

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 15 of 2015

Malik Ram @ Mohan S/o Jagamu Ram, aged about 34 years,
 Residence of Village Post Binta, P.S. Mardum, District Bastar,
 presently at Moti Talabpara, Jagdalpur, District Bastar (C.G.).

---- Appellant

Versus

1. Baiduram Mourya S/o Lakhamuram @ Lakhu, aged about 28 years, Residence of Chhapar Bhanpuri, P.S. Bandaji, Jagdalpur, District Bastar (C.G.).
2. V.P. Goswami S/o Shri B.P. Goswami, aged about 29 years, Residence of Village Usari Beda, P.S. Lohandiguda, District Bastar (C.G.).
3. Branch Manager, The Oriental Insurance Co. Ltd., Branch Office Laxman Avenue, Medical College Road, Jagdalpur, District Bastar (C.G.).

---- Respondents

For Appellant	: Shri Praveen Dhurandhar, Advocate
For Respondents No.1 & 2	: None
For Respondent No. 3	: Shri Pankaj Agrawal, 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

06.01.2021

1. Appellant/claimant has preferred this appeal under Section 173(2) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 05.08.2014 passed by the Additional Claims Tribunal (F.T.C.), Bastar at Jagdalpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.85 of 2012 whereby learned Claims Tribunal allowed the application filed under Sections 166 (1) and 140(1) of the M.V. Act in part and awarded Rs.1,37,040,- as total compensation in an injury

case.

2. Facts relevant for disposal of this appeal, are that, on 12.02.2010, appellant- Malik Ram alias Mohan was travelling on a Maxi Cab Vehicle bearing No.CG-17/ZD/1025 (hereafter referred to as 'offending vehicle') and going to Chitrakot. On the way near village Lamdaguda, non-applicant No.1/driver of offending vehicle drove his vehicle rashly and negligently, met accident with one Auto. In the aforesaid accident, appellant suffered fracture injury over his right femur bone along with other injuries on other parts of his body. Accident was reported to concerned Police Station, based upon which, crime was registered against non-applicant No.1/driver of offending vehicle.
3. Appellant filed an application under Sections 166 (1) and 140 (1) of the M.V. Act pleading therein that on account of motor vehicular accident, he suffered fracture injury over his right femur bone, he was admitted to hospital for treatment initially from 12.02.2010 to 02.03.2010 and thereafter from 09.04.2010 to 25.06.2010, his leg was shortened and he was facing problem in walking and suffered permanent disability. It was further pleaded that prior to the date of accident, he was working as Hamal (Loader) and earning Rs.150- per day, but due to disability suffered by him, he is unable to work and earn for his livelihood and claimed Rs.9,03,000/- as total compensation on different heads.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle did not file reply to claim application before learned Claims Tribunal.
5. Non-applicant No.3/Insurance Company submitted reply to claim application denying the pleadings made therein and pleaded that there was contributory negligence on the part of driver of both the vehicles i.e. offending vehicle and Auto; driver of Auto and owner has not been made party to claim application. On the date of accident, non-applicant No.1/driver of offending vehicle was not possessed with valid and effective driving licence, there was no valid permit and fitness, as such, there was breach of policy conditions. Issuance of insurance policy for offending vehicle for the period from 26.03.2009 to 25.03.2010 was not disputed.
6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal arrived at a finding that appellant suffered injuries on account of motor vehicular accident. Accident was a result of rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions could not be proved by Insurance Company and awarded Rs.1,37,040/- as total compensation on different heads.
7. Shri Praveen Dhurandhar, learned counsel for the appellant submits that learned Claims Tribunal erred in assessing loss of earning capacity of the appellant to the extent of 15%

overlooking the disability certificate (Ex.A/55) mentioning therein that appellant suffered permanent disability to the extent of 55%. He further submits that learned Claims Tribunal has not considered evidence of Dr. Lakhan Thakur (AW-2), who issued disability certificate (Ex.A/55). While referring to disability certificate (Ex.A/55), he submits that disability certificate was issued by the District Medical Board wherein District Medical Board has not only mentioned the percentage of disability suffered by the appellant, but has also very specifically mentioned that what kind of activities appellant will not be able to do on account of permanent disability suffered by him. It is very categorically mentioned that appellant cannot walk without support. It is contended that occupation of appellant was of Labourer i.e. Hamal (Loader), for which, the persons working as Labourer are required to be fit in all means with all of his four limbs, as such, learned Claims Tribunal ought to have considered loss of earning capacity to the extent of 55% as assessed by District Medical Board. It is further contended that learned Claims Tribunal erred in not awarding any amount towards loss of amenities and enjoyment in life, loss of future prospects and transportation expenses; adding that, awarded meager amount of compensation on the head of pain and suffering and prayed that amount of compensation calculated by learned Claims Tribunal be enhanced suitably. In support of his contention, he places his reliance on the verdict of Hon'ble Supreme Court in

case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**.

8. Per contra, Shri Pankaj Agrawal, learned counsel for respondent No.3/Insurance Company supports the impugned award and submits that appellant suffered permanent disability only on his right leg i.e. part of body and not on the whole body. Referring to evidence of Dr. Lakhan Thakur (AW-2), he argued that the doctor who issued the disability certificate in his evidence has stated that by elapse of time and practicing in physiotherapy, percentage of disability may be reduced and further disability certificate was issued only for three years. It is contended that amount of compensation awarded to the appellant in the facts and circumstances of the case is just and proper, which does not call for any interference.
9. We have heard learned counsel for the respective parties and perused the record carefully.
10. To appreciate the submission made by learned counsel for the appellant with regard to assessment of loss of earning capacity by learned Claims Tribunal, we have perused copy of discharge tickets (Ex.A/9 and Ex.A/10). Ex.A/9 is the discharge ticket of Maharani Hospital, Jagdalpur showing the date of admission as 12.02.2010 and date of discharge as 02.03.2010. In Ex.A/9, it is mentioned fracture of shaft M3rd Right and procedure of treatment as "DCP plating of femur (right)". Second date of admission mentioned in Ex.A/10 as

09.04.2010 till 25.06.2010. In Ex.A/10 also, there was mention of fracture of shaft femur (right). Disability certificate (Ex.A/55) issued by District Medical Board on 17.09.2012, in which, apart from mentioning of percentage of permanent disability, there is further mention that he cannot do squatting, cross legs and he cannot walk without support. Though in the disability certificate (Ex.A/55), it is mentioned as “total percentage of permanent physical disability in his right limb to be 55%”, but loss of earning capacity of a person in view of permanent disability certificate issued by the doctor or team of doctors is to be considered taking note of nature of occupation of injured. Percentage of disability suffered by the persons engaged in different works will have its effect differently in their earning capacity.

11. The effect of percentage of permanent disability on the earning capacity has been considered by Hon'ble Supreme Court in case of **Raj Kumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343**, in which, Hon'ble Supreme Court has held thus :

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of

permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent

disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See *for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. (2010) 10 SCC 254 and Yadava Kumar v. National Insurance Co. Ltd. (2010) 10 SCC 341*).

16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to “hold an enquiry into the claim” for determining the “just compensation”. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the “just compensation”. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the *Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons*, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other

authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.”

12. If in the light of aforementioned law laid down by Hon'ble Supreme Court, facts of the case at hand are taking into consideration, appellant was working as Labourer (Hamal/Loader), looking to the nature of disability suffered by the appellant as mentioned in the disability certificate (Ex.A/55) proved by Dr. Lakhan Thakur (AW-2) that appellant is unable to walk without any support, in our considered opinion, appellant will not be able to do most of the works which he was doing prior to the date of accident as Labourer (Hamal/Loader). This aspect has not been considered by learned Claims Tribunal. Learned Claims Tribunal without taking into consideration entire facts of the case, nature of occupation and without assigning any reason has assessed the loss of earning capacity of the appellant to the extent of 15% only, which in the opinion of this Court, is erroneous. Claims Tribunal erred in arriving at a finding that appellant suffered 15% loss of earning capacity without considering nature of occupation and without any basis, which is not sustainable and is hereby set aside.

13. Taking into consideration afore-discussed factors and further taking note of evidence of Dr. Lakhan Thakur (AW-2) wherein he has stated that upon taking physiotherapy and better treatment, there will be a chance of recovery, we find it appropriate to hold that appellant suffered 40% loss of earning capacity and it is ordered accordingly.
14. So far as the submission made by learned counsel for the appellant with regard to assessing the income of appellant as Rs.4,500/- per month, appellant has not placed on record any admissible piece of evidence in this regard. Learned Claims Tribunal has assessed the income of appellant on notional basis as Rs.3,900/- per month, to which, taking into consideration the date of accident i.e. 12.02.2010, we find it appropriate to assess the income of appellant as Rs.4,000/- per month. On the date of accident, appellant was aged about 34 years only and nature of permanent disability suffered by him will affect his future earning, therefore, appellant is entitled for addition of the amount in established income towards future prospects. The Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra) has held that even a person who is not engaged in permanent employment or self-employed, is entitled for amount towards future prospects and have categorized under three age groups i.e. less than 40 years, above 40 years but less than 50 years and 50-60 years. As on the date of accident, appellant is below 40 years of age and not in permanent employment, hence, there will be an addition

of 40% of the established income towards future prospects.

15. Learned Claims Tribunal has not awarded any amount towards loss of amenities and enjoyment in life overlooking the evidence available on record i.e. disability certificate (Ex.A/55) and evidence of Dr. Lakhan Thakur (AW-2). As per evidence of Dr. Lakhan Thakur (AW-2), appellant will not be able to walk without any support, due to which, he may not be able to do many of the things and activities, which he was doing prior to the date of accident or like an ordinary person of his age and class.

16. Award of compensation in cases of permanent disability has been considered by Hon'ble Supreme Court in the matter of **R. D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others** reported in **(1995) 1 SCC 551** has **held thus :**

“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.”

17. Taking support of the rulings rendered by Hon'ble Supreme Court, we find it appropriate to award Rs.25,000/- towards loss of amenities and enjoyment in life. We also find it appropriate to enhance the amount of Rs.5,000/- awarded by learned

Claims Tribunal towards pain and suffering to Rs.25,000/-.

18. Learned Claims Tribunal has awarded Rs.12,220/- towards loss of income during the period of treatment taking into consideration the period of treatment as inpatient, which in the opinion of this Court, is not correct. Appellant might be required to take rest after discharge from the hospital and will not be in a position to do any kind of Labour work for the purpose of earning, for further more time, hence, we find it appropriate to hold that the appellant could not able to do his work for a period of six months. Taking into consideration the discharge tickets (Ex.A/9 and Ex.A/10) available on record showing the appellant to be under treatment from 12.02.2010 to 25.06.2010, we find it appropriate to award Rs.24,000/- (4,000 x 6) towards loss of income during the period of treatment for a period of six months.
19. 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 :

The monthly income of appellant is taken as Rs.4,000/- per month and Rs.48,000/- per annum. By adding 40% of the income towards future prospects, the total annual income of appellant will come to Rs.67,200/- (48,000 x 40% = 19,200 and 48,000 + 19,200). On the date of accident, appellant was shown to be 34 years of age as mentioned in cause title of claim application, whereas age of appellant has been shown

in MLC report (Ex.A/6) as 35 years and in permanent disability certificate (Ex.A.55), age of the appellant has been mentioned as 34 years. Apart from the aforementioned documents showing the age of appellant, he has not placed on record any document to prove his age, in the said circumstances, we hold the age of appellant in the age group of 31-35 years, therefore, in view of law laid down by Hon'ble Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, appropriate multiplier would be 16. By applying the multiplier of 16, total income will come to Rs.10,75,200/- ($67,200 \times 16$). As we have held that appellant suffered 40% loss of earning capacity, loss of earning of appellant will come to Rs.4,30,080/- ($10,75,200 \times 40\%$). Apart from above loss of income, appellant will be further entitled for Rs.25,000/- towards pain and suffering, Rs.25,000/- towards loss of amenities and enjoyment in life, Rs.24,000/- towards loss of income during the period of treatment, Rs.5,000/- towards special diet and Rs.5,000/- towards transportation expenses.

20. Now, the appellant is entitled for total compensation of Rs.5,14,080/- ($4,30,080 + 25,000 + 25,000 + 24,000 + 5,000 + 5,000$) instead of Rs.1,37,040/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

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

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh