NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 388 of 2015

Smt. Primila Bai Suryavanshi W/o Late Rajkumar Suryvanshi, Aged About 44 Years, R/o Village- Semartal, P.S. Koni, District Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Ramesh Kumar Vijay S/o Ramlal, Aged About 23 Years, R/o Village Hindadih, P.S. Sipat, District Bilaspur, C.G., Through Owner, M/s Hind Energy And Kole Benification India Pvt. Ltd. Proprietor-Satish Agrawal Office First Floor, Rama Trade Center, Opposite Rajive Plaza, Bush Stand Bilaspur, Chhattisgarh
2. M/s Hind Energy And Kole Benification (India) Pvt. Ltd. Proprietor-Satish Agrawal, Office First Floor, Rama Trade Center, Opposite Rajive Plaza, Bus Stand Bilaspur, Chhattisgarh
3. Bajaj Allianz General Insurance Company Ltd. Through Branch Manager Shop No. O.C.-2 Chhattisgarh Complex, Opposite To Raja Hotel, Near Bus Stand, Tahsil And District Bilaspur, C.G. At Present 3rd Floor Gurukripa, Ashish Auto Mobile Vayapar Bihar Road, Bilaspur, Chhattisgarh

---- Respondents

For Appellant	: Shri Anand Kumar Gupta, Advocate
For Respondents No.1 & 2	: None
For Respondent No.3	: Shri Aditya Pandey, Advocate on behalf of Shri Abhishek Sinha, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

28.01.2021

1. Appellant/claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated

30.07.2014 passed by the Fourth Additional Member to the Court of First Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.13 of 2013 whereby learned Claims Tribunal allowed the application in part and awarded Rs.4,08,000/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal, are that, on 05.01.2011, appellant/claimant was travelling on Auto-rickshaw from Nawadeeh Chowk to Bilaspur, when Auto-rickshaw reached near pond just ahead Nawadeeh Chowk, one Hyva Truck bearing No.CG-10/C/3428 (hereafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the Auto-rickshaw and caused accident. In the aforesaid accident, appellant/claimant suffered grievous injuries over her person including left leg. Appellant was immediately taken to Primary Health Center from where she was referred to higher Hospital. She was admitted at Chhattisgarh Institute of Medical Sciences at Bilaspur (in short 'CIMS'). Accident was reported to concerned Police Station, based upon which, crime was registered against non-applicant No.1.

3. Appellant/ claimant filed an application under Section 166 of the M.V. Act pleading therein that in the accident, she suffered fracture injury over her left femur and lacerated would over her left calf muscle region; she also suffered

injuries on other parts of body; she was admitted to CIMS Hospital, underwent operation and steel road was implanted. She remained under treatment at CIMS Hospital from 05.01.2011 to 08.03.2011 and she was on bed for about eight months. On account of motor accidental injuries, she suffered permanent disability; unable to walk without support of crutches and claimed Rs.10,07,000/- as total compensation on different heads.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application pleading therein that accident was a result of negligence on the part of driver of Auto-rickshaw, in which, appellant/ claimant was travelling. It was further pleaded that driver, owner and insurer of Auto-rickshaw have not been impleaded as party non-applicants. Injuries suffered by appellant/claimant was simple in nature, but only to get higher amount of compensation, false case is setup. Offending vehicle was insured with non-applicant No.3, if it is found that non-applicant No.1/driver of offending vehicle is negligent, then non-applicant No.3/Insurance Company is liable to satisfy the amount of compensation.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made therein, pleaded that accident was a result of rash and negligent driving of Auto-rickshaw by its driver. It was further pleaded

that there was no negligence on the part of non-applicant No.1 in the facts of the case and it is a case of contributory negligence. It was also pleaded that claim case was not maintainable due to non-joinder of necessary party because driver, owner and insurer of Auto-rickshaw were not impleaded as party non-applicants. Non-applicant No.1 was not possessed with valid and effective driving licence and there was no valid permit and fitness of offending vehicle.

6. Upon appreciation of pleadings, evidence and material placed on record by respective parties, learned Claims Tribunal allowed the application filed under Section 166 of the M.V. Act in part holding that non-applicant No.1/driver of the offending vehicle while driving the vehicle rashly and negligently dashed Auto-rickshaw, in which, appellant/ claimant was travelling and caused accident. In the said accident, appellant/claimant suffered grievous injuries; contributory negligence and breach of the policy conditions were not found to be proved. Learned Claims Tribunal considering the loss of earing capacity to the extent of 50% and assessing amount of compensation on other heads, awarded Rs.4,08,000/- as total compensation.

7. Shri Anand Kumar Gupta, learned counsel for the appellant/claimant submits that learned Claims Tribunal erred in awarding meagre amount of compensation and not considering nature of occupation and part of body on which

appellant/claimants suffered permanent disability, assessed loss of earning capacity to the extent of 50% only instead of 100%. He further submits that learned Claims Tribunal awarded consolidated amount of Rs.30,000/- only towards pain and suffering, attendant, transportation and special diet, which is on lower side. It is contended that in the facts and circumstances of the case, amount of compensation awarded to the appellant/claimant be suitably enhanced.

8. Per contra, Shri Aditya Pandey, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal while taking into consideration entire facts and circumstances of the case, awarded just amount of compensation. He further submits that learned Claims Tribunal has assessed the income of appellant/claimant as Rs.4,500/- per month and upon assessing loss of earning capacity to the extent of 50%, calculated the amount towards loss of income as Rs.3,78,000/- and after adding Rs.30,000/- on other heads, awarded total compensation of Rs.4,08,000/-, which does not call for any interference.

9. We have heard learned counsel for the respective parties and perused the record carefully.

10. The liability to satisfy the amount of compensation is not under challenge. Loss of earning capacity assessed by learned Claims Tribunal to the extent of 50% is not

challenged by non-applicants/respondents. Learned counsel for the appellant/claimant pointed out that learned Claims Tribunal has awarded meagre amount of compensation in the facts and circumstances of the case.

11. To appreciate the submission made by learned counsel for the appellant/claimant with regard to non-considering the loss of income in appropriate manner taking into consideration the nature of occupation, we have perused the pleadings, permanent disability certificate (Ex.A/109), in which disability has been shown only on left leg and also the evidence of Dr. S.S. Bhatia (AW-2). Taking into consideration the part of body i.e. fracture of left femur suffered by appellant, which on the date of her examination was non-union as well as entire facts and circumstances of the case, we do not find any reason to interfere with the finding recorded by learned Claims Tribunal with regard to loss of earning capacity.

12. Learned Claims Tribunal has assessed the income of appellant/claimant as Rs.4,500/- per month, but had not added any amount towards loss of future prospects in the facts of the case. The issue with regard to award of future prospects to the person who are not in permanent employment or self-employment has been considered by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and

held thus:

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

13. In the case at hand, appellant/claimant was not in a permanent employment and aged above 40 years and less than 50 years, hence, there shall be addition of 25% of established income towards future prospects because appellant/claimant will suffer loss of earning for whole of her life. Learned Claims Tribunal has not awarded any amount towards loss of amenities and joy in life. Lump-sum Rs.30,000/- has been awarded towards pain and suffering, attendant, transportation and special diet, which in the opinion of this Court and looking to the nature of injuries, length of treatment as well as permanent disability suffered by appellant/claimant, is on lower side, which requires enhancement.

14. The Hon'ble Supreme Court in case of **R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others** reported in **(1995) 1 SCC 551** has considered the heads under which, compensation to be awarded 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."

15. For the forging reasons as well as the facts and circumstances of the case, we deem it fit and proper to recompute and recalculate the amount of compensation as under :

The income of appellant/claimant is taken as Rs.4,500/- per month and Rs.54,000/- per annum as assessed by learned Claims Tribunal. After adding 25% of established income towards future prospects, total annual income of appellant/claimant will come to Rs.67,500/- (54,000 x 25% = 13,500 and 54,000 + 13,500). On the date of accident, appellant/claimant was aged about 44 years, hence, appropriate multiplier will be 14 as applied by learned Claims Tribunal. Upon applying the multiplier of 14, total income will come to Rs.9,45,000/- (67,500 x 14). As held by learned Claims Tribunal, appellant/claimant suffered 50% loss of earning capacity, hence, loss of earnings of appellant/claimant will come to Rs.4,72,000/- (9,45,000 x 50%).

Apart from above amount of compensation, looking to the nature of injuries and permanent disability suffered by the appellant/claimant as well as the law laid down by Hon'ble Supreme Court in **R.D. Hattangadi** (supra), appellant/claimant will be entitled for pecuniary and non-pecuniary damages, hence, she will be further entitled for Rs.30,000/- towards pain and suffering, Rs.30,000/- towards loss of amenities and joy in life, Rs.10,000/- towards attendant and Rs.10,000/- towards transportation and special diet. Appellant/claimant has placed on record the medical bill of Rs.4,750/- for purchase of right tibia hockey plate, cancellous screw, cortical screw and S.S. drill bit, which is also to be awarded. Looking to the period of treatment, nature of injury of non-union of left femur, in the opinion of this Court, appellant/claimant may not able to work for a period of five months, hence, she will be entitled for loss of income during the period of treatment for five months i.e. Rs.22,500/- (4,500 x 5).

16. Now, appellant/claimant is entitled for total compensation of Rs.5,79,250/- (4,72,000 + 30,000 + 30,000 + 10,000 + 10,000 + 4,750 + 22,500) instead of Rs.4,08,000/- 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. Penal interest of 9% per annum awarded by learned Claims Tribunal is set aside as under the M.V. Act, there is no provision to award penal interest. Other conditions imposed by learned Claims Tribunal shall remain intact.

17. For the foregoing reasons, the appeal is allowed in part and impugned award is modified to the extent as indicated herein-above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh