

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
M. A. (C) No. 822 of 2014

(Arising out of award dated 31/01/2014 passed in Accident Claim Case No.49 of 2013 by the Motor Accident Claims Tribunal Balodabazar, District Balodabazar-Bhatapara, Chhattisgarh)

Devram Kewat S/o Ramdas Kewat, aged about 25 years,
 R/o village Hasuwa, Police Station Bilaigarh, Tahsil Kasdol,
 District Raipur (C.G.).

---- Appellant/(Claimant)

Versus

1. Mesh Ram S/o Fandu Ram Sahu, aged about 26 years, R/o village Hasuwa, Police Station Bilaigarh, Tahsil Kasdol, District Raipur (C.G.).
 (Driver of alleged vehicle bearing registration No. C.G.-04.-J.B.-8963)
2. Shivkumar S/o Rampyari Sahu, R/o village Hasuwa, Police Station Bilaigarh, Tahsil Kasdol, District Raipur (C.G.).
 (Owner of alleged vehicle bearing registration No. C.G.-04.-J.B.-8963)
3. Reliance General Insurance Company Limited, Division Office, Raipur, District Raigarh (C.G.).
 (Insurer of alleged vehicle bearing registration No. C.G.-04.-J.B.-8963)

---- Respondents/(Non-applicants)

For Appellant	: Shri Samir Singh, Advocate
For Respondents No.1 & 2	: None
For Respondent No.3	: Shri Sachin Singh Rajput, 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

07/08/2020

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter refereed to as 'M.V. Act') challenging the impugned award dated 31/01/2014 passed

by the Motor Accident Claims Tribunal Balodabazar, District Balodabazar-Bhatapara, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Accident Claim Case No.49 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.4,54,000/- as compensation in a permanent disability case.

2. Facts relevant for disposal of this appeal, are that, on 21/04/2011 appellant/claimant was travelling as a helper/cleaner of the truck bearing registration No.CG-04/JB/8963 (hereinafter referred to as 'offending truck'), which met with an accident near village Kamta and dashed with a tree. In the said accident, left hand of appellant/claimant came in between the tree and offending truck, due to which, it caused severe injuries over his left hand. He was taken to Balaji Hospital, Raipur where he took treatment as inpatient from 21/04/2011 to 08/05/2011.
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.16,78,000/- as compensation mentioning therein that on the date of accident, he was working as helper/cleaner in the offending truck; he suffered grievous injuries over his left shoulder and

his left hand was amputated, due to which, he became permanently disabled.

4. Respondents No.1 and 2, who are driver and owner of the offending truck submitted reply to claim application and denied the engagement of appellant/claimant as helper/cleaner, but in their further pleading, they have admitted the fact of accident and have not specifically denied the injuries suffered by the appellant in the said accident. They have pleaded that due to mechanical fault of offending truck, it met with an accident; there was no negligence on the part of non-applicant No.1 and on the date of accident, offending truck was insured with non-applicant No.3/Insurance Company.
5. Non-applicant No.3/Insurance Company submitted reply to claim application and while denying the pleading made in the claim application, pleaded that there was no nexus between the injuries suffered by appellant/claimant and the accident; the appellant/claimant has not suffered permanent disability as pleaded in the claim application. It was further pleaded that appellant/claimant was unauthorized passenger in the alleged offending truck, of which, risk was not covered under the insurance policy and on the date of accident, non-applicant No.1 was not possessing valid and effective driving licence to drive the vehicle.

6. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as six issues for consideration. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that appellant/claimant suffered grievous injuries on account of rash and negligent driving of offending truck by non-applicant No.1; appellant/claimant suffered permanent disability; there was no breach of conditions of insurance policy and awarded a total sum of Rs.4,54,000/- as compensation to appellant/claimant in an injury case and fastened the liability upon non-applicants No.1 to 3 jointly and severally for satisfying the amount of compensation.
7. Shri Samir Singh, learned counsel for the appellant/claimant submits that learned Claims Tribunal erred in assessing the loss of earning capacity of appellant/claimant as 50% only ignoring the nature of permanent disability and part of body over which, he suffered permanent disability i.e. amputation of his left hand from shoulder. He further submits that learned Claims Tribunal ought to have considered the loss of earning capacity as 100% because appellant/claimant is engaged as helper/cleaner, for which, a person in such work requires both of his hands and feet. It is contended that learned Claims Tribunal further erred in assessing the income of appellant/claimant as Rs.3,000/- per month

without taking note of the date of accident i.e. 21/04/2011 and the income pleaded by appellant/claimant as Rs.6,000/- per month. It is further contended that learned Claims Tribunal awarded meager amount of compensation towards other pecuniary damages as assessed by it and not awarded any amount towards loss of amenities and enjoyment in life and other non pecuniary damages. He places his reliance on the judgment passed by Hon'ble Supreme Court in the matter of **Mohan Soni v. Ram Avtar Tomar and Others** reported in **(2012) 2 SCC 267** to buttress his submission.

8. Per contra, Shri Sachin Singh Rajput, learned counsel for respondent No.3/Insurance Company supported the impugned award and submits that disability certificate (Ex.A/25) produced by the appellant/claimant before learned Claims Tribunal only bears the percentage of disability to the extent of 60%; adding that, appellant/claimant suffered the disability only on his left hand and not on the whole body.
9. We have heard learned counsel for the respective parties and perused the record carefully.
10. Perusal of disability certificate (Ex.A/25) would show that amputation of the left hand is from his left shoulder. In disability certificate, it is mentioned as disarticulation of left shoulder. The nature of work as pleaded in the claim

application as stated by appellant/claimant and supported by the evidence of Shyam Sunder Sahu (AW-2) that on the date of accident, appellant/claimant was working as helper/cleaner in the offending truck. Respondent No.2/Non-applicant No.2, namely, Shiv Kumar Sahu entered into witness box as NAW-1, who admitted that on the date of accident, appellant/claimant was working as helper on his truck, which met with an accident and he took the appellant/claimant from Tilda Hospital to Balaji Hospital, Raipur.

11. From the aforementioned facts and evidence, it is apparent that appellant/claimant who was working as helper in the offending truck suffered permanent disability on account of amputation of his left hand from his shoulder.
12. To prove the disability certificate (Ex.A/25), appellant/claimant examined Dr. Pramod Tiwari as AW-3, who in clear terms has stated that he issued the disability certificate (Ex.A/25) and percentage of disability mentioned in the certificate is with regard to his whole body.
13. Now, in view of aforementioned material and evidence available on record, we will consider the statement of learned counsel for the appellant/claimant that appellant/claimant suffered 100% loss of earning capacity on account of permanent disability suffered by him on his left

upper limb. The percentage of disability assessed by the doctor with regard to whole body is to be considered for the purpose of awarding compensation taking into account the nature of engagement of injured, his occupation and whether he is able to perform his work, which he was doing prior to the date of accident for the purpose of earning his livelihood.

14. The Hon'ble Supreme Court in the matter of **Mohan Soni** (supra) has considered the loss of future earnings on account of permanent disability suffered by a cart-puller on his left leg on account of amputation and held that consideration of hypothetical factors like changing his vocation or by adopting another means of livelihood, should not be taken into account. The Hon'ble Supreme Court in the aforementioned judgment has considered its earlier judgments of **Raj Kumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343**, **Yadava Kumar v. National Insurance Company Limited** reported in **(2010) 10 SCC 341** and **Arvind Kumar Mishra v. New India Assurance Company Limited** reported in **(2010) 10 SCC 254** and held thus :

“12. In light of the aforesaid decisions, we find it extremely difficult to uphold the decision of the High Court and the Tribunal based on the finding that the loss of the appellant's earning capacity as a result of the amputation of his left

leg was only 50%. It is noted above that the appellant used to earn his livelihood as a cart puller. The Tribunal has found that at the time of the accident his age was 55 years. At that age it would be impossible for the appellant to find any job. From the trend of cross-examination it appears that an attempt was made to suggest that notwithstanding the loss of one leg the appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb, etc. should not take into account such indeterminate factors.

13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of

persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.

14. The loss of earning capacity of the appellant, according to us, may be as high as 100% but in no case it would be less than 90%. We, accordingly, find and hold that the compensation for the loss of the appellant's future earnings must be computed on that basis. On calculation on that basis, the amount of compensation would come to Rs.3,56,400/- and after addition of a sum of Rs.30,000/- and Rs.15,000/- the total amount would be Rs.4,01,400/-. The additional compensation amount would carry interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment. The additional amount of compensation along with interest should be paid to the appellant without delay and not later than three months from today. ”

15. Recently, the Hon'ble Supreme Court in the matter of **Chanappa Nagappa Muchalagoda v. Divisional Manager, New India Insurance Company Limited** reported in **(2020) 1 SCC 796** taking note of the judgment of **Raj Kumar** (supra) and held thus :

“14. The aforesaid judgments are instructive for assessing the compensation payable to the appellant in the present case. As a consequence of the accident, the appellant has been incapacitated for life, since he can walk only with the help of a walking stick. He has lost the ability to work as a driver, as he would be disqualified from even getting a driving license. The prospect of securing any other manual labour job is not possible, since he would require the assistance of a person to ensure his mobility and manage his discomfort. As a consequence, the functional disability suffered by the appellant must be assessed as 100%.

15. We affirm the judgment of the High Court on assessing the income of the Appellant at Rs. 4000/- p.m. as per the evidence of his employer. The “functional disability” of the appellant is assessed as 100%, and the relevant factor would be 201.66 as per Schedule IV to the Act. Consequently, the compensation payable to the appellant would work out

to Rs. 4,83,984 under Section 4 of the Act.”

16. Awarding of compensation depends upon the nature of engagement of work of injured. Even in Part-II of Schedule-I of the Employees' Compensation Act, 1923, in case of amputation of upper limb (either arm through shoulder joint) prescribes the percentage of loss of earning capacity as 90%.
17. In view of above, we find it appropriate to hold that appellant/claimant suffered permanent disability to the extent of 60% resulting loss of earning capacity to the extent of 90%. We set aside the finding recorded by learned Claims Tribunal that appellant/claimant suffered 50% loss of earning capacity and held it to be 90%.
18. Now, coming to the assessment of income of appellant/claimant by learned Claims Tribunal as Rs.3,000/- per month, which definitely appears to be on the lower side looking to the date of accident as 21/04/2011. True, it is that appellant/claimant failed to prove the income by placing cogent and reliable piece of evidence before learned Claims Tribunal and in these circumstances, the income of appellant/claimant is to be assessed on notional basis.
19. For the purpose of calculating the amount of income on notional basis, several factors are required to be taken into

consideration like the date of accident, price index, wage structure and nature of employment/occupation of injured/deceased. In the instant case, looking to the nature of engagement of appellant/claimant and date of accident 21/04/2011, we find it appropriate to assess his income as Rs.4,000/- per month and Rs.48,000/- per annum.

20. Learned Claims Tribunal awarded Rs.60,000/- towards medical expenses, special diet and conveyance expenses, Rs.20,000/- towards pain and suffering, Rs.18,000/- towards loss of income during the period of treatment, Rs.3,06,000/- towards loss of future income on account of permanent disability, Rs.50,000/- towards non-pecuniary damages on account of permanent disability.
21. Learned counsel for the appellant/claimant could not able to point out which medical bills are not awarded by learned Claims Tribunal. Discharge summary (Ex.A/18), which is placed on record of Shri Balaji Institute of Medical Sciences Private Limited shows the medical expenditure of that hospital was Rs.51,900/-. The appellant/claimant has also placed on record the other bills of Balaji Hospital and also Laxmi Medical Store, which is the bills of the month May, June and July 2011 i.e. after discharge, which roughly comes to Rs.2,508/-. The appellant/claimant will be entitled

for a total sum of Rs.54,408/- (51,900 + 2,508) towards medical expenses.

22. The appellant/claimant took treatment as inpatient from 21/04/2011 to 08/05/2011, but learned Claims Tribunal has not awarded any amount towards attendant, whereas looking to the nature of injuries, he might have been attended by someone at least for a period of two months. Appellant/claimant is resident of rural area and from Hospital at Tilda, he was brought to Balaji Hospital, Raipur, therefore, we find it appropriate to award Rs.5,000/- towards conveyance expenses for himself and family members and Rs.3,000/- towards special diet.
23. For the forging reasons as well as the facts and circumstances of the case, we deem it fit and proper to recalculate the amount of compensation as under :

As we have held the income of appellant/claimant as Rs.4,000/- per month i.e. 48,000/- per annum. The injured on the date of accident is shown to be 25 years of age, therefore, there will be an addition towards future prospects in the income of appellant/claimant in view of law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others** reported in **AIR 2017 SC 5157**. In **Pranay Sethi** (supra), the Hon'ble Supreme Court has held that the person who is less

than 40 years of age and not in permanent employment, there will be an addition of 40% of the established income. By adding 40% ($48,000 \times 40\% = 19,200$) of the established income, total income of appellant/claimant will come to Rs.67,200/- ($48,000 + 19,200$) per annum. Looking to the age of appellant/claimant on the date of accident as 25 years, the appropriate multiplier will be 18 as held by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. By applying the multiplier of 18, the total loss of earning of appellant/claimant will come to Rs.12,09,600/- ($67,200 \times 18$). We have held the percentage of loss of income of appellant/claimant as 90%, therefore, appellant/claimant will be entitled for 90% of the aforementioned amount towards loss of income, which comes to Rs.10,88,640/- ($12,09,600 \times 90\%$).

24. Apart from above loss of income, appellant/claimant will be further entitled for a sum of Rs.54,408/- towards medical expenses, Rs.5,000/- towards conveyance expenses, Rs.3,000/- towards special diet, Rs.20,000/- towards pain and suffering, Rs.50,000/- towards loss of amenities and enjoyment in life as appellant/claimant is a young person of 25 years of age and he has to live with disability suffered by him for whole of his life.

25. On the basis of above recalculation, now appellant/claimant will be entitled for a total compensation of **Rs.12,21,048/-** (10,88,640 + 54,408 + 5,000 + 3,000 + 20,000 + 50,000) instead of Rs.4,54,000/- as awarded by the learned Claims Tribunal. The amount of compensation will carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.
26. In the result, 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