000 + 4000 + 16000) as compensation instead of Rs.4,74,000/-, as awarded by learned Claims Tribunal. The amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-
(Parth Prateem Sahu)
JUDGE