HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 847 of 2015

Rajendra Jain S/o Savluram Jain, Aged About 32 Years, R/o Village Donde, Thana and Tahsil -Pakhanjore, Distt, -Uttar Bastar Kanker Chhattisgarh.

---- Appellant

Versus

1. Vinay Rai S/o Hiralal Rai, Aged About 52 Years, R/o Village Satyanand Palli, Thana and Tahsil -Pakhanjore, Distt -Uttar Bastar Kanker, Chhattisgarh.
2. Shivkumar @ Shivshanker Markam, S/o Barju Markam, Aged About 42 Years, R/o Sohgaon, Thana and Tahsil -Pakhanjore, Distt - U.B. Kanker, Chhattisgarh.
3. The Oriental Insurance Ltd. Through M.B. Trade Centre Second Floor, Near Ghadi Chowk, Dhamtari, Chhattisgarh.

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

For Appellant	:	Mr. Shalvik Tiwari, Advocate on behalf of Shri Parag Kotecha, Advocate.
For Respondent Nos.1 and 2	:	None.
For Respondent No.3	:	Mr. N.K. Malviya, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

12/08/2021

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') challenging the award dated 31.03.2015 passed by learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District - Uttar Bastar, Kanker (CG) (for short 'Tribunal') in Claim Case No.29/13, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988, awarded total compensation of Rs.9,500/- in injury case alongwith interest @ 6% per annum and while exonerating Insurance Company from its liability, fastened liability upon non-applicant Nos.1 & 2/owner & driver of offending vehicle.

2. Facts relevant for disposal of this appeal are that on 29.06.12 appellant (injured) alongwith his friends Raghunath, Dev Nath, Suresh Komre & Rajesh Jain was travelling on goods vehicle Tata-709 bearing registration

No.CG-04-JC-3253, (for short 'offending vehicle'), after loading maize/corn on offending vehicle. When they were proceeding towards Rajnandgaon from Bande, on the way near village PV 78, Belgaal Square at about 5:00 – 5:30 pm, offending vehicle turned turtle due to rash and negligent driving of non-applicant No.2. In the aforementioned accident, appellant suffered grievous injuries. Raghunath, Suresh Komre & Devkumar also suffered grievous injuries. They were taken to Government Hospital, Pakhanjur, from where appellant was referred to District Hospital, Kanker.

3. Appellant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.1,45,000/- mentioning therein that on the date of accident, he was an able bodied person, working as labourer and earning Rs.6,000/- per month. On account of motor-accidental injuries, he suffered 30% permanent disability.

4. Non-applicant Nos.1 & 2/owner and driver of offending vehicle, submitted reply to application, denying facts pleaded therein. It was further pleaded that non-applicant No.1 employed non-applicant No.2 after perusing driving licence and looking to his experience. Non-applicant No.2 in discharge of his duty as 'driver' took offending vehicle to various cities but at no point of time Road Transport Officer or any other authority has pointed that driving license possessed by him as fake or false. Non-applicant No.1 was not aware of fact that driving license possessed by non-applicant No.2 is fake and forged. Offending vehicle was insured with non-applicant No.3, hence liability, if any, to satisfy amount of compensation would be of non-applicant No.3.

5. Non-applicant No.3/Insurance Company also submitted its reply and resisted the claim. It was further pleaded that offending vehicle was plied

in breach of policy condition as on the date of accident non-applicant No.2 was not having valid and effective driving license to drive offending vehicle.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that appellant suffered grievous injuries on his left hand in motor-accident due to rash and negligent driving of offending vehicle by non-applicant No.2. Breach of Policy condition was found to be proved. Tribunal allowed application in part, awarded total compensation of **Rs.9,500/-** ie (i) Rs.2,000/- towards pain and sufferings, (ii) Rs.2,500/- towards treatment, (iii) Rs.3,000/- towards loss of income for a period of one month, (iv). Rs.2,000/- towards special diet.

7. Learned counsel for appellant submits that Tribunal erred in awarding very meager amount of compensation overlooking nature of injuries suffered by appellant. Disability certificate issued by Medical Board is placed on record as Ex.P-11, in which there is mention of 20% permanent disability. On account of motor-accidental injuries, appellant suffered fracture of left arm and to prove the same he has placed on record discharge ticket of Civil Hospital Pakhanjur as Ex.A-8 and in-patient ticket of Govt. District Hospital, Kanker as Ex.P-9. The Tribunal has not awarded any amount of compensation towards permanent disability or even for grievous injuries. Tribunal held that there was breach of policy condition because driver was not having valid and effective driving license on the date of accident, therefore, Tribunal ought to have directed Insurance Company to first deposit entire amount of compensation and then to recover it from the insured.

8. There is no representation on behalf of respondent Nos.1 & 2 despite service of notice.

9. Learned counsel for respondent No.3-Insurance Company submits that Tribunal after considering pleadings, evidence and documents available on record has awarded just amount of compensation which does not call for any interference. Tribunal recorded a finding that injured persons were traveling on goods vehicle, risk of gratuitous passenger was not covered under the policy issued by respondent No.3-Insurance Company. Apart from aforementioned ground, appellant along-with other labourers was travelling in goods vehicle, which amounts to breach of policy conditions. Tribunal further considered that licensed possessed by Non-applicant No.2 to be forged.

10. Heard learned counsel for the parties and perused record of claim case.

11. So far as submissions of learned counsel for appellant for enhancement of amount of compensation is concerned, appellant has placed on record medical document of Jeevan Deep Samitee, Civil Hospital, Pakanjore as Ex.P-8, which shows that he was brought for treatment in hospital at 7:00 pm on 29.06.2012 and upon primary examination fracture of left arm was found. On same day, he was referred to Jeevan Deep Samiti, District Hospital, Kanker where he reached at 11:53 pm and diagnosed fracture of shaft humerus (left).

12. To prove permanent disability, appellant examined Dr. Vijay Shukla as AW-3, who has proved issuance of disability certificate Ex.P-11. In his evidence, he stated that on examination of appellant, he found that there was malunited of left humerus bone, only 50% bending of elbow, percentage of disability has been comparatively assessed for whole body.

13.In view of above evidence available on record, Tribunal further erred in not awarding any amount towards permanent disability. In the case of **R.D. Hattangi vs. Pest Control (India) Pvt. Ltd. & ors** reported in **(1995) 1 SCC 551**, Hon'ble Supreme Court has considered the award of just compensation 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."
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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."

14. In case of **Rajkumar vs. Ajay Kumar & Anr[1],** Hon'ble Supreme Court has considered the issue with regard to assessment of loss of earning capacity of person, who suffered permanent disability and held thus:-

> "6. The heads under which compensation is awarded in personal injury cases are the following :
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> Pecuniary damages (Special Damages)
> (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
> (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :
> (a) Loss of earning during the period of treatment;
> (b) Loss of future earnings on account of permanent disability.
> (iii) Future medical expenses.
>
> Non-pecuniary damages (General Damages)
> (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
> (v) Loss of amenities (and/or loss of prospects of marriage).
> (vi) Loss of expectation of life (shortening of normal longevity).
>
> In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.
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> 7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on

1 (2011) 1 SCC 343

> account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability- Item (ii) (a). We are concerned with that assessment in this case."

15. Hon'ble Supreme Court considering object of the Act of 1988 has observed that the compensation is to be assessed so as to bring the victim as far as possible to his previous status. In case at hand, appellant was working as labourer and on the date of accident he had gone do the work as loader for which, functioning of both hands are required.

16. Considering the entire facts and circumstances of the case at hand, particularly the fact that appellant suffered permanent disability, nature of his work and in the light of aforementioned rulings rendered by Hon'ble Supreme Court in cases of **R.D. Hattangi** (supra) and **Rajkuma**r (supra), I find it appropriate to assess loss of earning capacity of appellant as 10%. Accident is of the year 2012, appellant has been shown to be working as labourer, hence, I find it appropriate to assess income of appellant on notional basis as Rs. 4,000/- per month instead of Rs.3,000/- per month as assessed by Tribunal.

17. For the foregoing reasons, I propose to recompute amount of compensation to be awarded to appellant.

18. Upon assessing income of appellant/claimant as Rs.4,000/- per month. By adding 40% of established income towards future prospects as per law laid down by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[2], total monthly income of claimant comes to Rs.5,600/- (Rs.4,000 + 40% of 4,000) and annual income as Rs.67,200/- (12 X 5600). As this Court has assessed loss of earning capacity of claimant to the extent of 10%, hence, loss of earning suffered

2 (2017) 16 SCC 680

by claimant will be Rs.6,720/- (10% of Rs.67,200/-). On the date of accident, **c**laimant was in the age group of 30 to 35 years, therefore, appropriate multiplier would be 16. By applying multiplier of 16, total loss of income comes to Rs.1,07,520/- (Rs.6,720 X 16). Appellant will be further entitled for Rs.5,000/- towards pains and sufferings, Rs.10,000/- towards for loss of amenities and joy in life, Rs.2,000/- special diet, Rs.2,500/- towards medical expenses as awarded by Tribunal.

19.Now, appellant is entitled for a total compensation of R**s.1,27,020/-** (Rs.1,07,520/- + Rs.5,000 + Rs.10,000 + Rs.2,000 + Rs.2,500) instead **of Rs.9,500/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

20. As it is clear that deceased was a 'gratuitous passenger' traveling in goods vehicle, he was not an employee of insured and risk of deceased was not covered under policy, hence, direction of pay and recover cannot be issued to insurer/respondent No.3. Prayer made by learned counsel for the appellant for issuance of direction of pay and recover is not sustainable and is hereby rejected.

21. In result, appeal is allowed in part and impugned award stands modified to the extent as indicated above. Liability to satisfy amount of compensation shall be upon non-applicant Nos.1 and 2.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-