NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1116 of 2015

- Bharat Vishwakarma S/o Shri Shukhram Vishwakarma, aged about 45 Years R/o Village- Rivagahan, P.S. Lalbag, Tahsil and District- Rajnandgaon Chhattisgarh.

------Appellant

VERSUS

1. Sunil Kumar Verma s/o Prem Singh Verma, R/o Vaishali Nagar, Ambedkar Chowk, Supela, District Durg, Chhattisgarh

----Driver

2. Chiranjeev Jain S/o Manik Chand Jain MIC 33 Vaishali Nagar, Bhilai, Durg District Durg Chhattisgarh

----Owner

3. Bharti AXA General Insurance Company Limited, through its Branch Manager, 1st Floor Chawla Complex, Devendra Nagar Road, District : Raipur, Chhattisgarh

-------**Respondents**

For Appellant	:	Ms. Richa Pandey, Advocate.
For Respondent 1 & 2	:	None
For Respondent 3	:	Mr. Bhavesh Acharya, Advocate.

Hon'ble Shri Parth Prateem Sahu, Judge

ORDER ON BOARD

15/09/2021

1. Challenge in this appeal is to the award dated 24.03.2015 passed by learned First Additional Motor Accident Claims Tribunal, Rajnandgaon, Chhattisgarh (for short “Claims Tribunal”) in Claim Case no. 87/2014 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short “Act of 1988”) in part, awarded total sum of Rs. 1,23,600/- with interest @ 6% p.a. from the date of filing of claim application.

2. Facts of the case necessary for disposal of this appeal are that on 17.09.2012 about 05:00 pm when appellant was travelling on bicycle from village Indamara to Rivagahan and crossing the road,

at that relevant time, one car bearing registration number CG07MB1197 (henceforth “offending vehicle”) driven rashly and negligently by non-applicant 1 dashed the bicycle of appellant and caused accident. In the said accident, appellant suffered grievous injuries on his head and leg. He was immediately taken to Government Hospital, Rajnndgaon where he took treatment as in-patient.

3. Appellant filed an application under Section 166 of the Act of 1988 pleading therein that in the accident he suffered fracture injury over his left leg along with other injuries. He took treatment from 17.09.2012 to 28.09.2012 expended about Rs. 50,000/- towards medical treatment. He was able bodied person working as labourer and earning Rs. 5000/- per month. Due to motor accidental injuries he became permanently disabled to earn his livelihood and claimed total sum of Rs. 6,00,000/- as compensation.

4. Non-applicants 1 and 2 submitted reply to the claim application denying the facts pleaded therein, it was further pleaded that the accident was not a result of negligence on the part of non-applicant 1 but negligence on part of appellant himself, amount of compensation claimed is highly exaggerated. Offending vehicle owned by non-applicant 2 was insured with non-applicant 3, hence, liability to satisfy the amount of compensation would be upon non-applicant 3.

5. Non-applicant 3 submitted reply denying the facts pleaded in claim application, it was further pleaded that non-applicant 1/ driver of offending vehicle was not possessed with valid and effective driving licence as such there was breach of policy conditions and the Insurance company is not liable to satisfy the amount of

compensation.

6. Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties held that appellant-claimant suffered grievous injuries on his person due to rash and negligent driving of offending vehicle by non-applicant 1. Appellant suffered 15% permanent disability. Tribunal assessed income of claimant as Rs. 3000/- per month, calculated the amount of compensation and awarded total sum of Rs. 1,23,600/- with interest @ 6% p.a.

7. Ms. Richa Pandey, learned counsel for appellant submits that the Claims Tribunal erred in awarding meagre sum of compensation in the facts of the case. She submits that the age of appellant on the date of accident was 45 years, he was an able bodied person working as labourer and earning Rs. 5000/- per month. Even if the appellant failed to prove his income by placing admissible piece of evidence on record then also the Claims Tribunal ought to have considered income of appellant keeping in mind minimum wages fixed by State Government of that period. On the date of accident, wages for the work of labourer was Rs. 160/- per day. Claims Tribunal has not considered the disability certificate placed on record and the evidence of doctor AW-2 properly and erroneously assessed the loss of earning capacity of appellant as 15% only. She contended that the appellant was working as labourer and as per evidence of doctor AW-2 appellant suffered shortening of his left leg by 2CM due to stiffness in knee joint, hence, the loss of income ought to have assessed as 50% as stated by AW-2 in his evidence. Claims Tribunal not awarded just and proper compensation on pecuniary and non-pecuniary damages in the facts of the case.

8. Mr. Bhavesh Acharya, learned counsel for Respondent 3 submits that learned Claims Tribunal considering the pleadings and evidence brought on record particularly the evidence of doctor has rightly arrived at a finding that appellant suffered loss of income to the extent of 15% only. Accident was of 17.09.2012. Appellant failed to proved his income as pleaded in the claim application by producing admissible piece of evidence, hence, Tribunal justified in assessing income of appellant as Rs. 3000/- per month on notional basis which does not call for any interference. Tribunal awarded compensation on all heads for which appellant was entitled in the facts and circumstances of the case. Amount of compensation awarded is just and proper hence does not call for interference.

9. I have heard learned counsel for the respective parties and also gone through the record of claim case.

10. Sofar as, the first ground raised by learned counsel for appellant with regard to assessment of income is concerned, in the pleadings, appellant/ claimant has pleaded that he on the date of accident was an able bodied person, aged about 45 years. It is pleaded that appellant was earning Rs. 5000/- per month. To prove the pleadings in the claim application with regard to his income, appellant examined himself as AW-1. Apart from the pleadings appellant in his evidence has not made any statement with regard to income nor placed any document in support of his pleadings. In absence of any specific evidence to prove income of appellant, income is to be assessed on notional basis. For assessing income on notional basis factors like date of accident, age of appellant, occupation, wage structure, cost of living etc. are to be kept in mind. Considering the aforesaid factors in the opinion of this Court, Claims Tribunal erred in assessing income of

appellant as Rs. 3000/- per month only which is not sustainable and it is hereby set aside. I find it appropriate to assess income of appellant as Rs. 4000/- per month. As the appellant also suffered permanent disability and the Tribunal assessed loss of earning capacity of appellant as 15%, for the purpose of calculating the amount of compensation, income towards future prospects is also required to be added for computing the total income of appellant on the date of accident for calculating the amount of compensation. Appellant will suffer loss of income on each day of his life, his loss will gradually increase with the increase of income also, hence, I find it appropriate to add 25% of established income of appellant for calculating his total income. It is ordered accordingly. Heads on which the compensation is to be awarded in personal injury case is considered by Hon'ble Supreme Court in case of ***R.D. Hattangadi v. Pest Control India Ltd.*** **reported in 1995 (1) SCC 551** 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.”
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> 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.
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> 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. Hon’ble Supreme Court in case of ***Rajkumar v. Ajay Kumar and another*** reported in **(2011) 1 SCC 343** has further considered the assessement of award of compensation in personal injury case 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. Keeping in mind the aforementioned rulings of the Hon'ble Supreme Court and facts and circumstances of the case as also the nature of injuries, in the opinion of this Court, appellant will be entitled for the amount of compensation on the heads as mentioned by Supreme Court in the aforementioned rulings.

13. Claims Tribunal has not awarded amount of compensation on heads of loss of amenities and joy in life, attendant and conveyance overlooking the fact that appellant took treatment as in-patient from 17.09.2012 to 28.9.2012. He suffered fracture injury on left Tibia Fibula along with other injuries. Appellant is resident of village Rivagahan, Thana Lalbagh, District Rajnandgaon and he took treatment at District Hospital, Rajnandgaon. For the foregoing reasons, I find it appropriate to re-compute the amount of compensation for which the appellant is entitled.

14. Income of appellant is assessed as Rs. 4,000/- per month ie. Rs. 48,000/- per annum. By adding 25% of established income in the income of appellant towards future prospects, total annual income of appellant will come to Rs.60,000/-. Appellant suffered 15% loss of earning capacity and thereby appellant suffered loss of future earning of Rs. 9,000/- [15% of Rs. 60000]. By applying multiplier of 14 to the annual loss of income, total loss of income will be Rs. 1,26,000/- [Rs.9000x14]. Appellant will further be entitled for Rs. 15,000/- towards pains and sufferings, Rs. 15,000/- towards loss of amenities and joy in life. Rs. 24,000/- [Rs.4000x6] towards loss of income for a period of 6 months. Rs. 4,000/- towards attendant, Rs. 3,000/- towards conveyance, Rs. 25,000/- towards medical treatment and special diet as awarded by learned Claims Tribunal.

15. Now the appellant/ claimant shall be entitle for total sum of **Rs. 2,12,000/-** [Rs.1,26,000+ Rs.15,000+ Rs.15,000+ Rs.24,000+ Rs.4,000+ Rs.3,000+ Rs.25,000] instead of Rs. 1,23,600/- as awarded by learned Claims Tribunal. Aforementioned amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Liability to satisfy the amount of compensation shall be upon Respondents 1 to 3 jointly and severally. Other conditions imposed the learned Claims Tribunal shall remain intact.

16. 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

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