

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 867 of 2013**

(Arising out of award dated 19.07.2013 passed in Claim Case No.117 of 2013 by the Additional Motor Accident Claims Tribunal (F.T.C.), Dhamtari, District Dhamtari, Chhattisgarh)

Anandram S/o Shri Siraram Sahu, Aged About 40 Years,
R/o Village Sorem, Post- Bhatgaon, P.S. Rudri Civil Lines,
Tehsil and District Dhamtari Chhattisgarh.

---- Appellant**Versus**

1. Mahesh Manjhi S/o Raju Manjhi Aged About 29 Years R/o Nagersena Hatakchaowra, P.S. Bhodghat, District Bastar Chhattisgarh
(Driver of offending vehicle No.CG17/SS/1127)
2. Vishvanath Kashyap S/o Late Baliram Kashyap R/o Rajendra Nager Ward, Jagdalpur, P.S. Bhodghat, Tehsil and District Bastar Chhattisgarh
(Owner of offending vehicle No. CG17/SS/1127)
3. The New India Assurance Company Limited Through Divisional Manager, Madina Building, Kachari Chowk, Raipur, Tehsil and District Raipur, Chhattisgarh.
(Insurance Company of offending vehicle No.CG17/SS/1127).

---- Respondents

For Appellant	:	Shri Aman Yadav, Advocate on behalf
		of Shri B.P. Singh, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Shri K.N. Nande, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment On Board**Per Parth Prateem Sahu, Judge****09.07.2020**

1. Challenge in this appeal is to the award dated 19.07.2013 passed by the Additional Motor Accident Claims Tribunal

(F.T.C.) Dhamtari, District Dhamtari, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.117 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.1,10,100/- as compensation in an injury case.

2. Facts of the case in nutshell, are that, on 30.10.2011, appellant was travelling on his motorcycle and returning to his village Soram from village Telinsatti. On the way, when he reached Makai Chowk, Dhamtari at about 2.30 pm, one Truck bearing registration No.CG17/SS/1127 (hereinafter referred to as 'offending vehicle) driven by respondent No.1, dashed the motorcycle of the appellant. In the aforementioned accident, appellant suffered grievous injuries over both his knees and got fractured injury on ankle. He was taken to Dr. Pervez Hospital where he took treatment as inpatient. The accident was reported to the concerned Police Station, based on which, Crime No.398 of 2011 was registered against respondent No.1, driver of the offending vehicle.
3. The appellant/claimant thereafter filed claim application under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the learned Claims Tribunal claiming a sum of Rs.13,00,000/- as compensation mentioning therein that due to motor

accidental injuries suffered by him, his left leg became permanently disabled and he was unable to perform the work of labour.

4. Respondents No.1 and 2, who are driver and owner of the offending vehicle submitted reply to claim application while denying the pleadings made in the claim application, pleaded that the accident took place on account of negligence on the part of the appellant; respondent No.1 was possessing valid and effective driving license on the date of accident; the offending vehicle was insured with respondent No.3/Insurance Company, therefore, they are not liable to pay any amount of compensation.
5. Respondent No.3/Insurance Company submitted its separate reply while denying the pleadings made in the claim application, pleaded that respondent No.1 was not possessing valid and effective driving license; accident was not reported by the owner of the offending vehicle as per provisions of the M.V. Act to the Insurance Company; there was accident between two motor vehicles and both the drivers are liable for the accident.
6. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as five issues for consideration. On appreciation of the pleadings, evidence and material placed on record by the respective parties,

learned Claims Tribunal held that the accident of the appellant was on account of rash and negligent driving of the offending vehicle by respondent No.1; the appellant suffered permanent disability; there was no breach of conditions of insurance policy and awarded a total sum of Rs.1,10,100/- as compensation to the appellant in an injury case.

7. Shri Aman Yadav, learned counsel for the appellant/claimant submits that learned Claims Tribunal has not considered the entire evidence placed on record to prove the permanent disability and erred in taking permanent disability to the extent of 10% only on the basis of presumption overlooking the medical evidence i.e. disability certificate (Ex. P/37) and oral evidence of the Dr. Iqbal Pervez (AW-2). It is contended that learned Claims Tribunal ought to have assessed the loss of income towards permanent disability assessing the disability of the appellant as mentioned in the disability certificate issued by the treating doctor. It is further contended that learned Claims Tribunal erred in assessing the income of the appellant as Rs.3,000/- per month, which is on the lower side. He also submits that learned Claims Tribunal has not awarded any amount towards non-pecuniary damages as well as loss of income during the period of treatment, conveyance, attendant etc. and prays that the amount of compensation be enhanced suitably.

8. Per contra, Shri K.N. Nande, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal has awarded just and proper amount of compensation in the facts and circumstances of the case after considering the entire evidence placed on record including the medical evidence adding that, the impugned award does not call for any interference.
9. We have heard learned counsel appearing for the respective parties and perused the record carefully.
10. The appellant in his claim application has pleaded that he suffered fracture injury over his left ankle, lacerated wound over right foot along with other injuries suffered and became permanent disabled to the extent of 55%. In support of his pleading, appellant has placed the documents of criminal case along with discharge card, other medical prescriptions and bills towards purchase of medicine. Discharge card is filed as Ex. P/38, in which, it is mentioned that appellant was admitted in the hospital on 30.10.2011, operated on 31.10.2011 and discharged on 04.11.2011. The appellant also filed disability certificate (Ex. P/37) issued by Dr. Iqbal Pervez (AW-2) mentioning that the appellant suffered 20% permanent disability. Dr. Iqbal Pervez (AW-2) in his evidence admitted that appellant was brought to the hospital on 30.10.2011 with motor accidental injuries and there was

fracture of medial malleolus bone and left tibia fibula bone. Both the injuries are grievous in nature along with other simple injury of lacerated wound over right foot.

11. From the aforementioned evidence available on record, it is clear that the appellant suffered two fracture injuries over his left leg and lacerated wound over his right foot along with other injuries in the motor accident.
12. To appreciate the contention of appellant that he suffered permanent disability to the extent of 20%, but learned Claims Tribunal held permanent disability to the extent of 10% only, the law in this regard is well settled that permanent functional disability affecting the income and nature of injury of injured is to be considered and not only percentage of disability mentioned in the disability certificate for the purpose of calculating the loss of future earnings. The Hon'ble Supreme Court in its judgment has held that for awarding amount of compensation on the head of loss of future earnings, it is the functional disability suffered by the appellant have to be kept in mind.
13. The Hon'ble Supreme Court has taken into consideration the issue with respect to norms of calculating the disability affecting the earning capacity on the basis of permanent disability in the matter of **Raj Kumar v. Ajay Kumar and**

another¹, in which, the Hon'ble Supreme Court held as under :

“9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of

¹ (2011) 1 SCC 343

injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.”

14. In the light of aforementioned law laid down by Hon'ble Supreme Court, if the facts of the present case are considered, the appellant has stated that he was working as labour and having about one acre of land, but after the

accident, he is not able to do the work of labour and suffered monetary loss.

15. Dr. Iqbal Pervez (AW-2) has proved the injuries as well as disability certificate (Ex. P/37). In cross-examination at paragraph-4, Dr. Iqbal Pervez (AW-2) has admitted that percentage of disability which he has mentioned in the disability certificate of 20% is not for whole body, but for the left leg and further that, the appellant is capable to do all his routine work. From perusal of evidence of Dr. Iqbal Pervez (AW-2), who issued the disability certificate (Ex. P37) and also treated the appellant in very categorical terms stated that the disability mentioned in the disability certificate was for left leg only and not for whole body.
16. Looking to the injuries as well as the work and occupation as stated by the appellant that he is engaged in the work of labour, he will not suffer the same percentage of loss in his monthly income as mentioned in the disability certificate i.e. 20%, we are of the view that the learned Claims Tribunal has not erred in assessing the loss of income of the appellant due to permanent disability suffered by him as 10% only as functional disability.
17. Now the other ground raised by learned counsel for the appellant that the learned Claims Tribunal erred in assessing

the monthly income of appellant as Rs.3,000/- only on notional basis.

18. The accident took place on 30.10.2011 and there is no acceptable evidence of income placed on record except the self oral evidence. When income is not proved by producing admissible piece of evidence, then it is the duty of the Claims Tribunal to assess the income considering the price index, cost of living and also the wage structure prevailing at that relevant time. Looking to the date of accident i.e. 30.10.2011 and considering the aforementioned factors, we find it appropriate to hold the income of the appellant as Rs.4,000/- per month and Rs.48,000/- per annum.
19. The learned Claims Tribunal has awarded Rs.5,000/- towards pain and suffering, Rs.10,000/- towards special diet and transportation expenses, Rs.6,000/- towards loss of income during period of treatment, Rs.50,400/- towards loss of future income, Rs.38,700/- towards medical expenses and also awarded the amount towards entire bills as placed on record and proved by the appellant.
20. Learned counsel for the appellant could not able to point out before this Court any of the proved bill which is placed on record as an evidence has not been considered and awarded the amount.

21. The next argument raised by learned counsel for appellant is that learned Claims Tribunal committed an error in not awarding any amount towards future prospects. In view of law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**², the claimant is also entitled for the additional amount of 25% of the income towards future prospects as the claimant is not in a permanent employment and was above 40 years on the date of accident. In the instant case, on the date of accident, age of appellant is 42 years and therefore, 25% amount was added towards future prospects.
22. In view of above, the amount of award assessed and calculated by the learned Claims Tribunal requires reconsideration and recalculation. This Court proposes to recalculate the award in following terms :
23. The monthly income of appellant is taken as Rs.4,000/- per month and by adding 25% of the income towards future prospects i.e. Rs.1,000/-, the monthly income of appellant comes to Rs.5,000/- (4,000 + 1,000) and yearly income comes to Rs.60,000/- (5,000 x 12). It is held that the appellant has suffered 10% permanent disability in his future earnings, therefore, he suffered loss of Rs.6,000/- per annum (60,000 x 10%) as future loss of income. At the time of accident, the appellant was aged about 42 years,

² AIR 2017 SC 5157

therefore, in view of the matter of **Sarla Verma (Smt.)** (supra), multiplier of 14 would be applicable in the present case. After applying the multiplier of 14, total loss of income of appellants comes to **Rs.84,000/-** (6,000 x 14).

24. Learned Claims Tribunal has awarded only Rs.5,000/- towards pain and suffering, which looking to the nature of injury appears to be on lower side and we deem it fit and proper to award **Rs.10,000/-** towards pain and suffering. Appellant may not be able to perform his work for a period of three months looking to the nature of injuries where the ankle joint got fractured along with tibia fibula bone, we are of the view that the appellant will be entitled for loss of income during period of treatment for three months as **Rs.12,000/-** (4000 x 3).
25. Learned Claims Tribunal has not awarded any amount towards attendant though the appellant took treatment as inpatient and further looking to the nature of injuries and part of body where appellant suffered fracture injury, he might have required an attendant to help him for a period of one month, therefore, we find it appropriate to award **Rs.3,000/-** towards attendant along with an amount of **Rs.10,000/-** towards special diet and conveyance expenses.
26. Learned Claims Tribunal has not awarded any amount towards loss of amenities and enjoyment of life ignoring

though Dr. Iqbal Pervez (AW-2) has stated in his evidence that the appellant has to live with disability for his entire life. Appellant is a young man of about 42 years, therefore, we find it appropriate to award **Rs.5,000/-** towards loss of amenities and enjoyment in life. In addition to the above amount of compensation, the appellant is entitled for a sum of **Rs.38,700/-** towards medical expenses as awarded by learned Claims Tribunal.

27. On the basis of above recalculation, now the appellant/claimant will be entitled for a total compensation of Rs.1,62,700/- (84,000 + 10,000 + 12,000 + 3,000 + 10,000 + 5,000 + 38,700) instead of Rs.1,10,100/- awarded by the learned Claims Tribunal. The aforementioned amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

28. In the result, the appeal is allowed in part. The impugned award is modified to the extent indicated herein-above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge