

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 744 of 2013

- V.Vimal Kumar S/o R. Vidyadharan Aged About 55 Years, R/o 10/33, Ispat Nagar, Risali, Bhilai Nagar, Distt. Durg, P.S. Sector-6, Police Kotwali-Bhilai Nagar, Durg C.G.

---- Appellant

Versus

1. Rajiv Ranjan Sharma, S/o Chandrashekhar Sharma Aged About 28 Years R/o House No. 22/966 Shankar Bhavan, Pandri, Distt. Raipur C.G. (Driver)
2. Shashank Sharma S/o Chandrashekhar Sharma R/o House No. 22/966, Shankar Bhavan, Pandri, District : Raipur, Chhattisgarh(Owner)
3. National Insurance Co. Ltd. Regd. & Main Office 3 Midlatan Street Kolkata, Thru- Divisional Manager, Divisional Office, Akash Ganga campus, Supela, Bhilai, Tah. And District : Durg, Chhattisgarh (Insurer)

----Respondents

For Appellant	:	Dr Saurabh Kumar Pandey, Advocate
For Respondent-3/Insurance Company	:	Shri Dashrath Gupta, Advocate

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

**Per Parth Prateem Sahu, J.
09.06.2020**

1. Appellant/claimant has challenged inadequacy of compensation in Claim Case- 80 of 2011 passed by 1st Additional Motor Accident Claims Tribunal, Durg (for short, 'Claims Tribunal'), on 25.06.2012.
2. Facts relevant for disposal of this appeal are that on 18.06.2010 at about 1.20 pm, appellant was riding Motorcycle bearing No.CG07-ZE 1122 (for short, 'Motorcycle') was going to New Civic Centre, Bhilai from Street No.8, Sector-10. When he was crossing main road, he met with an accident with Indica Car bearing No.CG07-1366 (for short, 'offending vehicle'), driven by respondent-1/NA1. Immediately after the accident,

appellant was taken to Sector-9 Hospital, Bhilai, where fracture of hip was diagnosed. Looking to the nature of injuries suffered by the appellant, hip replacement surgery was done and he was discharged from hospital on 26.06.2010. Appellant was again admitted to hospital on 03.07.2010 to 15.07.2010 due to pain and swelling over the part of body which was operated by the Doctor. Appellant filed claim application claiming Rs.3,64,706.03 as compensation on different heads. In claim application, appellant pleaded that on the date of accident, he was 55 years of age on account of accidental injuries, he was admitted to hospital and undergone hip replacing surgery on 20.06.2010 and was discharged from the hospital on 24.06.2010. Due to pain and swelling over the injury, he was again admitted to hospital on 03.07.2010 till 15.07.2010. He was unable to do his work for a period of three months and suffered loss of income. It was also pleaded in claim application that he suffered permanent disability to the extent of 25%, as he could not able to bend, sit and sleep properly and there is continuous pain over his waist, he suffered loss of income due to permanent disability and claimed on the head of medical expenses of Rs.1,32,831.04, loss of income during the period of treatment Rs.41,874.99, for pain and suffering Rs.50,000/-, special diet Rs.20,000/-; and loss of amenities in life Rs.20,000/-, thereby total sum of Rs.3,64,706.03.

3. NA-1 and 2, driver and owner of offending vehicle submitted reply jointly, wherein they denied the fact of accident; rash and negligent act of respondent-1, amount claimed is highly exaggerated; and there was valid and effective driving license with driver of offending vehicle. On the date

of accident, offending vehicle was insured with NA-3/Insurance Company, the liability will be of Insurance Company.

4. Insurance Company also filed reply to claim application and pleaded that as the accident was head on collusion between two motor vehicles, there is contributory negligence on the part of appellant/claimant also. Fact of permanent disability to the appellant was denied and further it was pleaded that appellant has not suffered any loss of income. There was no valid and effective driving license with respondent-1/NA1, driver of offending vehicle, there was breach of conditions of Insurance Policy.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, arrived at a finding and held that accident occurred between two motor vehicles; appellant suffered motor accidental injuries on account of offending vehicle driven by respondent-1/ NA1; appellant suffered permanent disability and there was contributory negligence of drivers of both the vehicles to the extent of 50% each. There was no breach of conditions of Insurance Policy, calculated total compensation of Rs.1,93,831/- and awarded Rs.96,915/-after deducting 50% towards contributory negligence of appellant himself.

6. Shri Saurabh Pandey, learned counsel for the appellant submits that learned Claims Tribunal erred in holding appellant to be contributory negligent in the accident, without there being any clinching piece of evidence available on record. He submits that driver of offending vehicle did not chose to appear before the learned Claims Tribunal as witness. It

is also pointed out that learned Claims Tribunal erred in not awarding any amount towards loss of income during the period of treatment, very meager amount was awarded towards loss of future income due to disability, without considering the nature of injury and not considered the statement/evidence of the treating doctor, who issued Disability Certificate in proper perspective. He points out that Ex.P42 Disability Certificate is proved by Dr.VS Baghel, who is a Government servant and the same was accepted by learned Claims Tribunal that appellant suffered permanent disability to the extent of 25%, but it failed to award appropriate amount on the head of loss of future income due to permanent disability. It is also argued that amount awarded on other heads like pain and suffering, loss of amenities in life, special diet is on lower side and dis-proportionate, looking to nature of injuries suffered by the appellant and prays for enhancement of compensation.

7. Per contra, Shri Dashrath Gupta, learned counsel for the Insurance Company submits that learned Claims Tribunal taken note of facts and evidence placed on record by the appellant and after considering and discussing it elaborately, awarded amount of compensation which does not call for any interference. He submits that learned Claims Tribunal also discussed the issue with respect to contributory negligence on the part of appellant in very detail, particularly, looking into the fact that appellant came from side road to main road, which is very wide enough for passing of heavy motor vehicles and in fact, the appellant himself has seen the offending vehicle coming on the main road, but had not taken care or precaution to avoid accident and Tribunal rightly held that appellant is also

contributory negligent to the extent of 50%. He submits that learned Claims Tribunal has awarded compensation on almost all the heads for which appellant was entitled. Just and proper amount of compensation was awarded.

8. We have heard learned counsel for the respective parties and also perused records of appeal.

9. Appellant has filed relevant documents of claim case on which he is placing reliance with regard to his contention. Argument of learned counsel for the appellant that learned Claims Tribunal erred in holding the appellant to be contributory negligent to the extent of 50% is concerned, perusal of impugned award would show that learned Claims Tribunal has taken into consideration pleadings, evidence and also Ex.P3 spot map and arrived at a finding that appellant was coming from side road to main road and accident took place on the main road. Learned Claims Tribunal also recorded that appellant has seen the offending vehicle coming from opposite side before the accident and even thereafter, accident took place. The evidence of appellant is Annexure A4 in which he admits in para-25 that he has seen offending vehicle coming on the road and accident was head on collision. He further admits that for reaching to New Civic Center from Sector-X, he was crossing main road and also admits that place of accident is main road. In his evidence, appellant has not stated anything that after seeing offending vehicle, he has taken due care and even after his effort, accident could not be avoided for some reasons.

10. In view of above evidence available on record ie—Spot Map (Ex.P3), evidence of appellant, time and place of accident, in the opinion of this Court, we do not find any error in the finding recorded by learned Claims Tribunal that there is contributory negligence on the part of appellant to the extent of 50%.

11. So far as other submissions made by learned counsel for the appellant with regard to inadequacy of amount of compensation awarded is concerned, learned Claims Tribunal has awarded amount of compensation on the following heads:

“Physical and mental suffering: Rs.5,000/-; Loss of amenities in life : Rs.5,000/-; Special diet: Rs.1,000/-; Medical expenses: Rs.1,32,831/-; and loss of income due to permanent disability : Rs.50,000/-, total to the tune of Rs.1,93,831/-”

12. 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)

13. 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.”

14. Award of amount towards pain and suffering awarded is Rs.5,000/-. If it is taken into consideration along with nature of injury, part of body on which injury sustained and further, treatment taken by the appellant and his admission to hospital twice, in our opinion, learned Claims Tribunal has not awarded just amount of compensation but awarded very meager amount of Rs.5,000/- only.

15. From the medical documents and evidence of AW3 Dr Rajasekhar it is apparent that appellant took treatment as In-patient from 18th to 24th June, 2010, again from 3rd to 15th July, 2010. He suffered hip replacement surgery. Due to some complication at the place of injury and operation, appellant was again admitted in the hospital on 03.07.2010 and

discharged on 15.07.2010. The 2nd admission in the hospital was due to acute pain and swelling on hip joint. There is specific pleading and averment of appellant that due to the injuries suffered by him, he is facing problems. He could not able to perform his routine work; there is continuous pain over his waist; and also he is facing difficulty in bending his body and resting of operated part of body which is used in all activities of day-to-day human activity. Pleadings and evidence of appellant that he is facing continuous problem for his movement, bending and even at the time of sitting and sleeping and further, complaint of continuous pain cannot be said to be false statement, in view of the nature of injury, treatment taken and evidence of doctor.

16. From perusal of Ex.P44 and evidence of the treating doctor, as well as doctor issuing Disability Certificate, it appears that the appellant has to live with disability for rest of his life. The disability may increase by passage of time. In the aforementioned facts of the case and looking to the nature of disability, the part of the body over which appellant suffered permanent disability and his age, we find it appropriate to award Rs.25,000/- towards pains and sufferings instead of Rs.5,000/- as awarded by the learned Claims Tribunal.

17. Learned Claims Tribunal awarded only a sum of Rs.5,000/- towards loss of amenities of life, which in the facts and circumstances of case and nature of injury suffered by the appellant and part of body on which appellant suffered disability is on lower side.

18. Part of body on which appellant suffered disability may restrict many of his activities, which appellant was doing prior to the accident, but looking to the nature of injury ie replacing hip joint, he may not able to perform many of his activities in the same manner. As per uncontroverted statement and evidence of appellant, he is not able to drive motor vehicle. His loss of amenities and enjoyment of life from the injury and disability suffered by him will remain for the rest of his whole life, the appellant as stated that he is unable to drive may expend money towards conveyance for his movement for which he is also entitle. In these circumstances, we find it appropriate to award a sum of Rs.50,000/- on the head of loss of amenities and enjoyment of life and additional conveyance expenses for rest of his life.

19. Appellant in his evidence stated that during the period of treatment, his motor driving training centre was operated, which was taken into consideration by learned Claims Tribunal. But learned Claims Tribunal not considered evidence of appellant that due to injury and hip replacement surgery, he is not able to do the work of trainer in his motor driving training centre, as he is unable to perform his day today work in the same manner as he was doing before the accident. He also stated that prior to the accident, he himself was giving training of vehicle apart from other trainers but after the accident, due to his disability to drive the vehicle, he is to keep one trainer in his place for which he is paying Rs.4,000/- per month and thereby, he suffered loss of Rs.4,000/- from his earlier earning.

20. Learned Claims Tribunal has only taken into consideration that appellant himself has claimed Rs.50,000/- towards permanent disability

and inferred from it that appellant himself accepted that he has not suffered loss of any future income due to permanent disability. We are not in agreement with such finding recorded by learned Claims Tribunal. When once learned Claims Tribunal has accepted that appellant suffered permanent disability to the extent of 25%, which was also proved by the doctor, and appellant was not Government servant, but he is a self employed person. He engaged some trainer looking to the volume of work with him but it cannot be ignored that if there is less volume of work, then, instead of engaging the trainer, it is the appellant who himself has to do work for his earning to which he might not be able to do. Looking to the percentage of disability on the part of body, specially, due to the hip surgery, we are of the view that appellant definitely suffered loss of income. To prove his income, appellant placed his Income Tax Return (Ex.P43) on record before the learned Claims Tribunal, showing his yearly income as Rs.1,31,958/- and Rs.1,67,500/- per year or two years.

21. The appellant has claimed compensation for engaging assistant in his place as he is unable to drive car. Merely for any reason, some less amount is claimed will not restrict the Tribunal to consider entire facts and evidence available on record for awarding just amount of compensation. The Tribunal can award higher amount than what is claimed. The Tribunal has not considered the entire pleading and evidence available on record while awarding compensation on the head of loss of income due to permanent disability.

22. Looking to the nature of injury, now appellant has to take help and assistance of some other trainer. In all circumstances he may face

difficulty to drive a car as trainer, because a trainer of motor vehicle has to do much activity than that of any normal driver. Looking to the nature of work in which appellant is engaged for earning his livelihood, in the opinion of this Court, it will be just and proper to hold that appellant will suffer at least 10% of loss of future income due to disability because, he has to engage someone else as trainer in his place to ride the vehicle along with any trainee. Accordingly, upon calculating 10% of appellant's assessed income of Rs.13,000/- per month, 10% of loss of income will come to Rs.1,300/- per month and Rs.15,600/- (1300 x 12) per annum. As on the date of accident, appellant was shown as 55 years of age, therefore, appropriate multiplier will be 11.

23. By multiplying his yearly income with multiplier 11, appellant will be entitled for a total sum of Rs.1,71,600/- (15600 x 11) towards future loss of income due to permanent disability.

24. Learned Claims Tribunal has further awarded only Rs.1,000/- towards special diet. In the facts and circumstances of the case, nature and period of treatment, we find it appropriate to award Rs.3,000/- towards special diet and Rs.3,000/- towards attendant. Now, total compensation for which the appellant will be entitled is Rs.1,32,831/- towards medical expenses, Rs.25,000/- towards pain and suffering, Rs.50,000/- towards loss of amenities in life and future transportation, Rs.1,71,600/- towards loss of future income, Rs.3,000/- towards special diet and Rs.3,000/- towards attendant, which makes the total as Rs.3,85,431/-.

25. As it is held that there is contributory negligence on the part of appellant also, there will be deduction of 50% of total amount of compensation so calculated above, which comes to Rs.1,92,715.5/- (385431/2), rounded off to Rs.1,92,716/-.

26. After deducting 50% towards contributed negligence, appellant will be entitled for a total sum of **Rs.1,92,716/-** as compensation. Enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal will remain intact.

27. 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