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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 886 of 2015

Ramlal Sahu S/o Gajju Ram Sahu, Aged About 38 Years, R/o -village Nachniya, Police Station -Salhewara, Tahsil -Chhuikhadan, Civil & Revenue District -Rajnandgaon, CG.

---- Appellant/Claimant

Versus

1. Uttam Kumar Janghel S/o Dani Ram Janghel, Aged About 22 Years, R/o: Village Sahaspur, Salhewara, Tahsil -Chhuikhadan, District -Rajnandgaon Chhattisgarh.
2. Amaru Ram Lodhi S/o Bisahu Ram Lodhi, Aged About 50 Years, R/o Village-Sahaspur, Salhewara, Tahsil -Chhuikhadan, District -Rajnandgaon, Chhattisgarh.
3. Oriental Insurance Company Limited, G.E. Road, Supela, Bhilai, Tahsil and District Durg Chhattisgarh.

--- Respondents

For Appellant	:	Mr. Abhishek Sinha, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Ms. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

03/11/2020

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of amount of compensation awarded by learned Additional Motor Accident Claims Tribunal, Khairagarh, Distt. Rajnandgaon, (CG) (for short, 'the Tribunal) vide award dated 23.01.2015 passed in Claim Case No.22/2013, whereby the Tribunal allowed application filed under Section 166 of the Act of 1988 in part and awarded Rs.4,48,629/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 05.12.2012, claimant (injured) was going to Salehwara from Chhuikhadan on Motorcycle bearing No.CG08-HB-993 alongiwth his friend Mangal. When they reached near village- Raingakhar Barrier, one Truck bearing No.CG04/DM/9707 (for short 'offending vehicle') driven by non-applicant

No.1 rashly and negligent dashed the motorcycle and caused accident. In the aforesaid accident, Ramlal suffered grievous injuries over his leg, waist and other parts of the body. He was taken to Government Hospital, Chhuikhadan, looking to his grievous injuries he was referred to Shree Narayana Hospital, Raipur where he remained admitted from 06.12.2012 to 24.12.2012. During the course of treatment one of his leg was amputated.

3. Ramlal thereafter filed an application under Section 166 of the Act of 1988 before the Tribunal seeking compensation of Rs.39,02,000/- pleadings therein that on the date of accident, he was aged about 38 years and running grocery shop (Kirana Shop) thereby earning Rs.200/- per day and also earing Rs.3,00,000/- per annum from agriculture filed. On account of motor-accidental injuries suffered by him, he is unable to do his work which he was doing prior to the date of accident. Now, he has to keep one worker/employee for the purpose of agricultural activities.

4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, submitted reply to application and denied the pleadings made therein. It was further pleaded that claimant himself was responsible for the accident as he drove his motorcycle rashly and negligently and dashed with barrier. Amount of compensation claimed is highly exaggerated. On the date of accident, non-applicant No.1 was possessed of valid and effective driving license and offending vehicle was insured with Non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application pleading therein that accident took place on account of negligence on the part of claimant. Accident was head on collision

between two motor vehicles, hence there was contributory negligence on the part of drivers of both the vehicles. On the date of accident, non-applicant No.1 was not possessing valid and effective driving licence, as such there was breach of policy condition. Hence, Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that non-applicant No.1 while driving offending vehicle in rash and negligent manner dashed the motorcycle of claimant and caused accident. Claimant suffered injuries, permanent disability to the extent of 55%. Breach of policy condition was not found to be proved. Tribunal allowed claim application in part, awarded total compensation of Rs.4,68,629/- along with interest @ 6% p.a, fastened liability upon Non-applicants, jointly & severally, to satisfy the amount of compensation.

7. Learned counsel for the appellant/claimant submits that Tribunal erred in reducing percentage of disability from 70% as assessed by the Medical Board to 55% without any reason or basis. Claimant has pleaded and proved that he was running grocery shop (Kirana Shop) and also having agriculture field of about 10 acres from which he was earning more than Rs.4,00,000/- per annum, but the Tribunal has assessed income as Rs.3,000/- per month only which is on lower side. He further submits that the Tribunal has not added any amount towards future prospects when claimant is only 38 years of age and suffered permanent disability. The Tribunal has not awarded any amount towards loss of amenities & joy in life and pains & suffering. Amount of compensation awarded by the

Tribunal towards attendant, transportation expenses & special diet is also on lower side.

8. Per contra, learned counsel for respondent No.3-Insurance Company submits that the Tribunal has already taken 55% loss of earning capacity whereas, disability suffered by claimant is only on one leg. Permanent disability for the purpose of calculating the amount of compensation could not be more than 32%. She further submits that the Tribunal in absence of any specific proof of income has assessed income on notional basis which in the given facts of the case cannot be said to be on lower side. She further submits that the Tribunal has applied multiplier of '16' in a case where claimant is 38 years of age and as per guidelines of the Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**[1], appropriate multiplier would be '15'. She further submits the Tribunal after taking into consideration over all facts and circumstances of the case has awarded just amount of compensation, which does not call for any interference.

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

10. So far as submission with regard to reducing percentage of permanent disability is concerned, perusal of disability certificate placed on record as Ex.P-167 would show that said certificate was issued by the District Medical Board assessing permanent physical impairment on account of amputation of right leg above knee as 70%. The Tribunal while assessing loss of income based on disability certificate has considered evidence of doctor wherein he stated that in Ex.P-167, disability mentioned is with

1 (2009) 6 SCC 121

regard to affected part of the body not for the whole body and on the basis of presumption has held loss of earning capacity as 55%.

11. For computing the amount of compensation under the Act of 1988 in permanent disability cases, it is to be kept in mind the nature of occupation and part of the body, to assess loss of earning capacity. The person suffered permanent disability in hand or leg will suffer different percentage of loss of earning capacity based on the nature of occupation of claimant.

12. Claimant neither placed on record any document or evidence with regard to business of grocery shop (Kirana shop) nor any document to show that he is having 10 acres of agriculture land in his name. In absence of any specific proof with regard to his business or agriculture field, occupation of claimant can be taken as an ordinary manual 'laborer'. For the purpose of assessing loss of earning capacity in the facts of the case, where claimant appears to be a manual laborer, in the opinion of this Court, it will be appropriate to take help of Schedule appended to the Employees Compensation Act, which provides for assessment of loss of earning capacity based on personal injury or permanent disability suffered by employees. Under Part -II of Schedule I at Serial No.19, it is mentioned that percentage of loss of earning capacity as 60% on account of amputation of leg below middle thigh to below knee. In case at hand, amputation of leg as per Ex.P-167 & medical documents placed on record as Ex.P- 27 & 28 would show that there was right leg amputation above knee, hence, I find it appropriate to assess loss of earning capacity of claimant as 60% instead of 55% as held by the Tribunal. It is ordered accordingly.

13. So far as other submission with regard to assessment of income of claimant as Rs.3,000/- per month is concerned, claimant failed to prove his income by placing cogent and reliable piece of evidence placed on record, in such a situation, it will appropriate to assess income of claimant on notional basis. Taking into consideration the date of accident, nature of occupation, cost of living, wage structure and price index etc. Considering the date of accident and above factors, I find it appropriate to assess income of claimant as Rs.4,000/- per month instead of Rs.3,000/- as awarded by the Tribunal.

14. The Tribunal has awarded Rs.3,000/- towards transportation expenses, overlooking the fact that claimant is a resident of Distt. Rajnangoan, whereas he took treatment at Shree Narayana Hospital, Raipur. Appellant might have expended much more for travelling. Hence, amount of compensation towards transportation awarded by the Tribunal as Rs.3,000/- also requires to be enhanced to Rs.10,000/-. Looking to the nature of injuries and period of treatment, I find it appropriate to award Rs.12,000/- towards loss of income during the period of treatment and recovery for three months (Rs.4,000 X 3).

15. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal.

16. Income of claimant is taken as Rs.4,000/- per month as held above. By adding 40% towards future prospects in view of decisions of Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi**[2], which comes to Rs.1600/- (40% of 4000), total monthly income of deceased comes to Rs.5,600/- (4000+1600) and accordingly yearly

2(2017) 16 SCC 680

income of deceased comes to Rs.67,200/- (5600 X 12). By applying multiplier of ‘15’ total loss of dependency will come to Rs.10,08,000/- (67200 X 15). As this Court has assessed loss of earning capacity of claimant to the extent of 60%, hence, loss of earning suffered by claimant will be Rs.6,04,800/- (60% of Rs.10,08,000/-).

17. Apart from this, claimant is also entitled for a sum of Rs.1,44,829/- towards medical expenses, Rs.4,000/- towards attendant, Rs.2,000/- towards special diet as awarded by the Tribunal. Rs.12,000/- towards loss of income during period of treatment, Rs.30,000/- towards pains and suffering; Rs.40,000/- towards loss of amenities and joy in life; Rs.10,000/- towards transportation expenses.

18. Now claimants will be entitled for a total sum of **Rs.8,47,629/-** (Rs.6,04,800 + Rs.1,44,829/- + Rs.4,000/- + Rs.2,000/- + Rs.12,000/- + Rs.30,000/- + Rs.40,000/- + Rs.10,000/-) instead of Rs.4,68,629/- as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of filing claim application till its realization. Rest of the conditions of impugned award shall remain intact.

19. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-