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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 441 of 2015

- Smt. Ramkunwar Nishad widow of Anjori Ram Nishad, aged about 45 years, resident of village-Baihatola, Tahsil Khairagarh, District Rajnandgaon Chhattisgarh

------Appellant

VERSUS

1. Madhusudan Mahobiya son of Hemlal Mahobiya, aged about 42 years, Occupation-Driver, resident of Village Dhara, Tahsil-Dongargarh, District Rajnandgaon Chhattisgarh
2. Smt. Tuleshwari Bai Verma wife of Shailendra Verma, Occupation-Bus Transport, resident of Village- Achholi, Tahsil Dongargarh, District Rajnandgaon Chhattisgarh
3. National Insurance Company Limited, through the Divisional Manager, Akash Ganga Complex, Supela, Tahsil and District-Durg Chhattisgarh

-------Respondents

For Appellant	:	Mr. Pushkar Sinha, Advocate
For Respondent 1 & 2	:	None.
For Respondent 3	:	Mr. B.N. Nande, Advocate with Mr. Priyanshu Gupta, Advocate

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Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

28/01/2021

1. Challenge in this appeal is to the award dated 21.11.2014 passed by learned Additional Motor Accident Claims Tribunal, Khairagarh, District-Rajnandgaon, Chhattisgarh in claim case no. 70/2013, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short “Act of 1988”) and awarded Rs. 52,800/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal are that, on 02.04.2013, appellant/ claimant was travelling on a bus bearing registration number CG08M0206 (henceforth “offending bus”) as a fare paying passenger and

going to Dongargarh from village Baihatola. On the way, due to rash and negligent driving of offending bus by non-applicant 1/ respondent 1, it turned turtle and met with an accident. In the accident, appellant suffered fracture injury on her right hand and injuries on different parts of body including her face. Other passengers of the bus also suffered injuries. Appellant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.14,00,000/- pleading therein that on the date of accident, she was working as labourer and earning Rs. 6,000/- per month, on account of motor accidental injuries, she became permanently disabled and is not able to do work as labourer.

3. Non-applicants 1 and 2 who are driver and owner of offending bus were proceeded *ex parte*.

4. Non-applicant 3/ Insurance Company submitted reply to the claim application, pleading therein that non-applicant 1 driver of the offending bus was not possessed with valid and effective driving licence. There was no valid permit, and fitness certificate of the bus, as such, there was breach of policy conditions. They have denied the fact of permanent disability of by appellant as pleaded in the application.

5. Learned Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties, held that offending bus met with an accident due to rash and negligent driving of the bus by non-applicant 1. In the accident, applicant suffered grievous injuries and permanent disability. Breach of policy conditions was not found to be proved. Claims Tribunal on assessing 10% loss of earning capacity of appellant awarded total sum of Rs. 52,800/- as compensation.

6. Mr. Pushkar Sinha, learned counsel for appellant submits that Claims Tribunal had not considered entire material and evidence placed on record

by appellant. He submits that appellant has placed on record disability certificate issued by Medical Board, examined doctor who issued disability certificate as AW-1 before the Claims Tribunal to prove the disability suffered by her to the extent of 30%. Tribunal without assigning any reason has assessed loss of earning capacity to the extent of 10% contrary to the percentage of permanent disability assessed by the expert. He further pointed out that the Tribunal assessed income of appellant Rs. 3,000/- per month only, overlooking the age of appellant, occupation, cost of living, wage structure etc. Income of appellant as pleaded in the claim application and stated by appellant in her evidence ought to have been taken into consideration for the purpose of assessing income. He further pointed out that the Tribunal erred in awarding very meagre amount towards attendant and nutritious diet as Rs. 1,000/- only and not awarded any amount towards loss of amenities and joy in life, in the facts and circumstances of the case. He submits that the amount of compensation to be suitably enhanced.

7. On the other hand, Mr. B.N. Nande, Advocate with Mr. Priyanshu Gupta, Advocate, submits that learned Claims Tribunal, upon considering entire pleadings, documentary and oral evidence, has awarded just amount of compensation. Appellant failed to prove her income by placing any reliable piece of evidence. He further contended that though disability certificate mentions permanent disability to the extent of 30%, the doctor in his evidence has stated that disability certificate mentioning 30% disability has been issued with regard to affected organs of body and not for the whole body. Claims Tribunal has rightly taken into consideration disability of 10% for whole body affecting her loss of earning capacity. He submits that amount of compensation awarded is just and proper which does not call for any interference.

8. We have heard learned counsel for the respective parties and also perused the record of claim case.

9. Sofar as the first submission raised by the learned counsel for appellant with regard to assessment of loss of earning capacity by the Tribunal to the extent of 10% only and not 30%, perusal of record would show that the appellant suffered fracture injury on left forearm as per Ext. P-6, which is the x-ray report, no bone injury has been found in other x-ray reports ie. of shoulder and left elbow. Disability certificate Ext. P-1 has been issued by the Medical Board showing 30% permanent disability for the forearm fracture. Doctor who is one of the Members of Medical Board has been examined as AW-1. In paragraph 5 of his evidence, he categorically admitted that 30% permanent disability mentioned in Ext.P-1 is only for the affected parts of body and not for whole body. In view of specific evidence of doctor, loss of earning capacity cannot be taken as 30%. In view of above, we do not find any force in the submission made by learned counsel for appellant that loss of earning capacity to be taken at 30% as mentioned in Ext. P-1 disability certificate. The said submission of learned counsel for appellant is hereby repelled.

10. Sofar as, the other submission made by learned counsel for appellant with regard to assessment of income as Rs. 3,000/- per month is concerned. Appellant, on the date of accident, was 45 years of age and has pleaded and stated that she was able-bodied person. She was working as labourer. True it is that the income of appellant has not been proved in accordance with law, for the purpose of calculating the amount of compensation under Motor Vehicles Act. The person working as labourer even otherwise could not be able to place any document in the regard. In such circumstances, notional income of victim/ deceased is to be reckoned by the Tribunal or Court, upon considering the date of accident, nature of occupation, wage

structure, cost of living etc.

11. Upon taking into consideration the overall facts and circumstances of the case and date of accident ie. of 02.04.2013, we find it appropriate to reckon income of appellant as Rs. 4,500/- per month. Fracture injury as well as permanent disability suffered by appellant are not in dispute. Tribunal arrived at a finding that appellant suffered grievous injury resulting in permanent disability but the Tribunal has not awarded any amount towards pains and sufferings, loss of amenities and joy in lie, very meager amount towards special diet and attendant has been awarded. Appellant suffered loss of income which will be life long but no amount is added in income towards future prospects. For the foregoing reasons, in the considered opinion of this Court, appellant is entitled for enhancement of amount of compensation which is re-calculated and re-computed as under.

12. Income of appellant is assessed as Rs. 4,500/- per month ie. Rs. 54,000/- per annum. By adding 25% of established income towards future prospects as held by Hon'ble Supreme Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680**, total yearly income of appellant will come to Rs.67,500/- (Rs.54,000+25% of Rs.54,000). Considering the age of appellant as 45 years, appropriate multiplier would be 14. Upon applying multiplier of 14 to yearly income, total income of appellant will come to Rs.9,45,000/- (Rs.67,500x14). Appellant suffered 10% loss of earning capacity, 10% of total income will come to Rs. 94,500/- which is loss of income suffered by appellant in her life.

Apart from above, loss of income, appellant is also entitled for Rs. 15,000/- towards pain and sufferings, Rs. 15,000/- towards loss of amenities and joy in life, Rs. 3,000/- towards attendant conveyance and special diet and Rs. 5,000/- towards medical expenses as awarded by the Claims Tribunal. Now the appellant-claimant shall be entitled for total **Rs. 1,32,500/-** (Rs.94,500+Rs.15,000+Rs.15,000+Rs.3,000+Rs.5,000) as compensation instead of Rs. 52,800/- as awarded by the Tribunal. Aforementioned amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Claims Tribunal has awarded 9% penal interest which is not sustainable as there is no provision under the Motor Vehicles Act to award penal interest. Penal interest @ 9% is set aside. Other conditions imposed by learned Claims Tribunal shall remain intact.

13. Appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Pawan