

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1 of 2016**

- Nandkishor Kunjam, S/o Shri Bhavarsingh Kunjam, aged about 47 years, R/o Koregaon, Tahsil Nagri, District Dhamtari Chhattisgarh

---Appellant**VERSUS**

1. Amit Gond S/o Late Shri Sudhram Gond, R/o village Mainpur, Police Station Korar, District Kanker Chhattisgarh

-----Driver

2. Atal Singh Juneja S/o Shri Harvindar Singh Juneja, aged about 25 years, R/o Sundarganj Ward Dhamtari, Thana City Kotwali, Revenue/ civil Distt. Dhamtari Chhattisgarh

-----Owner

3. The Oriental Insurance Company Limited through Branch Manager, Branch Office-Behind Amar Talkies, Dhamtari, Revenue/ Civil Distt. Dhamtari, Chhattisgarh

----Respondents

For Appellant	: Mr. Samir Singh, Advocate
For Respondent 3	: Mr. Anumesh Shrivastava, Advocate

*(proceedings through Video Conferencing)***Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****23/08/2021**

1. Challenge in this appeal is to the award dated 02.11.2015 passed by Additional Motor Accident Claims Tribunal, Dhamtari, C.G. (for short "Claims Tribunal") in claim case no. 96/2014, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 in part, awarded Rs. 3,10,800/- as total compensation in an injury case.
2. Facts relevant for disposal of this appeal are, that on 11.05.2013,

appellant-claimant was travelling on truck bearing registration no. CG04 ZC 8559 (henceforth "offending truck") it met with an accident with tree standing on road side and turned turtle near village Kumrahakot. In the said accident appellant-claimant suffered grievous injuries on his person as he was sitting in the cabin of offending truck. He suffered crush injury over his left leg. He was initially taken to Government hospital Nagri from where he was referred to higher hospital. Appellant-claimant was admitted to Government hospital Dhamtari. During the course of treatment his leg below knee was amputated. Appellant filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident he was an able-body person, aged about 47 years, working as cleaner and hamal on the offending truck but on account of motor accidental injuries suffered by him, he suffered permanent disability. He cannot able to do the work of cleaner or loader of the truck. He has to take support of crutches for walking and claimed Rs. 10,50,000/- as total compensation.

3. Non-applicant 1 submitted reply to the claim application denying the facts pleaded therein. Occupation of appellant to be as cleaner and loader was admitted and his wages as mentioned as Rs. 100/- per day. On the date of accident non-applicant 1 was possessed with valid and effective driving licence. Offending truck was insured with non-applicant 3/ Insurance Company, as such, liability to satisfy the amount of compensation would be upon non-applicant 3.
4. Insurance Company/ Non-applicant 3 submitted its reply resisting the claim, it was further pleaded that on the date of accident non-applicant 1 driver of offending truck was not possessed with valid

and effective driving licence. Truck was being plied without there being any valid permit and fitness. There was breach of policy conditions, hence, the liability to satisfy the amount of compensation would be non-applicant 1 and 2 driver and owner of offending truck.

5. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by respective parties has held that claimant suffered permanent disability on account of rash and negligent driving of offending truck by its driver non-applicant 1. Claimant suffered 60% permanent disability. Breach of policy conditions was not found to be proved and awarded Rs. 3,10,800/- as total compensation with interest @ 6% p.a. from the date of filing of claim application till its realization.
6. Mr. Samir Singh, learned counsel for Appellant-claimant would submit that learned Claims Tribunal erred in calculating the meagre sum of compensation in the facts and circumstances of the case. Tribunal erred in assessing loss of earning capacity of 60% only overlooking the nature of occupation of appellant, who was working as cleaner and loader in the offending truck and also doing work of loader for earning his livelihood. He submits that a person who suffers permanent disability on his leg on account of amputation cannot do the work of cleaner and loader on vehicle, hence, the loss of earning capacity of appellant was 100% though the disability suffered by appellant for whole body is 60% only. He further submits that learned Claims Tribunal erred in assessing income of appellant as Rs. 3,000/- per month only, without considering the date of accident ie. 11.5.2013 and work of appellant to be cleaner

and loader. He submits that looking to the nature of work pleaded and proved by appellant, Tribunal ought to have assessed income of appellant as Rs. 200/- per day or Rs. 6,000/- per month. Tribunal has not awarded any amount of compensation towards future prospects though the appellant suffered permanent disability resulting in loss of earning capacity, consolidated amount of Rs. 30,000/- is awarded for other heads like pain and suffering, special diet, conveyance etc. which is also on lower side and submits that the amount of compensation be suitably enhanced. Learned counsel in support of his contentions places reliance upon the judgment of Hon'ble Supreme Court in case of **Mohan Soni v. Ram Avatar Tomar** reported in **2012 2 SCC 267** and **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**.

7. Mr. Anumesh Shrivastava, learned counsel for Respondent-Insurance Company submits that learned Claims Tribunal taking into consideration the entire facts and circumstances of the case, awarded just and proper amount of compensation. Tribunal considering the percentage of disability suffered by appellant as mentioned in disability certificate has correctly assessed loss of earning capacity, hence, the submission made by learned counsel for appellant that appellant suffered 100% loss of earning capacity is not sustainable. The amount of compensation awarded in the facts and circumstances of the case is just and proper which does not call for any interference.
8. I have heard learned counsel for respective parties and also perused the record of claim case.

9. So far as, the submission made by learned counsel for appellant with regard to income of appellant is concerned, perusal of record would show that the appellant in his claim application has pleaded that he was working in the offending truck owned by non-applicant 2 as cleaner and loader. In the accident he suffered amputation of his left leg below knee. The date of accident is of 11.05.2013, on the said date even an ordinary manual labourer could have earned more wages than what is assessed by Claims Tribunal. In support of pleadings made in claim application appellant examined himself as AW-1 and one Santosh Kumar Kunjam as AW-2, working as Assistant Teacher, who also stated that claimant is his uncle, prior to date of accident appellant was working as loader. Non-applicant 2 examined himself before the Claims Tribunal and admitted that the claimant was working as hamal on his truck. In view of aforementioned evidence brought on record by appellant-claimant his income is to be assessed on notional basis for which the date of accident, age of claimant/ injured, wage structure, nature of occupation, cost of living etc. are to be taken into consideration. Upon considering the entire facts and circumstances of the case and also the aforementioned factors, I find it appropriate to assess income of appellant as Rs. 4500/- per month. It is ordered accordingly.

10. So far as the assessment of loss of earning capacity as 60% by Tribunal is concerned, loss of earning capacity should be on the basis of nature of occupation of injured/ victim. The work on which appellant/ victim was engaged was Loader on goods on truck. For the work which appellant was doing demands all the four limbs of person to be healthy; with the permanent disability suffered by the

appellant on account of amputation of his left leg from below knee, he cannot able to do the work of loader as also the work of ordinary labourer. Application for grant of compensation is filed under the Act of 1988 which is a beneficial piece of legislation. The object of the Act is to compensate the victim or his/ her family members to make out the loss suffered by him/ her. Hon'ble Supreme Court in case of **R.D. Hattangadi v. Pest Control India Ltd.** reported in **1995 (1) SCC 551** has considered the calculation of amount of 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."

11. In case of **Rajkumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343**, hon'ble Supreme Court has again considered the assessment with regard to award of compensation in personal injury case resulting in permanent disability and held thus:

"13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that

he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

12. In case of **Mohan Soni (supra)**, Hon'ble Supreme Court while referring its earlier judgment in case of **Rajkumar (supra)** has

considered loss of earning capacity by conterpollard and held thus:

“12. In the light of the aforesaid decisions, we find it extremely difficult to uphold the decision of the High Court and the Tribunal based on the finding that the loss of the appellant's earning capacity as a result of the amputation of his left leg was only 50%. It is noted above that the appellant used to earn his livelihood as a cart puller. The Tribunal has found that at the time of the accident his age was 55 years. At that age it would be impossible for the appellant to find any job. From the trend of cross-examination it appears that an attempt was made to suggest that notwithstanding the loss of one leg the appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb etc. should not take into account such indeterminate factors.”

13. Taking into consideration the facts and circumstances of the case, nature of occupation of appellant and further taking note of aforementioned rulings of Hon'ble Supreme Court, I am of the view that appellant at least has suffered 80% loss of earning capacity. It is ordered accordingly. Heads on which amount of compensation to be awarded to the victim of accident in personal injury has been considered by Hon'ble Supreme Court in case of **R.D. Hattangdi (supra)**, hence, the appellant-claimant will be entitled for amount of compensation on those heads as well.

14. For the foregoing reasons, I find it appropriate to re-compute the amount of compensation to be awarded to the appellant-claimant, as under:

15. Income of appellant is assessed as Rs. 4500/- per month ie. Rs. 54000/- per annum. There will be addition of 25% of established income towards future prospects which makes the total income of appellant on the date of accident as Rs. 67,500/-. Appellant on the date of accident was 47 years of age, as such, there will be multiplier of 13 to the annual income of appellant which makes total income of appellant as Rs. 8,77,500/- [Rs.67500x13]. Loss of earning capacity of appellant is assessed as 80% and 80% of total income will come to Rs. 7,02,000/-. Looking to the nature of injury appellant will further be entitled for Rs. 20,000/- towards pain and sufferings, Rs. 25,000/- towards loss of amenities and joy in life, Rs. 9,000/- towards loss of income during treatment period for a period of two months, Rs. 5,000/- towards conveyance expenses, Rs. 5,000/- towards special diet and Rs. 5,000/- towards attendant.
16. Now the appellant-claimant shall be entitled for Rs. **7,71,000/-** [Rs.7,02,000+Rs.20,000+Rs.25,000+Rs.9,000+Rs.5,000+Rs.5,000 +Rs.5,000] as total compensation instead of Rs. 3,10,800/- as awarded by Claims Tribunal. Aforesaid amount of compensation shall carry interest @ 6% pa from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.
17. In the result, appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge