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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1536 of 2015**

- Vedvyas Nirmalkar S/o Shri Rewaram Nirmalkar, Aged About 22 Years R/o Village- Dongritarai, Post Office & Police Station- Abhanpur, District Raipur (CG)

---- Appellant**Versus**

1. Purushottam Sahu S/o Dwarika Sahu, Aged About 25 Years R/o Village- Koma, Post Office & Police Station- Rajim, District- Gariyaband (CG) [Driver of Vehicle Mini Bus bearing registration No.CG04/E/2148]
2. Ghanshyam Sahu S/o Ramdayal Sahu, Aged About 32 Years R/o Village Jenjra, Post Office & Police Station Rajim, District Gariyaband, [Registered owner of Vehicle Mini Bus bearing registration No.CG04/E/2148]
3. The Oriental Insurance Company Ltd. through Branch Manager, Branch Office, Madina Building, Jail Road, Raipur, Post Office Raipur, Police Station Gol Bazar, Raipur Tasil & District Raipur (CG) [Insurer of vehicle Mini Bus bearing registration No.CG04/E/2148].

---- Respondents

For Appellant	:	Mr. Shivendu Pandya, Advocate
For Respondent No.1 & 2:		Mr. B.K. Chakravarthy, Advocate
For Respondent No.3	:	Mr. Raj Awasthi, Advocate

Single Bench: Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****06/11/2020**

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 5th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') vide award dated 30.6.2015 passed in Claim Case No.230/14 thereby allowing application in part and awarding Rs.8,58,486/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 17.2.2014 at about 12.00 noon appellant was standing by the side of road near Abhanpur and waiting for a bus to go to Dongitarai. At that time, one Mini Bus bearing registration number CG04-E-2148, coming from the side of Raipur and driven by non-applicant No.1 rashly and negligently, knocked him down and ran over his right leg. In the aforementioned accident, claimant-appellant suffered grievous injuries on various parts of his body including right leg. He was initially taken to Ambedkar Hospital, Raipur where he was given primary treatment and thereafter he was shifted to Samarpan Hospital, Raipur where he took treatment as inpatient from 17.2.2014 to 25.3.2014. During the course of hospitalization, right leg of claimant just below knee was amputated. Appellant also took treatment from other private doctors.
3. Claimant/appellant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.26,00,000/- pleading therein that on account of accidental injuries suffered by him, his right leg below knee has been amputated as a result he has become permanently disabled. It was also pleaded that on account of disability suffered by him, he has been removed from the job of Supervisor by its employer Kaushik Transport. Claimant has also sought compensation under all other heads as are available to him like loss of income, special diet, medical expenses, future medical expenses, pain and sufferings etc.

4. Non-applicant No.1 & 2 submitted their reply to claim application, while denying the pleadings made therein it was further pleaded that claimant-appellant was standing by the side of road in drunken condition, when the driver of offending vehicle was about to stop it, claimant himself came into contact of rear wheel of vehicle and suffered injuries. On the date of accident, offending vehicle was insured with non-applicant No.3, therefore, Insurance Company is liable to indemnify the insured.
5. Non-applicant No.3-Insurer of offending vehicle, submitted reply to claim application, while denying the pleadings made therein, has further pleaded that accident was the result of self negligence of claimant. Non-applicant No.1-driver was not having valid and effective driving license, there was breach of condition of insurance policy, hence, insurance company is not liable to pay any amount of compensation.
6. The Claims Tribunal on appreciation of pleadings and evidence placed on record held that claimant-appellant suffered grievous injuries on account of motor vehicular accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1, plea that the offending vehicle was plied in breach of condition of insurance policy has not been found proved as it could not be established that on the date of accident, non-applicant No.1 was not having valid & effective driving license, accordingly, allowed claim in application in part and awarded

Rs.8,58,486/- as compensation.

7. Mr. Shivendu Pandey learned counsel for appellant-claimant submits that the Claims Tribunal erred in assessing loss of earning capacity of claimant-appellant only to the extent of 30% overlooking the pleadings and documentary evidence placed on record like disability certificate issued by the Medical Board concerned certifying that appellant has suffered 60% permanent disability. He further contended that appellant on account of permanent disability suffered by him has been removed from his job, he is not able to do the work which he was doing prior to the accident and thereby he has been deprived from his livelihood. He also submits that the Claims Tribunal has not taken into consideration the entire facts and circumstances of case including nature of employment in which claimant-appellant was engaged prior to accident, which he is unable to continue after the accident, and assessed the loss of earning capacity at 30% thereby committed mistake. The Claims Tribunal has not awarded any amount towards loss of amenities & joy in life.
8. Per contra, Mr. Raj Awasthi, learned counsel for the respondent No.3 submits that though disability certificate issued by the Medical Board certifies that claimant-appellant suffered 60% permanent disability on account of amputation of his right leg below knee joint, but the doctor, who was examined by appellant to prove disability, has categorically stated that disability assessed by the Medical Board is with

regard to the part of body i.e. right leg only and not for the whole body. He further stated that percentage of disability for whole body would be 30%. The Claims Tribunal taking into consideration evidence placed on record by claimant himself i.e. of AW-2, has assessed percentage of loss of income, which cannot be said to be erroneous. He further submits that the Claims Tribunal has awarded sufficient amount of compensation under other heads like medical expenses, pain and sufferings, loss of marital aspect, transportation, special diet and future treatment expenses. Hence, the amount of compensation awarded by the Claims Tribunal is just and proper and does not call for any interference.

9. I have heard learned counsel for the parties and perused the record.
10. To appreciate the submission made by learned counsel for the appellant that the Claims Tribunal erred in assessing loss of earning capacity to the extent of 30% only, I have perused the documents available on record. Perusal of disability certificate issued by the Medical Board and the evidence of doctor (AW-2) would show that appellant suffered amputation of his right leg just below knee joint. Loosing part of body by way of amputation during the course of treatment is something more severe than that of disability suffered by a person from any other nature of injuries not resulting into amputation of any part of body. Appellant suffered amputation of his right leg just below knee and the nature of employment, as stated, is of

Supervisor with Kaushik Transport. Appellant in his evidence has very specifically stated that he has to travel from one village to another where trucks travel for leaving goods and for picking up goods and thereafter to collect documents and transport charges from the respective persons. Appellant has further stated that due to permanent disability suffered by him, he has been removed from his job. He has admitted in his evidence that he has to maintain records of incoming and outgoing of trucks and along with that job, he has to also collect amount of transportation charges from the clients of his employer at different places.

11. From the above pleadings and evidence placed on record by appellant himself, it is clear that the appellant is not working as a labour, his work is not to operate any machine, vehicle etc. but as per his admission in his evidence, along with work of maintaining records of trucks, he has to visit nearby places in connection with his employment. Nature of work and statement that now he has been removed from the job have not been proved by appellant by examining any of his colleagues working in the same transport company or employer. The entire evidence of appellant cannot be accepted in absence of examination of any independent person as witness. But, the permanent disability suffered by appellant on account of amputation of his right leg just below knee joint is proved by placing disability certificate Ex.P-175 and examining the doctor (AW-2. Looking to the part of leg

from where amputation was done, appellant may not be able to travel continuously in connection with his work in nearby villages of his own and even he may not be able to drive motorcycle also. Though appellant has not placed any material or evidence before the Claims Tribunal with regard to his employment, nature of work and earning, but the question for consideration is whether appellant with the permanent disability suffered by him can do any other job. True it is that with the disability suffered by appellant, he may not get job of his choice or he may not have much opportunities to get employment of the nature in which he was employed as per his statement. Hence, while awarding amount of compensation to appellant with regard to permanent disability suffered by him on account of amputation of his right leg, aforementioned factors are also to be taken into consideration. The Claims Tribunal without applying its mind and accepting evidence of doctor that 60% permanent disability recorded in the certificate is only with respect to injured part of body i.e. right leg, and not for whole body and percentage of permanent disability for the whole body may be 30%, has recorded that appellant suffered loss of earning capacity to the extent of 30%. The Claims Tribunal has not considered and discussed in the impugned award that how much and upto what extent, looking to the nature of employment, permanent disability suffered by appellant will affect his earning. As discussed by Hon'ble Supreme Court in the case of **Rajkumar Vs. Ajay**

Kumar & another reported in **(2011) 1 SCC 343** number of injuries affecting loss of earning capacity to different persons engaged in different occupation but having same percentage of permanent disability.

12. 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 considered the award of just compensation in personal injury case and 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.”

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."

13. From the materials and evidence available on record it do not appear that appellant is highly qualified person and can be easily employed for table work. Taking into consideration overall aspect of the case, nature of permanent disability, part of body affected, nature of his engagement pleaded and stated by appellant, in absence of any evidence with regard to his qualification, in the opinion of this Court, the loss of earning capacity as assessed by the Claims Tribunal is on lower side. Taking into consideration the judgment passed by Hon'ble Supreme Court in the matters of **Rajkumar (supra)** and **R.D. Hattangi (supra)** and in view of above discussions, I find it appropriate to assess loss of earning capacity of claimant-appellant to the extent of 45%.

14. The Claims Tribunal has awarded amount almost under all the heads for which appellant is entitled for in the facts and circumstances of case, except under the head of loss of amenities and joy in life. Analysing that on the date of accident, appellant was 22 years old bachelor and he has to live with permanent disability suffered by him for whole of his

life, I deem it fit to award Rs.50,000/- towards loss of amenities and joy in life.

15. Appellant met with accident and suffered injuries, he took treatment as inpatient in Medishine Hospital, Raipur from 17.2.2014 to 25.3.2014 for about 36 days. Looking to the nature of injuries, it may not be possible for the applicant to do some work for some more time after discharge. He stated that he was removed from the job due to disability and he might have taken some time to get another job. Taking into consideration aforementioned aspect of the matter, I find it proper to award loss of income during the period of treatment for six months i.e. Rs.30,000/- (5000x6) and Rs.5,000/- towards Attendant.
16. As this Court is considering appeal for enhancement of compensation on the ground that meagre amount of compensation towards loss of earning capacity and non award of any amount towards loss of amenities and joy in life, it is bounden duty of this Court to see that claimant-appellant is awarded just compensation and not a bonanza. The Claims Tribunal has added 50% towards future prospects. The award of future prospects has been considered by Hon'ble Supreme Court in case of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in (2017) 16 SCC 680 and it is held that person who are below 40 years of age and not in permanent employment, there will be addition of 40% of the established income towards future prospects. Hence, in case

at hand also, there will be addition of 40% of established income of appellant towards future prospects instead of 50% as done by the Claims Tribunal.

17. For the foregoing reasons, this Court proposes to recompute the amount of compensation payable to claimant/appellant to award just compensation.
18. The income of appellant-claimant is taken as Rs.5,000/- per month and after adding 40% of his established income towards future prospects, total monthly income of appellant comes to Rs.7,000/- (5000+40% of 5000) and annual income comes to Rs.84,000/-. Since claimant-appellant has suffered permanent disability to the extent of 45%, as held in preceding paragraph by this Court, the capacity of appellant to earn in future would be reduced by Rs.3,150/- p.m. (45% of 7000), which, in turn, comes to Rs.37,800/- per annum. As the claimant-appellant was 22 years old on the date of accident, multiplier of '18' will be applicable to annual loss of income of appellant. By applying multiplier of '18' to annual loss of income, total loss of income would come to Rs.6,80,400/- (37,800x18). Besides this, claimant-appellant will be entitled for Rs.50,000/- for loss of amenities and joy in life; Rs.30,000/- towards loss of income during period of treatment and Rs.5,000/- towards Attendant. Appellant-claimant will also be entitled for the amount awarded by the Claims Tribunal towards medical expenses, future medical treatment expenses, loss of marital aspect, pain and sufferings, special

diet and transportation, total of which comes to Rs.3,72,486/- (152486 + 100000 + 50000 + 50000 + 20000). Thus, claimant/appellant is now entitled for total sum of **Rs.11,37,886/-** (6,80,400+50,000+30,000+5,000+3,72,486), instead of Rs.8,58,486/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ **9% p.a.** from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

19. In the result, the appeal stands allowed in part and the impugned award stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-