

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1485 of 2015

Premjit Mishra S/o Satendra Mishra, Aged About 23 Years, R/o Parpa Naka Jagdalpur, District Bastar, Chhattisgarh.

---- **Appellant**

Versus

1. Nilamber Baghel S/o Ratan Baghel Aged About 45 Years R/o Hatkachora Near Kali Mandir Jagdalpur, District Bastar Chhattisgarh. **(Driver)**.
2. (a) : Rajesh Tiwari S/o N. Tiwari.
(b) : Ritesh Tiwar S/o N. Tiwari.
Both are R/o Near Durga Mandir, Shanti Nagar, Frezerpur Jagdalpur District Bastar, Chhattisgarh. **(Owner)**.
3. The Oriental Insurance Company Limited Through Branch Manager, Main Road, Anupama Chowk Jagdalpur District Bastar Chhattisgarh.

--- **Non-applicant Nos.1 to 3/Respondents**

For Appellants	: Mr. Praveen Dhurandhar, Advocate.
For Respondent Nos.1 and 2	: None.
For Respondent No.3	: Mr. Deepak Gupta, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

21/09/2021

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned 2nd Additional Motor Accident Claims Tribunal, Bastar, District -Jagdalpur, (CG) (for short 'Tribunal') vide award dated 24.8.2015 in Claim Case No.202/2014, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.6,66,640/- in an injury case.
2. Facts relevant for disposal of this appeal are that on 10.02.2013 at about 4:00 pm, claimant was going to Parpa Naka from Jagdalpur on his motorcycle. On the way, one Indica Car bearing registration No. CG/17-C/0422, (for short, 'offending vehicle') driven by Non-applicant No.1 rashly and negligently, dashed the motorcycle of claimant and caused accident. In the accident, claimant suffered grievous injuries on his head, right leg and other part of body. He was taken to Maharani Hospital Jagdalpur from where he was referred to Ramkrishna Care Hospital, Raipur, upon

diagnose it revealed that he suffered injury over his head diffuse edema, fracture of right Temporal, Himatoma and fracture of shaft femur.

3. Claimant has filed application under Section 166 of the Act of 1988 seeking total compensation of Rs.27,66,000/- on different heads pleading therein that on the date of accident, he was able bodied person, aged about 23 years. He was working as motor-mechanic/truck mechanic at Naresh Garage and earning Rs.8,000/- per month. On account of motor-accidental injuries, he suffered permanent disability and unable to do any work which he was doing prior to the date of accident.
4. Non-applicants No.1/driver of offending vehicle, submitted reply to application, denied the pleading made therein. It was further pleaded that on the date of accident, non-applicant No.1 was possessed with valid and effective driving license. Offending vehicle was insured with non-applicant No.3/insurance Company. Hence, liability if any to pay the amount of compensation would be of Insurance Company.
5. Non-applicant No.2/owner of offending vehicle, submitted its reply separately to application, denied the facts pleaded therein. It was further pleaded that on the date of accident, non-applicant No.1 was possessed with valid and effective driving licence. Offending vehicle was insured with non-applicant No.3-Insurance Company. Hence, liability if any to pay the amount of compensation would be of Insurance Company.
6. Non-applicant No.4/Insurance Company submitted its reply to application, resisting the claim. It was further pleaded that owner and insurer of motorcycle of appellant was not arrayed as party to claim. Accident was not a result of rash and negligent driving by non-applicant No.1. On the date of accident, non-applicant No.1 was not having valid and effective

driving licence to drive offending vehicle. As there was breach of policy condition, Insurance company is not liable to indemnify the insured.

7. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that claimant suffered permanent disability in motor-accident due to rash and negligent driving of offending vehicle by non-applicant No.1. Contributory negligence on the part of claimant and breach of policy condition were not found to be proved. Tribunal while assessing loss of earning capacity of claimant to the extent of 18% assessed income as Rs.3,000/- per month on notional basis, awarded total compensation of Rs.6,66,690/- including Rs.4,83,000/- towards medical expenses and Rs.50,000/- towards future medical expenses.
8. Learned counsel for appellant submits that injuries suffered by appellant/claimant were serious in nature. He suffered fracture of Temporal Hemorrhagic contusion with diffuse cerebular cerebra, fracture of shaft femur. He took treatment as in-patient from 11.02.13 to 15.03.13 at Ramkrishna Care Hospital, Raipur. He underwent operation of head and right leg. Appellant to prove his injuries, examined Dr. SN Madhariya as (AW/4) who stated in his evidence that at the time of operation of head of appellant part of bone was removed from head and kept in stomach. Evidence of Dr. Pankaj Dhawaliya (AW/3) shows nature of injury suffered by appellant. Apart from fracture of right femur claimant also suffered injury over his hip. Appellant appeared before District Medical Board Jagdalpur on 10.07.15 ie after about more than two years of accident. Doctor of Medical Board upon examination of appellant found 55% of permanent physical impairment, disability over right lower limb and has assessed permanent disability to the extent of 55%. Claimant to prove

disability certificate (Ex - A/20) examined Dr. L.L. Thakur as AW/2 who stated in his evidence that prior to issuance of disability certificate X-ray of right femur was taken, upon which, it revealed that steel rod was inserted and It was fitted with screw. Looking to the nature of disability assessed by Medical Board and also proved by Doctor L.L. Thakur, Tribunal erred in assessing loss of earning capacity of appellant to the extent of 18% only. It is always not necessary that percentage of permanent disability assessed for the whole body will affect the earning capacity in that ratio but it is to be calculated considering nature of work in which, appellant is engaged and nature of disability suffered by him. Looking to the nature of occupation of appellant to be motor mechanic, who has to work in all position like siting, bending and also laying under the vehicle and lifting weight. In view of above, loss of earning capacity assessed by Tribunal requires to be reconsidered. He further submits that Tribunal erred in assessing income of claimant as Rs.3,000/- per month only, overlooking the facts that in claim application appellant has very specifically pleaded that on the date of accident he was working as motor mechanic which comes within skilled work. Tribunal ought to have assessed income of appellant atleast Rs.5,000/- per month in the facts and circumstance of the case. Once the Tribunal arrived at a conclusion that appellant suffered loss of earning capacity resulting into loss of future income which is for the whole life of appellant, Tribunal should have awarded compensation towards future prospects as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**¹. Tribunal has not awarded any amount of compensation towards attendant, conveyance expenses and loss of amenities and joy in life and awarded meager sum of Rs.6,000/- towards physical and mental agony. Tribunal erred in

¹ (2017) 16 SCC 680

calculating loss of income only for period of 2 months, whereas in the facts and circumstances of this case appellant took treatment continuously in OPD of Ramkrishan Care Hospital Raipur Hospital till August 2013. Tribunal should have awarded loss of income during the period of treatment for the period of 5 months. In view of above, amount of compensation be suitably enhanced.

9. Learned counsel for respondent No.3 submits that Tribunal based upon evidence of Dr. L.L. Thakur (AW/2) assessed loss of earning capacity. Doctor AW/2 in his cross-examination admitted that disability of appellant/claimant for the whole body would be 18.5% only. Tribunal assessed loss of earning capacity as 18% which cannot be said to be erroneous. Though appellant has pleaded that he was working as motor mechanic at Nagesh Garage and earning Rs.8,000/- per month but failed to prove the same by placing admissible piece of evidence on record. Hence, Tribunal justified in assessing income of appellant as Rs.3,000/- per month on notional basis. Tribunal upon considering entire facts and circumstances, evidence on record, awarded just amount of compensation, which does not call for any interference.
10. Heard learned counsel for the parties and perused the record.
11. So far as submission made by learned counsel for appellant with regard to assessment of loss of earning capacity of appellant is concerned, perusal of record would show that appellant has placed on record MLC investigation reports dated 11.02.13 & 15.02.13 as Ex.A/5 & Ex.A/6. In Ex.A/5 upon examination of appellant, Dr. S.N Madhariya found that appellant suffered injury on right temporal region, diffuse cerebral edema and fracture of left temporal myxoid bone. Ex.A/6 upon examination of

appellant, Dr. P. Dhabaliya (D. Ortho) found that appellant suffered displaced fracture of shaft femur. Appellant underwent surgery of head as well as right leg. He took treatment as in-patient from 11.02.2013 to 15.03.2013 at RamKrishna Care Hospital which is evident from Ex.A/14. Medical Board issued disability certificate as Ex.A/20 assessing disability on the lower limb to the extent of 55%. Dr. L.L. Thakur member of medical board was examined as AW/2, who stated that appellant would not be able to sit cross legs. Due to the injuries suffered by appellant on hip, he could not able to drive the vehicle. He will not able to sit/stand while working as motor mechanic. Dr. LL Thakur also stated in Para No.5 of his evidence that based on caselar procedure disability for the whole body would be 55%. There is no dispute that assessment of permanent disability by medical board was of his left leg and assessed 55% physical impairment and disability. It is also true that for the purpose of assessing permanent disability of whole body, Doctor realised on caselar procedure and came to conclusion that appellant suffered 18.5% disability. While considering application for grant of compensation under the Act of 1988 it is to be seen as to in what manner disability suffered by appellant will affect his earning capacity. Assessment of loss of earning capacity is to be considered based on nature of disability, part of body on which appellant suffered disability, and the nature of occupation. Claimant though pleaded that he was working as motor mechanic at Naresh Garage, but appellant has not examined owner of garage as witness to prove his engagement with him as motor mechanic. Even if appellant failed to prove his occupation that he was working as motor mechanic, then also looking to his age, it cannot be said that appellant was not doing any work for the purpose of earning his livelihood. Even if occupation of appellant is taken to be a manual labourer, then also he could have

earned more than what was assessed by Tribunal. Hence, in the facts and circumstances of this case, considering the occupation of appellant to be manual labourer. Then also in view of evidence of Dr. AW/2, in the opinion of this Court, loss of earning capacity cannot be less than 20% and income of appellant as Rs.4,000/- per month. It is ordered accordingly.

12. Issue with regard to award of compensation on future prospects has been considered by the Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and held that in case deceased/victim of motor accident, was below 40 years and not in a permanent employment, an addition of 40% of established income towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads 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 case at hand, appellant on the date of accident was aged about 23 years, not in a permanent employment, therefore, there shall be addition of 40% of established income to the income of appellant for computing the amount of compensation.
14. Tribunal awarded Rs.6,000/- towards physical and mental agony which in the considered opinion of this Court is very less. Tribunal awarded Rs.5,000/- towards conveyance expenses, attendant, and special diet, which is also on lower side and requires to be suitably enhanced. Tribunal further erred in awarding loss of income only for the period of 2 months in the facts of the case.

15. Considering the nature of injuries, documents available on record with regard to treatment and evidence of doctors, in the opinion of this Court loss of earning of appellant can be assessed for the period of 5 months. It is ordered accordingly.
16. For the foregoing, I propose to recompute the amount of compensation.
17. Income of appellant is taken as Rs.4,000/- per month, upon adding 40% of establish income towards future prospects, which comes to Rs.1,600/- (40% of 4,000), total monthly income of claimant comes to Rs.5,600/- (4,000 + 1600) and accordingly yearly income comes to Rs.67,200/- (12 X 5600). As this Court assessed loss of earning capacity of claimant to the extent of 20%, hence, loss of earning suffered by claimant will be Rs.13,440/- (20% of Rs.67,200/-). On the date of accident, claimant was aged 22 years of age, therefore, appropriate multiplier would be 18. By applying multiplier of 18, total loss of earnings comes to Rs.2,41,920/- (Rs.13,440/- X 18).
18. Appellant will also be entitle for medical expenses as proved and awarded by Tribunal as Rs.4,83,000/- and future medical expenses awarded by Tribunal of Rs.50,000/-. Claimant is further entitled for Rs.30,000/- towards pains and suffering, Rs.25,000/- towards loss of amenities and joy in life, Rs.10,000/- towards attendant, Rs.10,000/- towards conveyance expenses, Rs.5,000/- towards special diet and Rs.20,000/- (4,000 X 5) towards treatment of 5 months.
19. Now, claimants will be entitled for a total compensation of **Rs.8,74,920/-** (Rs.2,41,920/- + Rs.4,83,000/- + Rs.50,000/- + Rs.20,000/- + Rs.25,000/- + Rs.30,000/- + Rs.10,000/- + Rs.10,000/- + Rs.5,000/-) instead of **Rs.6,66,640/-** as awarded by Tribunal. This amount of

compensation shall carry interest @ 9% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-