AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 688 of 2015

- Umeshchand Sharma, S/o Late Prahaladchand Shastri, Aged About 55 Years R/o Naya Baradwar, Tahsil - Sakti, District-Janjgir-Champa, Chhattisgarh.

---- Appellant

Versus

1. Naaseer Khan @ Naseer Khan, S/o Shekh Ali (Driver), aged about 26 years, Rajendra Nagar, Akaltara, District- Janjgir-Champa (CG)
2. Mohan Kumar Khatri S/o Meghraj Khatri, (Owner), aged about 48 years R/o Pamgarh, District- Janjgir-Champa, Chhattisgarh/
3. The New India Insurance Company Ltd, Korba, Tahsil & District- Korba, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Sushobhit Singh, Advocate
For Respondent No.3	:	Mr. B.N. Nande, Advocate

SB:Hon'ble Shri Justice Parth Prateem Sahu

Order On Board

02/11/2020

1. Claimant/appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by the learned 1st Additional Motor Accident Claims Tribunal, Sakti, District Janjgir Champa (for short 'the Claims Tribunal') vide award dated 03.03.2015 passed in Claim Case No.32/13 thereby allowing claim application in part and awarding Rs.3,20,803/- as compensation in an injury case.
2. Facts relevant for disposal of this appeal, in brief, are that on

28.10.2011 appellant along with other passengers was travelling on bus bearing registration number CG10-ZA-0171 (for short 'offending vehicle'), driven by non-applicant No.1 and owned by non-applicant No.2. When offending vehicle reached in front of house of one Rajesh Kesharwani, it overturned and met with an accident. In the aforementioned accident, appellant along with other persons by name Tulsiram Sahu, Atmaram Patel, Fotobai, Khamhan, Dukalu, Rambai etc. suffered injuries. Appellant suffered grievous injuries on his spinal bone. Accident was reported to concerned police station based on which crime was registered against non-applicant No.1.

3. Claimant-appellant filed an application under Section 166 of the Act of 1988 seeking compensation on the ground that in the aforementioned accident, he suffered fracture on his back bone and even after taking continuous treatment from hospitals situated at Bilaspur (CG) & Vellore (Andhra Pradesh), he has suffered permanent disability on both his lower limbs. It was further pleaded that claimant suffered paraplegia and his movements are restricted, as a result he is unable to do his daily routine works without help of someone else.

4. Non-applicant No.1 & 2, driver & owner of offending vehicle, submitted reply to claim application and denied pleadings made therein. It was pleaded that claimant-applicant suffered accidental injuries on account of his own negligence; false and fabricated report has been lodged against non-applicant No.1. On the date of accident, offending vehicle was insured with

non-applicant No.3 and non-applicant No.1-driver was having valid and effective driving license, therefore, liability to satisfy the amount of compensation, if any awarded by the Claims Tribunal, would be upon non-applicant No.3 Insurance Company.

5. Non-applicant No.3-insurer of offending vehicle, also submitted its reply to claim application and denied the pleadings made therein. It was pleaded that claimant/appellant was not travelling as passenger on the offending vehicle as he has not filed bus ticket; non-applicant No.1-driver was not having valid and effective driving license to drive offending vehicle, there was no valid permit and fitness of offending vehicle. Thus there was breach of conditions of policy, therefore, insurance company is not liable to indemnify the insured.

6. The Claims Tribunal on appreciation of pleadings and evidence placed on record held that the claimant suffered grievous motor accidental injuries leading to permanent disability to the extent of 50% in the accident occurred due to rash and negligent driving of offending bus by its driver i.e. non-applicant No.1; breach of policy condition was not found to be proved and awarded Rs.3,20,803/- as compensation.

7. Mr. Sushobhit Singh, learned counsel for appellant submits that the Claims Tribunal erred in fixing income of deceased as Rs.3,000/- per month, overlooking the date of accident, occupation & income of deceased specifically pleaded in claim application i.e. running of a grocery shop in village Naya

Baradwar and earning Rs.12,500/- per month. He further submits that the Claims Tribunal erred in awarding compensation under the head 'loss of income' by holding that claimant-appellant has suffered 50% loss of earning capacity. He submits that though claimant has suffered 50% permanent disability, as assessed by District Medical Board concerned, but looking to nature of disability suffered by claimant-appellant i.e. traumatic paraplegia, and considering the fact that he is not able to do his daily routine works without help of an attendant, it can be presumed that he has suffered 100% loss of earning capacity. In the medical documents placed on record there is specific mention that appellant is unable to feel movement of his lower limbs. Referring to documents ExP-14 & Ex.P-15, learned counsel submits that apart from taking treatment at Apollo Hospital, Bilaspur, appellant also took treatment at Christian Medical College, Vellore-4, but of no avail because paraplegia suffered by him on both his lower limbs could not be healed. He submits that in the given facts and circumstances of case, the Claims Tribunal ought to have held that claimant suffered total loss of income i.e. 100%. He further submits that the Claims Tribunal has not awarded any amount towards loss of income during the period of treatment, pain & sufferings, loss of amenities & joy in life, special diet. Transportation expenses is also not awarded overlooking documents placed on record and the fact that claimant is resident of Naya Baradwar, District Janjgir Champa and he took treatment as inpatient from two different hospitals i.e. Apollo Hospital, Bilaspur and Christian

Hospital, Vellore, which are situated far away from his place of residence.

8. Per contra, Mr. Nande, learned counsel representing the respondent Insurance Company submits that medical documents with regard to treatment of appellant have not been proved by examining any treating doctor of Apollo Hospital, Bilaspur or Christian Medical College, Vellore-4, as such, the submission made by learned counsel for appellant with regard to nature of injuries of claimant and treatment taken by him cannot be accepted. He further contended that disability certificate issued in favour of claimant-appellant, which is placed on record as Ex.P-123C, clearly mentions that appellant has suffered 50% permanent physical impairment and accordingly the Claims Tribunal has assessed loss of income to the extent of 50%, which is just and proper. As per note appended to disability certificate Ex.P-123C, appellant was required to get permanent disability reassessed, which shows that disability suffered by claimant is not permanent in nature and there are chances of recovery. Compensation awarded by the Claims Tribunal is just compensation and does not call for any interference or enhancement as claimed by claimant/appellant.

9. I have heard learned counsel for the parties and perused the records of claim case.

10. Appeal filed before this Court is only with regard to enhancement of compensation. Respondent No.3- Insurance

Company has not pointed out that insurance company or driver & owner of offending bus have filed any appeal challenging any of the findings recorded by the Claims Tribunal with respect to nature of injuries suffered by claimant in a motor vehicular accident or involvement of offending vehicle in accident or quantum of compensation.

11. To appreciate the submission of learned counsel for appellant with regard to nature of disability causing total loss of income, I have perused Wound Certificate (Ex.P-6) issued by Apollo Hospital, Bilaspur, in which it is mentioned that claimant was admitted in hospital on 28.10.2011 and discharged on 30.10.2011. In this certificate the nature of injury is mentioned as 'grievous' i.e. dislocation of D10, D11 with paraplegia (ASIA-A). In the Discharge Summary (Ex.P-15) of Christian Medical College, Spinal Disorders Surgery Unit, Vellore-4 it is mentioned that claimant was admitted on 25.11.2011 and discharged on 9.12.2011. In the discharge summary under the heading 'Diagnosis' it is mentioned that "**Ankylosing Spondylitis with Post Traumatic T11 fracture dislocation and ASIA 'A' Paraplegia'**. On the date of discharge itself i.e. 9.12.2011, claimant-appellant was again admitted in the Physical Medicine & Rehabilitation Unit of Christian Medical College, Vellore-4 where he was treated as inpatient upto 23.1.2012, as is evident from Discharge Summary of Ex.P-14. In the Discharge Summary of Ex.P-14 under the heading 'Diagnosis' it is mentioned that "**T11 complete paraplegia paralytic ileus ankylosing spondylitis**". The injuries

mentioned under the heading 'Diagnosis' of Ex.P-14 & Ex.P-15 clearly show the grievousness/nature of injuries suffered by claimant-appellant. Under the heading 'On Examination' of Ex.P-14 it is mentioned that;-

“Perennial Sensation	:	Absent
Deep Anal Sensation	:	Absent
Voluntary anal contraction	:	Absent
Anal Wink	:	Absent”

Thereafter, claimant-appellant appeared before the District Medical Board, Janjgir Champa which has issued disability certificate of Ex.P-123C in favour of claimant-appellant certifying that claimant is a case of traumatic paraplegia, he has suffered 50% permanent physical impairment and his condition is not likely to improve.

12. Perusal of above documents reveals that even after two months of continuous treatment at Christian Medical College, Vellore-4, the paraplegia suffered by claimant could not be cured. Ex.P-15 further reflects that appellant underwent surgery of T8, T9, T10, T11, T12, L1, L2, PSF, post-up period was uneventful, however, no complication was noticed in wound. In the details of Discharge Summary (Ex.P-14) it is mentioned that “his wife was trained to do digital stimulation/evacuation of stools (attender digital evacuation-DE). Condition of claimant-appellant, as is discernible from documents Ex.P-14 & Ex.P-15, is that appellant-claimant has lost sense over his lower limbs or lower part of body and he has become fully dependent on other for his daily routine works like discharge of stools & urine. In these circumstances, although the appellant has suffered

permanent physical impairment to the extent of 50% onlyi.e. on lower limbs, but the same has resulted in total loss of income to him as on account of such disablement, he is not even able to move on his legs and become dependent on others to perform his routine works. Document Ex.P-14 shows the pathetic condition of appellant of losing all senses below waist.

13. The award of compensation on account of permanent disability vis-a-vis disability assessed and having its impact in earning capacity is considered by Hon'ble Supreme Court in case of **Jakir Hussein vs. Sabir** reported in **(2015) 7 SCC 252**; **Syed Sadiq & ors vs. Divisional Manager, United India Insurance Company Limited** reported in **(2014) 2 SCC 735**; **Rekha Jain vs. National Insurance Co. Ltd.** reported in **(2013) 8 SCC 389**, (2015) 10 SCC 506 & **Anant son of Sidheshwar Dukre vs. Pratap & another** reported in **(2018) 9 SCC 450.** In the aforementioned case laws Hon'ble Supreme Court held that the loss of earning capacity may not be in same ratio of percentage of disability assessed by doctor, but the disability may sometime affect the earning capacity more and at times affect the earning capacity less than the percentage of disability suffered by a person. It depends upon the nature of disability and the employment of claimant. In the case at hand, the appellant's lower part of the body from waist lost sensation and as per medical report, he suffered 'A' category paraplegia.

In light of above ruling of Hon'ble Supreme Court and considering the medical documents available on record including disability certificate and evidence of the doctor (AW-3), who has proved permanent disability certificate, this Court is of the considered view that appellant-claimant has suffered 100% loss of earning capacity. It is held accordingly.

14. Coming to next submission made by learned counsel for appellant-claimant that the Claims Tribunal erred in fixing monthly income of claimant at Rs.3,000/- on notional basis. Perusal of record reveals that the claimant has pleaded that prior to accident, he was running a grocery shop and earning Rs.12,500/- per month, but in order to prove this plea claimant has not produced any admissible documentary evidence like ledger account or license under Shop and Establishment Act etc. In absence thereof, the Claims Tribunal was justified in determining monthly income of claimant on notional basis. Nevertheless, considering the date of accident, price index, rate of inflation and wage structure prevailing at the relevant point of time, this Court is of the view that income of appellant-claimant assessed by the Claims Tribunal at Rs.3,000/- per month is certainly on lower side and requires reconsideration. In the given facts and circumstances of case, it would be just and fair that income of appellant be taken as Rs.5,000/- per month (Rs.60,000/- per annum) which he could have easily earned even by working as an unskilled labour.

15. At the time of accident, age of appellant-claimant was 55 years as was mentioned in claim application. However, no documentary evidence in support of age of claimant has been

filed on record, therefore, I deem it proper to hold that on the date of accident, appellant-claimant was in the age group of 50 to 55 years. Consequently, in view of decision of Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, appellant-claimant is entitled for an addition of 10% of his established income towards future prospects. Since, appellant is held to be in the age group of 50 to 55 years, as per Second Schedule of the Act of 1988, multiplier of '11' will be applicable to annual income of deceased for calculating loss of income.

16. The amount awarded by the Claims Tribunal under the head of special diet and grievous injuries are also on lower side and requires reconsideration.

17. In the case of **R.D. Hattangi vs. Pest Control (India) Pvt. Ltd. & ors** reported in **(1995) 1 SCC 551**, Hon'ble Supreme Court has considered the award of just compensation in personal injury case and held thus:-

> "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."

10.It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

18. In case of **Rajkumar Vs. Ajay Kumar & another** reported in **(2011) 1 SCC 343**, the Hon'ble Supreme Court has again considered the issue of award of loss of income on account of permanent disability and award of just compensation and held thus:-

"6.The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured

would have made had he not been injured, comprising :
(a) Loss of earning during the period of treatment;
(b) Loss of future earnings on account of permanent disability.
(iii) Future medical expenses.
Non-pecuniary damages (General Damages)
(iv) Damages for pain, suffering and trauma as a consequence of the injuries.
(v) Loss of amenities (and/or loss of prospects of marriage).
(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

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 (iii) -- 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. Decision of this Court and 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. Assessment of future loss of earnings due to permanent disability- Item (ii) (a). We are concerned with that assessment in this case."

19. In the light of aforementioned ruling of Hon'ble Supreme Court, I propose to recalculate the amount of compensation.

20. Accordingly, monthly income of appellant for the purpose of calculating loss of income, is taken as Rs.5,000/-, annual income as Rs.60,000/- as held above. Since appellant-claimant was 55 years of age and not in permanent employment, 10% of his monthly income is to be added towards future prospects.

By adding 10%, the monthly income of appellant comes to Rs.5,500/- (5000+10% of 5000). By applying multiplier of 11 to annual income of appellant i.e. Rs.66,000/-, the total loss of income comes to Rs.7,26,000/- (66000x11). Hence, Rs.7,26,000/- is awarded to claimant-appellant under the head 'loss of income'.

21. Looking to the nature of injuries i.e. fracture of back bone, the fact that appellant-claimant underwent surgery of spinal bone at Christian Medical College, Vellore-4, he suffered paraplegia on both his lower limbs and became permanently disabled, I find it appropriate to award Rs.50,000/- towards pain & sufferings.

22. Considering the fact that appellant has suffered 50% permanent physical impairment in the accident in question and now he cannot move or perform his routine works without the help of others, hence, this Court is of the considered opinion that appellant is entitled for a sum of Rs.50,000/- under the head 'loss of amenities & joy in life'.

23. From the medical documents available on record it is evident that appellant-claimant has lost sense over both his lower limbs, meaning thereby he would not be able to move or do his daily routine work whole of his life without the help of an attendant. Hence, I find it appropriate to award a lump sum amount of Rs.1,00,000/-towards expenses of 'Attendant'.

24. Perusal of impugned award reveals that the Claims Tribunal has not awarded any amount towards conveyance. Admittedly, appellant-claimant is resident of Naya Baradwar, District Janjgir

Champa, after the accident he was admitted in Apollo Hospital, Bilaspur where he took treatment as inpatient from 28.10.2011 to 30.10.2011. Thereafter, on 25.11.2011 he was admitted in Christian Medical College, Vellore-4 and discharged on 23.1.2012. Therefore, a lump sum amount of Rs.20,000/- is awarded under the head of conveyance.

25. Looking to the nature of injuries, it appears that the appellant must have also taken special diet to recover from his injuries. Hence, a sum of Rs.10,000/- is awarded under the head 'special diet'.

26. The Claims Tribunal has awarded Rs.1,81,803/- towards medical expenses, which has not been disputed, therefore, the same is affirmed.

27. On the basis of aforesaid discussions, the amount of compensation is recomputed as under:-

Sr. No.	**Compensation under various heads**		**Awarded by this Court**
01.	Medical Expenses	:	1,81,803/- (as awarded by Claims Tribunal)
02.	Loss of future income	:	Rs.7,26,000/-
03.	Loss of amenities & joy in life	:	Rs.50,000/-
04.	For pain & sufferings	:	Rs.50,000/-
05.	For attendant	:	Rs.1,00,000/-
06.	For conveyance	:	Rs.20,000/-
07.	For special diet	:	Rs.10,000/-
	Total	:	**Rs.11,37,803/-**

28. Thus, the total amount of compensation for which the claimant/ appellant is entitled to receive comes to Rs.11,37,803/- instead of Rs.3,20,803/- as awarded by the Claims Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimant/appellant as compensation shall be adjusted from total amount of compensation as calculated above.

29. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-