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HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.1180 of 2013

Lalit Kumar Dewangan S/o Keju Ram Dewangan Aged About 38 Years, R/o P.H.E. Colony, Nayapara, Rudri Road, P.S. Rudri, Civil & Revenue Distt. Dhamtari C.G.

---- Appellant

Versus

1. Atendra Kumar S/o Mahadeo Patel Aged About 22 Years, Occupation- Driver, R/o Sankra Road, Nagari, Distt. Dhamtari C.G.
2. Vishram Singh S/o Vir Singh Aged About 30 Years, R/o Plate No. S-6, Plot No. 56/05, Malviya Nagar, Jivan Sagar, Apartment, Bhopal, Madhya Pradesh.
3. I.C.I.C.I. Lembard General Insu. Co. Ltd. Branch Office, Raipur, Distt. Raipur C.G.

---- Respondents

Appellant	:	Shri Anil Gulati, Advocate.
Respondent No.1 & 2	:	None.
Respondent No.3	:	Ms. Pratibha Das, Advocate on behalf of Shri Amrito Das, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

30.01.2020

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 11.07.2013 passed by learned Additional Motor Accident Claims Tribunal, (FTC), Dhamtari, Distt. Dhamtari, C.G (in short 'the Tribunal') in Claim Case No.86/2013, whereby the Tribunal allowed claim application in part and awarded total sum of Rs.3,48,800/- as compensation in an injury case.

2. Brief facts, in nutshell, are that on 02.07.2010, appellant (injured) along with his friend Ramnaresh was going towards Dhamtari from village Chhati on Motorcycle bearing registration No.CG05/C/9266. Appellant was traveling as 'pillion rider', whereas Ramnaresh was driving the said motorcycle. When they reached near village -Sehradabri, one Indica Car bearing registration No.MP04-CB-3296,

(hereinafter referred as “offending vehicle”), driven by Non-applicant No.1/Atendra Kumar, dashed against their motorcycle, as a result appellant/ claimant suffered grievous injuries on various parts of the body including fracture injury on his both legs, chest & left thigh. He was taken to Christian Hospital, Dhamtari where he remained admitted for about 22 days. Accident was reported to PS- Arjuni based on which, crime bearing No.250/10 was registered against driver of offending vehicle.

3. On account of injuries suffered by him in motor accident, appellant/claimant filed claim application under Section 166 of the Act of 1988 before the competent Claims Tribunal claiming an amount of Rs.12,00,000/- as compensation on the ground that on the date of accident, he was aged about 38 years of age; he was earning Rs.200-250/- per day by working as 'Mason', however, on account of permanent disability suffered by him in the aforementioned accident, he is unable to earn his livelihood.

4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, jointly submitted their reply to claim application and denied all adverse pleadings made against them. It was pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3-Insurance Company and the driver of offending vehicle was possessing valid and effective driving license. It was also pleaded that the accident took place due to negligence on the part of driver of motorcycle. It was also pleaded that driver & owner of offending vehicle are not liable to pay any amount of compensation.

5. Non-applicant No.3/Insurance Company submitted reply to claim application and denied all adverse pleadings made therein. It was pleaded that on the date of accident, offending vehicle was being plied in breach of essential conditions of insurance policy. It was also pleaded that accident took place due to head-on collusion between offending vehicle and motorcycle and thus there was contributory negligence on the part of injured/ claimant also. In these circumstances, insurance company is not liable to indemnify insured.

6. On appreciation of pleadings and evidence placed on record by the respective parties, the learned Tribunal arrived at a conclusion that accident took place on account of rash and negligent act of driver of offending vehicle in which claimant suffered permanent disability and there was no violation of any of the conditions of the insurance policy. On the basis of above findings, the Tribunal allowed claim application in part, awarded total sum of Rs. 3,48,800/- as compensation to claimant and held the Insurance Company liable for payment of the amount of compensation awarded.

7. Learned counsel appearing for claimant/appellant submits that though the Tribunal observed that the appellant suffered permanent disability to the extent of 45%, but not awarded any amount towards loss of future prospects. He also submits that the Tribunal committed an error in assessing income of appellant only at Rs.100/- per day i.e. Rs.3,000/- per month, ignoring the pleadings and evidence placed on record by the appellant, that on the date of accident he was working as 'Mason', which comes within the category of skilled labour and

earning Rs.200-250 per day. On the aforesaid grounds, he submits that the compensation awarded to the claimant be enhanced suitably.

8. Per contra, learned counsel for respondent No.3/Insurance Company submits that the Tribunal has rightly taken into consideration the evidence and materials placed on record by appellant/claimant and awarded just and proper amount of compensation. She further submits that the appellant/claimant failed to produce any cogent and reliable piece of evidence in support of his claim regarding income. The Tribunal has rightly assessed his income on notional basis, which cannot be faulted with. The amount of compensation is just and proper.

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

10. So far as first submission made by learned counsel for appellant that the Tribunal was not justified in not awarding any amount towards loss of future prospects is concerned, the permanent disability assessed by the Tribunal to the extent of 45% is not challenged by the respondents by way of filing an appeal. To consider the submission made by the learned counsel for appellant that appellant is entitled for compensation towards loss of future prospects, it is necessary to consider the nature of employment of appellant. In the pleadings and evidence, the appellant has stated that on the date of accident, he was working as 'Mason', which is a kind of work in which a person requires to stand and to sit during period of work. In the aforementioned accident appellant has suffered grievous injuries over his leg, which is evident from medical certificate (Ex.P-166)

issued by Dhamtari Christian Hospital, Dhamtari, according to which, appellant remained admitted in the said hospital as indoor patient from 02.07.2010 to 24.07.2010; upon x-ray examination, fracture injury in left tibia fibula bone & left acetabulum was noticed and that he underwent surgery for fracture injuries on 02.07.2013. As per disability certificate (Ex.P/191) issued by Dr. Amit Agrawal, (MS Ortho), Dev Kripa Hospital, Shankar Nagar, Raipur, that percentage of disability is 71%. Dr. Amit Agrawal was examined as AW-2 and he has stated in his evidence that appellant suffered 71% of permanent disability. This witness has admitted that in future the appellant will face problem in standing and sitting on his both legs. In the cross examination this witness has denied the suggestion that Physiotherapy treatment may reduce the extent of disability of appellant.

11. Taken into consideration the medical certificate, disability certificate as well as evidence of the doctor AW-2, I am of the view that appellant has been able to prove that he suffered injuries over his left leg as also on left hip resulting in permanent disability. Doctor AW-2 has stated in categorical terms that the appellant would face difficulty while standing on both his legs with weight. Looking to the nature of engagement/employment of appellant, it is required to stand and sit for the whole time of work using his both legs, however, due to disability suffered by him, he may not be able to perform his work with the same efficiency, which he was doing prior to the date of accident, therefore, in future also he will suffer loss of income due to said disability. In these circumstance, I am of the considered view

that the Tribunal has committed error in not awarding any amount towards loss of future prospects, to which, the appellant is entitled for.

12. Coming to second submission made by the learned counsel for appellant that the Tribunal committed error in fixing income of appellant/claimant at Rs.1,00/- per day i.e. Rs.3,000/- per month. It is true that the appellant has not placed any cogent and reliable piece of evidence on record to prove his income, but at the same time it cannot be overlooked that prior to accident, appellant was working as 'Mason' as pleaded and stated in evidence and being so, he cannot be expected to be employed with only one person and therefore, there cannot be any documentary prove of wages. When there is no documentary prove of earning/wages of any person then the proper course would be to take the wage rate and price index to assess income of a person. Looking to the date of accident i.e. 02.7.2010, and nature of work of the appellant, which comes under the category of skilled labour, in the considered opinion of this Court, reasonable amount of wages can be taken as Rs. 4,500/- per month instead of Rs.3,000/-.

13. So far as the grant of amount towards future prospects is concerned, this issue has been dealt with by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi reported in (2017) 16 SCC 680,** wherein it has been held that in case the claimant (injured) was between the age of 40 to 50 years and not in permanent employment, an addition of 25% of actual income towards future prospects should be added. Relevant paragraph of **Pranay Sethi's** case reads 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. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

14. Indisputably, in case at hand, at the time of accident, the claimant was aged about 41 years and was self-employed i.e. Mason, therefore, this Court is of the considered opinion that appellant/ claimant is entitled for an addition of 25% of established/assessed income i.e. Rs.4,500/-.

15. In view of above, amount of compensation awarded by learned Claims Tribunal requires recalculation, which this Court calculates as under :-

16. Income of appellant is taken as Rs.4,500/- per month as above, and by adding 25% of the income towards future prospects, which comes to Rs.1125/- (25% of 4500), total monthly income of appellant is assessed at Rs.5625/- (4500+ 25% of 4500) and accordingly yearly income would come to Rs.67,500/- (5625X12). As held that appellant suffered 45% permanent disability he will suffer loss of income to the extent of 45% of his income which comes to Rs.30,375/- (67500 X 45/100) yearly. The appellant is aged about 41 years for which appropriate multiplier is 14 and by applying multiplier of 14, the total loss of income comes to Rs.4,25,250/- (30,375 X 14). Besides this, appellant will also be entitled for a sum of Rs.80,000/- towards medical expenses, Rs.10,000/- towards pains & suffering, Rs.9,000/-

towards loss of income during the period of treatment, Rs.20,000/- towards future treatment, Rs.3,000/- towards special diet & conveyance expenses as awarded by the Tribunal.

17. Now appellant/claimant will be entitled for a total sum of **Rs.5,47,250/-** (425250+ 80000+ 10000+ 9000+ 20000+ 3000) instead of **Rs.3,48,800/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

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

Sd/-

(Parth Prateem Sahu)
Judge

Jamal