

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1178 of 2015**

- Smt. Sandhya Sahu wd/o late Mahendra Sahu, aged about 30 years, R/o village Dargahan, Tahsil Kurud, District Dhamtari Chhattisgarh

---Appellant**VERSUS**

1. Tikaram Ogre S/o Chhannu Ogre, aged about 42 years, R/o village Nayakbandha, Police Station Abhanpur, District Raipur Chhattisgarh
-----Driver
2. Jagat Ram S/o Bhakadu Dhritlahre, aged about 48 years, R/o village Gotiyadih, Police Station Abhanpur, District Raipur Chhattisgarh
-----Owner
3. Insurance Company, Bhartiya Exa General Insurance Company Limited, 1st Floor, Chawla Complex, Devendra Nagar Road, Sai Nagar, Raipur, District Raipur, Chhattisgarh

----Respondents

For Appellant	: Mr. Anil Gulati, Advocate
For Respondent 3	: Mr. N.K. Thakur, Advocate

*(proceedings through Video Conferencing)***Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****12/08/2021**

1. Appellant-claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 01.07.2015 passed by learned Chief Motor Accident Claims Tribunal, Dhamtari, C.G. (for short "Claims Tribunal") in claim case no. 109/2014, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 in part, awarded Rs. 1,53,630/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal are, that on 21.04.2014, appellant-claimant was travelling on motor cycle along with her husband and children and going to Sejbahar, Raipur. On the way, when they reached near Semra turn of Bhakhara main road, one Tata magic bearing registration no. CG04 TA 2669 (henceforth "offending vehicle") driven by non-applicant 1 rashly and negligently dashed the motor cycle and caused accident. In the said accident, appellant, her husband Mahendra Sahu suffered grievous injuries. Husband of appellant succumbed to motor accidental injuries on spot and appellant was taken to Christian hospital, Dhamtari.
3. Appellant filed an application under Section 166 of the Act of 1988 pleading therein that in motor accidental injuries, she suffered grievous injuries over her waist, right leg, ankle and right hip along with head and chest. She suffered fracture injuries over her leg and pelvis, took treatment as in-patient for about 13 days. On the date of accident she was aged about 30 years, earning Rs. 125-150 per day as labourer and claimed total sum of Rs. 11,45,000/- as compensation.
4. Non-applicants 1 and 2/ Respondents 1 and 2, who are driver and owner of the offending vehicle submitted reply denying the facts pleaded in the claim application, except the fact that they are driver and owner of the offending vehicle. It was further pleaded that non-applicant 3 was insurer. Accident was a result of negligence on the part of driver of the motor cycle, liability, if any, for payment of amount of compensation would be upon non-applicant 3/ Insurance Company.

5. Non-applicant 3/ Respondent 3/ Insurance Company submitted its separate reply, resisting the claim. It was further pleaded that on the date of accident, non-applicant 1 was not possessed with valid and effective driving licence, there was no permit, there was breach of policy conditions, hence, the Insurance Company is not liable to indemnify the insured.
6. Learned Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties, held that appellant-claimant suffered motor accidental injuries on his person on account of rash and negligent driving of offending vehicle by non-applicant 1. Income of deceased, breach of policy conditions and contributory negligence were not found to be proved. Tribunal awarded total sum of Rs. 1,53,630/- as total compensation including Rs. 1,50,630/- towards medical expenses.
7. Mr. Anil Gulati, learned counsel for the appellant/ claimant would submit that the Claims Tribunal failed to consider the entire facts and circumstances of the case, nature of injuries, period of treatment, total amount expended towards medical treatment of appellant and awarded only Rs. 3,000/- towards mental and physical pain. Tribunal has further not considered the evidence of doctor R.K.Soni who proved the disability certificate Ext. P-94 wherein the appellant suffered 20% permanent disability. Tribunal has not awarded any amount towards loss of income, attendant, special diet, conveyance, loss of amenities and joy in life, amount towards pain and sufferings awarded by the Tribunal is also on lower side. Learned counsel, in alternate, submits that if for any

reason this Court come to the conclusion that the appellant failed to prove permanent disability then also the appropriate amount to be awarded towards grievous injuries.

8. Mr. N.K. Thakur, learned counsel for Respondent-Insurance Company would submit that the Tribunal allowed the entire medical expenses proved by claimant-appellant and awarded Rs. 1,50,630/-. He further submits that the Tribunal has further awarded Rs. 3,000/- towards pain and sufferings, hence, the amount awarded by the Tribunal is just and proper in the facts and circumstances of the case.
9. I have heard learned counsel for the respective parties and also perused the record of claim case.
10. So far as, the submission of learned counsel for the appellant with regard to non-award of any amount of compensation towards permanent disability is concerned, appellant has filed disability certificate issued by the District Medical Board, Dhamtari as Ext. P-94 in which the Medical Board has assessed 20% disability Certificate was issued for a period of 1 year. It is also mentioned that there are chances of improvement. Nature of disability is mentioned as temporary and part of the body is shown as right leg and waist. To prove the disability certificate Ext. P-94, appellant-claimant has examined Dr. R.K.Soni as AW-3. He admitted that the disability certificate is issued temporarily and in his evidence he further admitted that the disability certificate was issued temporarily and there are chances of improvement. Taking into consideration the nature of evidence available on record with respect to plea of permanent disability raised by appellant-

claimant, in the opinion of this Court, appellant-claimant failed to prove the pleading that the appellant suffered 20% permanent disability. The finding recorded by the Claims Tribunal with respect to permanent disability cannot be said to be erroneous, hence, it is affirmed. Tribunal apart from the medical expenses, has awarded Rs. 3,000/- towards pain and sufferings, appellant in support of her case has placed on record the medical documents of her treatment. After accident, appellant was taken to Christian hospital, Dhamtari on 21.04.2014. Admission sheet of Dhamtari Christian hospital is placed on record as Ext. P-6 wherein it is mentioned that 'road traffic accident; pelvic injury'. After taking primary treatment at Christian hospital, Dhamtari, appellant took treatment at Shri Narayan hospital, Raipur where she got admitted on 30.05.2014 and took treatment as in-patient up to 07.06.2014. During the course of treatment CT pelvic including hip joint was done and found four fracture injuries over pelvic region which is evident from Ext. P-93. Impression found upon diagnosis during the CT scan is reproduced below for ready reference.

- “1. Fracture of right iliac bone including iliac blade.*
- 2. Fracture of right side of sacrum.*
- 3. Fracture of right superior pubic ramus.*
- 4. Fracture of right inferior ischio-pubic ramus.”*

11. Appellant had to underwent operation and the procedure of treatment has been mentioned “ORIF WITH LOCKING RECON PLATE FIXATION RIGHT PELVIS; ORIF WITH TBW RIGHT LATERAL MALLEOLUS UNDER SAB” as mentioned in Ext. P-70. From the aforementioned injury report, treatment taken as in-patient from 21.05.2014 to 07.06.2014, nature of injuries and

procedure for treatment would show that the appellant suffered grievous injuries on her person, considering the part of the body over which the appellant suffered four fracture injuries and the procedure of treatment, in the opinion of this Court, Tribunal erred in not awarding any amount towards grievous injuries and loss of income during the treatment period. Award of compensation in personal injury cases has been 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.”

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."

12. In case of **Rajkumar v. Ajay Kumar and another** reported in

(2011) 1 SCC 343, hon'ble Supreme Court has 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."

13. If in the light of the aforementioned ruling of the Supreme Court, if the facts of the case are taken into consideration, appellant-claimant is entitled for further amount of compensation under the head of grievous injuries, loss of income during treatment period, attendant, special diet, conveyance, loss of amenities and joy in

life. Looking to the nature of injuries and part of body over which appellant suffered multiple fracture injury, I find it appropriate to award Rs. 35,000/- towards grievous injuries and loss of income for a period of six months. Appellant-claimant has been shown to be skilled labourer but her income could not be proved by placing documentary or any admissible piece of evidence, hence, the income of appellant is to be assessed on notional basis. Taking into consideration, the date of accident, nature of occupation, wage structure, cost of living, price index etc. Appellant-claimant is resident of nearby village of district Dhamtari and the date of accident was 21.04.2014, hence in the opinion of this Court, income of appellant can be assessed on notional basis as Rs. 4,500/- per month treating her to be an ordinary labourer.

14. For the foregoing reasons, loss of income by the appellant during the treatment period of treatment will be Rs. 27,000/- (Rs. 4500X6). Looking to the nature of injuries, period of treatment, part of body on which appellant suffered injuries, I find it appropriate to award further amount of compensation on the head of attendant as Rs. 8000/-, special diet as Rs. 7000/-, conveyance expenses as Rs. 10000/-, loss of amenities and joy in life as Rs. 20,000/- and Rs. 20,000 towards pain and sufferings. Appellant-claimant shall further be entitled for sum of Rs. 1,50,630/- as awarded by Claims Tribunal towards medical expenses.

15. Now the appellant-claimant shall be entitled for **Rs. 2,77,630/-** [Rs.35,000+Rs.27,000+Rs.8,000+Rs.7,000+Rs.10,000+Rs.20,000+Rs.20,000+Rs.1,50,630] as total compensation instead of Rs. 1,53,630/- 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.

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

Pawan