

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 929 of 2013

- Dr. Sunil Jaiswal, S/o Balram Prasad Jaiswal Aged About 32 years (At present aged about 47 Years) R/o Main Road, Ratanpur, Tah. Kota, Civil And Revenue Distt. Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Satender Thakur, S/o Surajpat Thakur Aged About 30 years (At present aged about 45 Years), R/o Naveen Nagar, P.S. Navin Nagar, Distt. Aurangabad, Bihar, Presently R/o Thru- Mohd. Mohnuddin, S/o Mohd. Sahid, Tyre Repairer, Village- Sutarra, Tah. Katghora, Distt. Bilaspur, New Distt. Korba, Chhattisgarh
2. Surjeet Singh Walia S/o Laxman Singh R/o Tatibandh, Raipur C.G., District : Raipur, Chhattisgarh
3. Mohammad Moinuddin S/o Mohd. Sahid Aged About 38 Years Tyre Repairer, Sutarra, P.S. And Tah. Katghora, Distt. Bilaspur New Distt. Korba, Chhattisgarh
4. United India Insu.Co.Ltd. Thru- Branch Manager, City Branch, Amar Complex, Jeevan Bima Marg, District : Raipur, Chhattisgarh

----Respondents

For Appellant	: Shri Ravindra Agrawal, Advocate
For Respondent-4	: Shri Pankaj Agrawal, Advocate
For Respondents- 1, 2 and 3	: None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
11.06.2020

1. Challenge in this appeal is to the impugned award dated 18.07.2013 passed in Clam Case No.5 of 2013 by the First Additional Motor Accident Claims Tribunal, Bilaspur, (for short, 'Claims Tribunal') whereby learned Claims Tribunal allowed the application in part and awarded a total sum of Rs.1,41,750/- as compensation in an injury case after deducting 25% amount towards contributory negligence.

2. Facts relevant for disposal of this appeal are that on 19.05.2019 at about 9.30 am, appellant was travelling on Motorcycle bearing No.MP 26-6271 along with his wife and son from Bilaspur to Ratanpur. When he reached near Government Hospital, Ratanpur, one Truck bearing No.MP 23 D 3112 (for short, 'offending truck') driven by NA1/respondent-1, dashed the Motorcycle by coming towards wrong side. Appellant suffered grievous injuries in the accident. He was taken to the Government Hospital, Bilaspur, where it was found that appellant suffered fracture injury on his right femur, fracture on lower jaw, fracture of left shoulder along with other injuries, on account of which he suffered 45% permanent disability after treatment.

3. Appellant filed an application under Section 166 of the Act 1988 claiming compensation of Rs.65,80,000/-, mentioning therein that earlier to the date of accident, appellant was in the profession of Homeopathy Doctor and thereby earning Rs.10,000/- per month but due to permanent disability suffered by him, he is unable to earn his livelihood.

4. NA3/respondent-3 submitted reply pleading therein that NA1 was driver of offending vehicle and it is owned by NA2, but there was no accident with the vehicle which has been shown to be the offending vehicle. The amount claimed is highly exaggerated.

5. NA4/ Insurance Company submitted reply to the claim application pleading therein that truck was insured in the name of respondent-2 but on the date of accident, he was not owner of truck and therefore, Insurance Company is not liable to pay any amount of compensation.

There was breach of conditions of Insurance Policy and the principles of contributory negligence are attracted in the facts and circumstances of the case.

6. NA1 and 2 have not submitted their reply to the claim application and were proceeded *ex-parte*.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, held that appellant suffered motor accidental injuries with offending truck suffered 25% permanent disability there was breach of conditions of Insurance Policy. There was contributory negligence on the part of appellant/claimant to the extent of 25% and awarded total compensation of Rs.1,41,750/-.

8. Appellant/claimant filed this appeal questioning the finding recorded by the Tribunal that there is 25% contributory negligence on the part of appellant, stating to be erroneous in the facts and circumstances of the case; assessment of permanent disability to the extent of 25% instead 45% as assessed by the treating doctor, as well as Medical Board vide its certificate Ex.P184; and the finding of assessing income of deceased to be on lower side ignoring that appellant was practising as Homoeopathy doctor.

9. Shri Ravindra Agrawal, learned counsel for the appellant submits that initially learned Claims Tribunal passed award on 14.12.2002 in Claim Case No.66 of 1998, which was challenged by the Insurance Company which was allowed and the said appeal was remitted back to the Tribunal to decide the case afresh, vide order dated 30.06.2011 in MA-144 of 2001

and also for clarification of permanent disability suffered by the appellant with respect to the whole body and further to deduce corresponding functional disability after examining the doctor and other medical evidences. He further submits that earlier, learned Claims Tribunal thereafter awarded a sum of Rs.3,79,000/- as compensation by impugned award.

10. Shri Ravindra Agrawal, learned counsel further contended that appellant is practising as doctor of Homoeopathy, after obtaining diploma in Homoeopathy and registering himself with the Homoeopathy Council, Madhyapradesh but learned Claims Tribunal erred in assessing his income as Rs.3,000/- only, which is on lower side. It is further contended that learned Claims Tribunal recorded a finding that appellant contributed to the accident but without any evidence. It is pointed out that though the pleading of contributory negligence has been taken by the Insurance Company in its reply to the claim application but no admissible piece of evidence was brought on record. Merely by taking into consideration the head on collusion between the two vehicles, it cannot be inferred that driver of other vehicle is also contributory negligent to the accident. He placed reliance in case of **Mangla Ram Vs Oriental Insurance Company Limited and others** reported in (2018) 5 SCC 656, in support of this submission.

11. It is further contended that appellant by placing Ex.P10 Disability Certificate dated 08.07.1997 issued by the treating doctor namely, Dr RS Dhir (AW5), mentioning therein 45% disability, other certificate issued by the District Medical Board, Bilaspur mentioning 45% disability dated

09.07.1997 and thereafter, Disability Certificate issued by District Medical Board consisting of 4 doctors in which percentage of disability has been shown to be 45% but even then, learned Claims Tribunal has considered only 25% of permanent disability for assessing amount of compensation, which is erroneous in view of evidence placed on record by the appellant. It is also argued that appellant to prove the Disability Certificate, examined Dr GL Arora, Asst Surgeon, working in the District Hospital, Bilaspur, where initially appellant was admitted. Dr RS Dhir, Orthopaedic Specialist of Tejkaur Nursing Home, Bilaspur, where the appellant took further treatment and also undergone operation, who further issued Ex.P10 Disability Certificate to the extent of 45% permanent disability. Dr SS Bhatia was examined as AW6 to prove the Disability Certificate issued by Medical Board Ex.P184 that appellant suffered permanent disability to the extent of 45% and lastly, it was submitted that amount of compensation of only Rs.10,000/- is awarded on the head of pain and suffering and no other amount has been awarded towards other non-pecuniary damages. He prays for enhancement of the award suitably.

12. Shri Pankaj Agrawal, learned counsel for the Insurance Company submitted that learned Claims Tribunal, looking to the facts and circumstances of the case and also looking to the head on collusion between the two vehicles and the appellant did not take care to avoid the accident, has rightly held the appellant to be contributory negligent to the accident to the extent of 25%, which do not call for any interference. It is also contended that appellant has not proved his income by placing any documentary evidence on record but for the oral submission that on the

date of accident appellant was earning Rs.10,000/- per month, he submits that in absence of any evidence, learned Claims Tribunal was justified in assessing the income of the appellant as Rs.3,000/- per month in the facts of present case and with regard to the permanent disability it is argued by learned counsel for the Insurance Company that appellant not suffered permanent functional disability to the extent of 45% but as per the medical evidence placed on record, disability of appellant has been shown only for part of body, but not for the whole body. Learned Claims Tribunal, looking to the nature of injuries suffered by the appellant as well as occupation of the appellant, had considered the loss of earning capacity to the extent of 25% and awarded the amount accordingly, which do not call for any interference. It is also pointed out that looking to nature of injuries suffered by the appellant and treatment taken by him, learned Claims Tribunal had awarded Rs.10,000/- on the head of non-pecuniary damages apart from the medical bills claimed by the appellant, which is just and proper.

13. We have heard learned counsel for the respective parties and also perused record.

14. So far as the first ground raised by the learned counsel for appellant that learned Claims Tribunal erred in holding the appellant to be contributory negligent to the extent of 25% is concerned, the appellant in his claim application has very specifically pleaded that he was going from Bilaspur to Ratanpur on his side very cautiously, but it is the driver of offending truck, who drove his vehicle rashly and negligently and by coming on the wrong side, caused the accident. Driver of offending truck has not made his appearance in the proceeding before the Claims

Tribunal. It is the Insurance Company, who took the plea of negligence as also the contributory negligence of driver of both vehicles only after remand of case by this Court to the Claims Tribunal vide its order dated 30.06.2006 in MA-144 Of 2001. Apart from the pleadings made by the Insurance Company, after remand of case by way of amendment in their reply to the case, Insurance Company has not brought any evidence before the Tribunal to prove their pleadings in reply. The appellant, in support of pleadings made in the claim application has filed documents of the Criminal Case including the spot map prepared by the Investigating Agency (though the spot map is not marked as exhibit to) available in the records of the case. Bilaspur-Ratanpur road is a wide road of double lane and perusal of spot map would show that place of accident is on left side of road, where appellant was travelling on his side of road on Motorcycle. Spot Map can be taken into consideration in view of pleadings made by the appellant for the purpose of persuasive value.

15. Negligence is a fact which is required to be proved by the party asserting to it by placing cogent and reliable piece of evidence.

16. Hon'ble Supreme Court in the matter of **Minu Rout and another Vs Satya Pradyumna Mohapatra and others 2013** reported in **AIR SCW 5375**, while setting aside the finding of contributory negligence, held as under:

“12. -----The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance

Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet- Exh. 1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW.2 and PW3 in their cross-examination and placed reliance on them to record the finding on issue No. 1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No. 1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law.”

17. Recently, in case of **Mangla Ram (supra)** Hon'ble Supreme Court has considered that when there being no evidence of contributory negligence, it cannot be proved and held thus:

“33. In other words, we are inclined to hold that there is no tittle of evidence about the motorcycle being driven negligently by the appellant at the time of accident. The respondents did not produce any such evidence. That fact, therefore, cannot be assumed. Resultantly, the argument of the respondents that the appellant did not possess a valid motorcycle driving licence at the time of accident, will be of no significance. Thus, we hold that there is no legal evidence to answer the issue of contributory negligence against the appellant.”

18. If we consider the facts of this case in light of law laid down by Hon'ble Supreme Court in the above cases, it shows that appellant was

travelling along with his family ie wife and minor son and his vehicle has been shown on the left side of road. No evidence has been brought on record by the Insurance company except the pleading made in the reply to claim application by way of amendment, that too after remand of the case, driver of offending truck did not chose to appear before learned Claims Tribunal.

19. In view of aforementioned facts, we are of the view that Insurance Company who took the plea of contributory negligence failed to prove its plea taken in its reply by not placing cogent and reliable piece of evidence before learned Claims Tribunal. Therefore, finding of contributory negligence recorded by the learned Claims Tribunal is without any evidence which is not sustainable and is hereby set aside.

20. The next submission of the learned counsel for appellant that learned Claims Tribunal erred in calculating loss of income assessing permanent disability as 25%, ignoring the Disability Certificate issued by the Medical Board to the extent of 45%.

21. No doubt, appellant has placed on record Ex.P11C Disability Certificate issued by the District Medical Board, Bilaspur dated 09.07.1997, Ex.P10 Disability Certificate issued by Dr RS Dhir (AW5) on 08.07.1997 on his letter head showing the disability suffered by the appellant to the extent of 45% on lower limb. Dr RS Dhir was treating doctor of appellant. Other medical certificates issued by Dr GL Arora (AW4), Assistant Surgeon also issued Disability Certificate mentioning temporary disability to the extent of 80% with an advice to consult after

three months and other Disability certificates issued by the Medical Board Ex.P184 issued by the Medical Board on 26.07.2011.

22. Dr GL Arora was examined as AW4, who was Orthopaedic Specialist of District Hospital, Bilaspur, who in his evidence stated that he issued Ex.P24 Disability Certificate mentioning temporary disability of 80%. Dr Dhir was examined as AW5, who in his evidence has stated that appellant suffered permanent disability to the extent of 45% and in his examination-in-Chief he stated that said disability pointed out in the Certificate is of permanent nature and it cannot be cured. Even on the date of his examination and the appellant complained that he is unable to sit properly. It was also pointed out that there is no flexibility on the hips and on account of that, his knee is also not bending. He also stated that he is facing problem on sitting, suffering pain on walking and have to take support of a stick for walking. Facing difficulty in sitting on chair. Dr SS Bhatia, one of the doctors of Medical Board examined as AW6 and he stated in his evidence that he has issued Disability Certificate to the extent 45%. He has not given the calculation in the disability certificate of assessing 45% permanent disability and he issued Disability Certificate by examining affected part of the body. In para-6 of his evidence, Dr SS Bhatia has stated that percentage of disability which he has certified was to the extent of 45% to the whole body.

23. In view of aforementioned medical evidence placed on record by the appellant, what is to be considered in the facts and circumstances of the case is, what will be the affect of disability assessed by the doctors in various certificates on his earning (ie the functional disability).

24. The appellant in his claim application has pleaded that he is a Homoeopathy doctor and practising at Ratanpur. To prove the diploma of Homoeopathy and his practice, appellant has produced Diploma certificate issued by the council of Homoeopathy as Ex.P182C and his registration with the State Homoeopathy Council of Madhya Pradesh at that time as Ex.P183C.

25. From the aforementioned pleadings and documents placed on record, the occupation of appellant cannot be disputed that he is working as Homoeopathy Doctor. He can pursue his occupation even with the injuries suffered by him but looking to the disablement and the nature of sufferings even after treatment, it may definitely cause some loss in the income as it has been stated by the doctor that the appellant is facing difficulty in sitting even on chair, his knee is not bending and there is no flexibility of hip. It is not a case where the occupation of appellant is of some physical activity and therefore, in view of the nature of occupation of appellant, we do not find any error in the finding recorded by the learned Claims Tribunal which remained unchallenged that the appellant suffered 25% disability on his earning capacity.

26. The ground raised by learned counsel for the appellant that learned Claims Tribunal erred in assessing income as only Rs.3,000/- per month. We have gone through the record. The appellant apart from the pleading and documents of his diploma in Homoeopathy and registration with Homoeopathy council, has not placed any other document to show about his income.

27. Along with the copies of documents of Criminal case, appellant has placed on record the copy of licence issued in his favour. In absence of any admissible evidence with regard to income of appellant, we do not find any error in assessing income of appellant as Rs.3,000/- in the year 1996 ie on the date of accident. The submission of learned counsel for the appellant that as the award has been passed in the year 2012 and therefore, at least Rs.8,000/- ought to have been taken as income of the appellant is not sustainable because for awarding compensation, the income and loss suffered on the date of accident is to be taken into consideration.

28. Income of the insured or the deceased for the purpose of calculating the amount of compensation in an accident with regard to the motor accident is to be considered as per the date of accident and not by the date of deciding the claim application. Therefore, we held that learned Claims Tribunal justified in assessing the income of appellant as Rs.3,000/- per month.

29. However, definitely appellant will be entitled for an addition of 40% of the established income towards the future prospects in light of law laid down by the Honorable Supreme Court in the matter **National Insurance Company Vs Pranay Sethi** reported in 2 AIR 2017 SC 5157, wherein the persons who are self employed and working on fixed pay and below 40 years are held to be entitled for an additional sum of 40% of the income towards future prospects.

30. Last submission of learned counsel for the appellant is that learned Claims Tribunal erred in not awarding any amount towards non-pecuniary damages suffered by the appellant, overlooking the nature of injuries, treatment taken by the appellant and permanent disability suffered by him, that will remain with him for whole of his life.

31. Award of compensation in personal injury cases is to be given under two heads ie pecuniary damages and non-pecuniary damages. Pecuniary damages will be loss of income during the treatment, loss of future income on account of permanent disability, medical expenses, transportation of food, and attendant etc. Non-pecuniary damages consist of pain and suffering, loss of amenities in life and loss of expectancy in life. Here in the present case, learned Claims Tribunal has only awarded Rs.10,000/- on this head in addition to the medical treatment and loss of income due to permanent disability on the head of special diet for a period of 4-5 months, towards attendant. But had not awarded any sum towards pain and suffering, loss of income during the period of treatment, loss of amenities of life due to permanent disability. The award of Rs.10,000/- by the learned Claims Tribunal on other heads is on lower side which requires suitable enhancement.

32. In view of above discussion, we set aside the finding of contributory negligence and therefore, the amount of compensation awarded by the learned Claims Tribunal requires re consideration and re-calculation.

33. Hon'ble Supreme Court in the matter of **R.D. Hattangadi vs M/s Pest Control (India) Pvt. Ltd. and others** reported in AIR 1995 SC 755,

for calculating loss of amount of compensation on the head of non-pecuniary damages, held as under:-

“17.“When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000/- in respect of claim for pain and suffering and Rs.1,50,000/- in respect of loss of amenities of life....”

(emphasis supplied)

34. Further it is relevant to refer the case of **Raj Kumar Vs Ajay Kumar and another** reported in 2011 (1) SCC 343, in which it is held thus:

“7. Assessment of pecuniary damages under Item(i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses – Item (ii)-depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages-Items (iv), (v) and (vi)-involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability-Item (ii) (a). We are concerned with that assessment in this case.”

35. Hon'ble Supreme Court in the matter of **R.K. Malik and Another Vs Kiran Pal And Others** SCC 2009 14 held thus:

"22. The Supreme Court in the case of R. D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551, at page 556, has observed as follows in para 9:

"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."

In this case, the Court awarded non-pecuniary special damages of Rs. 3,00,000/- to the claimants.

23. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a

person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life".

36. In the light of the aforementioned dictum of Hon'ble Supreme Court, we are of the view that the amount of compensation awarded by the learned Claims Tribunal requires re-computation.

37. Income of the appellant has been assessed as Rs.3,000/- per month and Rs.36,000/- per annum. By adding 40% of established income towards future prospects, yearly income comes to Rs.50,400/- $\{36000 + (36000 \times 40/100)\}$. It is held by the Tribunal that appellant suffered 25% loss of income due to permanent disability. Now appellant's loss of income comes to Rs.12,600/- $(50400 \times 25/100)$ per annum.

38. Appellant has been shown to be aged in between 31-35 years. Therefore, appropriate multiplier would be 16 as applied by learned Claims Tribunal. Now total loss of income comes to Rs.2,01,600/- (12600×16) . Evidence available on record shows that appellant took treatment as In-patient from 19.05.1996 till 17.06.1996 ie nearly a month. He got his jaw operated and dental wiring was done on 21.05.1996 and also nailing of femur bone was done on 03.09.1996.

39. As per evidence of Dr RS Dhir, who stated that in his nursing home, fracture medfemur was operated in the last month of 1996. In 1998,

appellant undergone further operation for removing the pins which were inserted for uniting the fracture medfemur and again he was operated due to the inconvenience faced by him due to stiff knee on the hip joint in the year 1999. But that also was not so fruitful. Looking to this evidence available on record which shows that appellant undergone operation for about 3 times, but learned Claims Tribunal has not awarded any amount on the head of pain and suffering.

40. In the aforementioned facts and circumstances of the case, looking to the nature of injuries, treatment taken by the appellant and operations he went through in 1994 and 1995, in the opinion of this Court, we deem it fit and proper to award Rs.25,000/- towards pain and suffering.

41. Learned Claims Tribunal has not awarded any amount towards loss of income during period of treatment. The documentary evidence ie discharge ticket of District Hospital, Bilaspur dated 17.06.1996 and other evidence considering the nature of injuries of affected part of the body, as well as the treatment taken by the appellant, the operation of jaw and femur bone, we held that appellant may not be able to perform his work for further period of three months after the discharge from his hospital and thereby, he suffered loss of income for a period of five months. In this view, we award Rs.15,000/- (3000 x 5) as loss of income during the period of treatment.

42. Three Disability Certificates have been produced by the appellant in support of his case. In all these three certificates, disability of the appellant was assessed as 45%. Dr SS Bhatia (AW6) of Medical Board

in his cross-examination has stated that 45% disability assessed is with respect to his whole body. The evidence of Dr Dhir would show that appellant has to live for his whole life with the pain due to injuries suffered by him on the hip and thigh. There is stiffness on the thigh joint and also on the knee joint, due to which there is difficulty in bending of hip and knee. Due to the aforementioned infirmity occurred in the body of appellant, he may not be able to enjoy his life as an ordinary man. He may not be able to perform many tasks of work in daily life.

43. In the aforementioned facts and circumstances of the case, looking to the documentary evidence and evidence of doctor, we find it appropriate to award Rs.40,000/- towards loss of amenities and joy in life and Rs.25,000/- towards loss of expectation in life.

44. Learned Claims Tribunal has awarded Rs.35,000/- on the head of medical bills, for which, the appellant is entitled for. Learned counsel for the appellant has not pointed out specifically as to which of the bills have been awarded and which were not awarded. Therefore, we held the medical expenditure of appellant only to the extent of Rs.35,000/-.

45. Appellant took treatment from 1995 to 1999 as per the medical documents placed on record and for which he incurred expenses on conveyance also. Learned Claims Tribunal has not awarded any amount towards conveyance. Looking to the period of treatment and nature of injuries, we deem it fit and proper to award Rs.10,000/- towards conveyance expenses.

46. Appellant is also entitled for a sum of Rs.10,000/- towards attendant and special diet, as awarded by learned Claims Tribunal.

47. Now, appellant will be entitled for a total sum of **Rs.3,61,600/-** (Total loss of income - Rs.2,01,600/-, Pain and suffering -Rs.25,000/-, Loss of income during the period of treatment- Rs.15,000/-, Loss of amenities in life and joy-40,000/-, Rs.25,000/- towards loss of expectation in life, Medical bill- Rs.35,000/-, Conveyance- Rs.10,000/- and Attendant and Special diet- Rs.10,000/-), instead of Rs.1,41,750/-.

48. Aforementioned amount will carry interest @ 6% from the date of filing of claim application till its realisation. Other conditions imposed by the learned Claims Tribunal will remain intact.

49. Appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge