

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1248 of 2015**

- Dhannu Ram Patel S/o Shri Panchu Ram Patel, aged about 43 Years R/o Village Kachandur Chowki, Jevra Sirsa, Police Station Pulgaon, Tahsil and District Durg, Chhattisgarh.

---Appellant/claimant**VERSUS**

1. Santosh Verma S/o Shri Krishna Verma aged about 22 Years R/o Village Bhardakhurd, Police Station Dhumka, District Rajnandgaon Chhattisgarh (**Driver** of Alleged Vehicle Motorcycle Hero Honda Bearing Registration No. C.G.08G8355).
2. Umesh Kumar Sahu S/o Shri Dayal Ram Sahu, aged about 25 Years R/o Village Garrapar, Post office Madhipar, Police Station Khairagarh District Rajnandgaon Chhattisgarh (**Owner** of Alleged Vehicle Motorcycle Hero Honda Bearing Registration No. C.G.08 G8355).
3. I.C.I.C.I. Lombard Insurance Company Limited Branch Manager, Branch office Commercial Bhawan Bhutal, Devendra Nagar Raipur Tahsil And District Raipur Chhattisgarh (**Insurer** of Alleged Vehicle Motorcycle Hero Honda Bearing Registration No. C. G. 08 G 8355).

----Respondents

For Appellant	:	Mr. A.D.Kuldeep, Advocate
For Respondent 3	:	Mr. Tessy Abraham, Adv. On behalf of Mr. Amrito Das, Advocate

*(Proceedings through Video Conferencing)***Hon'ble Shri Justice Parth Prateem Sahu****ORDER****23/08/2021**

1. Challenge in this appeal is to the award dated 14.08.2015 passed by learned First Additional Motor Accident Claims Tribunal, Rajnandgaon (for short "Claims Tribunal") in Claim Case no. 30/2014 whereby learned Claims Tribunal allowed the application for grant of compensation in part and awarded total sum of Rs. 15,000/- in an injury case.

2. Facts of the case relevant for disposal of this appeal are that, on 25.05.2013, Dhannu Ram Patel was travelling on motor cycle bearing registration no. CG07 ZR 0593, while so, non-applicant 1 while driving motor cycle bearing registration number CG08 G 8355 (henceforth "offending vehicle") rashly and negligently dashed the motor cycle of Dhannu and caused accident. In the said accident, Dhannu suffered grievous injuries over his wrist, right shoulder, right rib, jaw and other parts of body, he was taken to Government Hospital, Rajnandgaon where he took treatment as in-patient. Dhannu filed an application under Section 166 of the Motor Vehicles Act, 1988 pleading therein that on the date of accident he was an able bodied person, aged about 43 years, working as crusher machine operator and earning Rs. 8000/- per month. On account of motor accidental injuries, he became permanently disabled and unable to earn his livelihood and claimed total compensation of Rs. 18,02,000/-.
3. Non-applicants 1 and 2 submitted reply to the claim application denying the facts pleaded therein, it was further pleaded that the amount of compensation claimed is highly exaggerated. Offending vehicle was insured with non-applicant 3/ Insurance Company, hence, liability to satisfy the amount of compensation is upon non-applicant 3/ Insurance Company.
4. Non-applicant 3/ Insurance Company submitted its reply resisting the claim and it was further pleaded that non-applicant 1 was not possessed with valid and effective driving licence. There was breach of policy conditions. Amount of compensation claimed is highly exaggerated.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that Dhannu Ram Patel suffered motor accidental injuries over his person on account of rash and negligent driving of offending vehicle by non-applicant
1. Breach of policy conditions and contributory negligence on the part of appellant was not found to be proved and awarded Rs. 15,000/- total compensation.
6. Mr. A.D. Kuldeep, learned counsel for appellant submits that the appellant, on account of motor accidental injuries, suffered 30% permanent disability. Appellant produced disability certificate issued by Medical Board and proved it by examining one of the Members of the Medical Board. Witness in his evidence, categorically stated that the appellant suffered 30% permanent disability but even then Claims Tribunal has not considered the evidence of Doctor and held that the appellant failed to prove permanent disability. He submits that the appellant suffered fracture of Clavicle bone and Metacarpal bone but even then Tribunal has not awarded any amount of compensation towards grievous injuries, even if Tribunal came to conclusion that appellant failed to prove permanent disability, no compensation is awarded towards loss of amenities and joy in life and meagre amount of Rs. 1000/- is awarded towards pain and sufferings. He submits that the amount of compensation be suitably enhanced.
7. Mr. Tessy Abraham, learned counsel for Respondent 3/ Insurance Company submits that the Claims Tribunal has correctly arrived at a finding that the appellant failed to prove permanent disability because the witness AW-2, examined on behalf of appellant/

claimant to prove permanent disability, has stated that he has not treated the claimant and has not specified the process by which the permanent disability is calculated. Claims Tribunal considering the entire facts and circumstances of the case awarded just amount of compensation which does not call for any interference.

8. I have heard learned counsel for the respective parties and also perused record of claim case.
9. This appeal is for enhancement of the amount of compensation. Heads under which compensation is to be awarded in personal injury case was considered by Hon'ble Supreme Court in case of **R.D. Hattangadi v. Pest Control India Ltd.** reported in **1995 (1) SCC 551** has 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.

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.”

10. Hon'ble Supreme Court in case of **Rajkumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343** has again considered the assessment with regard to award of compensation in personal injury case resulting in permanent disability 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."

11. Sofar as, the ground raised by learned counsel for appellant with regard to finding recorded by learned Claims Tribunal of permanent disability not found to be proved, perusal of record would show that accident took place on 25.05.2013, MLC report Ext. P-5 dated 25.05.2013 would show that the appellant suffered sever injury over his right shoulder and fracture of Clavicle bone. In X-ray report of District Hospital, Rajnandgaon there is mention of fracture of right Clavicle and fracture of 4th& 5th Metacarpal bone. Appellant took treatment from 25.05.2013 to 28.05.2013. Disability certificate is placed on record as Ext. P-17, perusal of which would show that appellant appeared before the Medical Board on 14.03.2014,

wherein it is mentioned, fracture of Clavicle right and fracture of 4th & 5th metacarpal bone; 30% permanent physical impairment and reassessment after three years. To prove Ext. P-17 ie. Disability Certificate appellant/ claimant examined Dr. Prakash Bhalerao as AW-2, who is also a Member of Medical Board. In his evidence, he stated that there was Mal-united of right Clavicle bone, fracture of 4th & 5th left metacarpal, 30% permanent disability. Certificate issued is for affected part of body and not for the whole body. He admitted that there is no mention as to by adopting what procedure disability certificate was issued and thereafter in self statement he submits that by adopting scientific method the disability certificate was issued. Claims Tribunal in para 14 to 18 has discussed the issue with regard to permanent disability of appellant and has arrived at a finding that appellant failed to prove permanent disability.

12. Considering the nature of evidence brought on record by the appellant and the statement of AW-2, I find no error in the finding recorded by the Claims Tribunal that appellant failed to prove permanent disability. The submission made by learned counsel for the appellant that even if Claims Tribunal arrived at a finding that the appellant failed to prove permanent disability, then also looking to the nature of injuries, Claims Tribunal ought to have awarded compensation towards grievous injuries, is having some force. Appellant suffered fracture of right Clavicle which was Mal-united and further injury of 4th & 5th metacarpal bone, considering the nature of injuries, in the opinion of this Court, Claims Tribunal erred in not awarding any amount towards grievous injuries. Upon considering the facts and circumstances of the case, nature of

injuries, part of body affected, I find it appropriate to award Rs. 20,000/- towards grievous injuries.

13. Claims Tribunal awarded only Rs. 1000/- towards pain and sufferings overlooking the nature of injuries, period of treatment etc. Considering the nature of injuries which is fracture of right Clavicle bone and fracture of left 4th & 5th metacarpal bone, I am of the view that appellant is entitled for Rs. 10,000/- towards pain and sufferings. As there was Mal-united right Clavicle bone, Claims Tribunal erred in not awarding any amount towards loss of amenities and joy in life. Appellant due to aforesaid injuries may not be able to enjoy his life as he was prior to the date of accident, hence, I find it appropriate to award Rs. 10,000/- towards loss of amenities and joy in life and Rs. 1000/- towards attendant. Claims Tribunal assessed loss of earning capacity during the period of treatment of 3 months by assessing income of appellant as Rs. 3000/- per month. Income assessed by the Claims Tribunal in the facts of the case where accident took place on 25.05.2013 in the opinion of this Court is on lower side.
14. In absence of any admissible piece of evidence, to prove income, proper course to assess income is on notional basis, considering the nature of occupation (operator of machine), date of accident, age of appellant, price index and wage structure. Considering the aforementioned factors, I am of the view that income of appellant can be assessed as Rs. 4500/- per month. It is ordered accordingly.
15. For the foregoing reasons, the amount of compensation to be awarded to the appellant/ claimant requires re-computation as under.

16. Income of appellant is taken as Rs. 4500/- per month. Loss of income for a period of three months as held by Claims Tribunal will come to Rs. 13,500/- [Rs.4500x3]. Appellant is further entitled for Rs. 5000/- towards medical expenses, special diet and conveyance, Rs. 10,000/- towards pain and sufferings, Rs. 20,000/- towards grievous injuries, Rs. 10,000/- towards loss of amenities and joy in life, and Rs. 1000/- towards attendant.
17. Now the appellant/ claimant shall be entitled for total sum of **Rs. 59,500/-** [Rs. 13500+ Rs.5000+ Rs.10000+ Rs.20000+ Rs.10000+ Rs.1000] as compensation instead of Rs. 15,000 as awarded by learned Claims Tribunal. Aforesaid amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Liability to satisfy amount of compensation shall be upon non-applicants 1 to 3 jointly and severally. Other conditions of the award shall remain intact.
18. 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