

(Proceedings through video conferencing)

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 913 of 2015

- Khoman Lal Sahu S/o Shri Lakhan Lal Sahu Aged About 30 Years R/o Village Chorbhatti, Thana And Tahsil- Kurud, Civil And Revenue District- Dhamtari, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

1. Mannu Lal S/o Shri Vishambher Yadav Aged About 56 Years R/o Village Kasaridih Durg Thana & Tahsil- Durg, Civil & Revenue District- Durg (CG)
2. Manager, Manish Traders, Pulgaon Naka Durg Thana & Tahsil- Durg, Civil & Revenue District- Durg, Chhattisgarh.
3. Divisional Manager, The Oriental Insurance Co. Limited, M.B. Trade Balak Chowk Dhamtari, Tahsil & District- Dhamtari (CG)

---- Respondents

For Appellant	:	Mr. Sunil Sahu, Advocate
For Respondent No.3	:	Mr. Anumeh Shrivastava, Advocate

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

27/8/2021

1. Claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') questioning the validity and legality of award dated 2.3.2015 passed by the Chief Motor Accident Claims Tribunal, Dhamtari (for brevity 'the Claims Tribunal') in Claim Case No.144/2013 by which the Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part; awarded sum of Rs.5,80,640/- with interest @ 6% p.a. from the date of filing of application in an injury case and fastened liability upon non-

applicants to satisfy the amount of compensation, jointly and severally.

2. Facts of the case, in brief, are that on 21.5.2013 appellant-claimant along with his wife & children, after attending a marriage ceremony, was returning from village Bhura to village Chorbhatti on his motor cycle bearing registration number CG07-U-3487. On the way, one bus bearing registration number CG07-E-1114 (for short 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed his motorcycle from its back and caused accident. In the accident, appellant and his wife suffered grievous injuries. Appellant was taken to the Government Hospital, Kurud. Looking to the nature of injuries suffered by appellant, he was referred to Christian Hospital, Dhamtari. Appellant suffered grievous injuries on his head, face, hand and left shoulder. He suffered crushed injuries over his left knee as offending vehicle ran over his left leg. During the course of treatment left leg of appellant was amputated above knee.
3. Appellant filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident, he was an able bodied person of 30 years age. Prior to accident, he was working as Driver of van and tractor with one Raju Seth and earning Rs.4,500/- per month. He was also working in his agriculture field measuring 10 acres and earning Rs.70,000/- per month from it. After motor accident, he has suffered permanent disability and become unable to perform any

activity, which he was performing prior to date of accident, to earn livelihood for himself and his family members. He claimed total sum of Rs.24,00,000/- as compensation on different heads.

4. Non-applicants No.1 & 2, driver & owner of offending vehicle, did not appear before Claims Tribunal and were proceeded ex-parte.
5. Non-applicant No.3 Insurance Company submitted its reply to application and denied the facts pleaded therein. It was further pleaded that on the date of accident, non-applicant No.1-driver of offending vehicle, was not possessed with valid and effective driving license; there was no valid permit and fitness certificate with offending vehicle; non-applicant No.1 was not employed with non-applicant No.2 to drive offending vehicle. There was breach of conditions of insurance policy, hence insurance company is not liable to indemnify the insured.
6. The Claims Tribunal based upon the pleadings and evidence placed on record by respective parties, held that appellant-claimant suffered permanent disability on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1. Appellant suffered 75% permanent disability; assessed income of appellant as Rs.3,000/- per month and awarded total sum of Rs.5,80,640/- as compensation.
7. Mr. Sunil Sahu, learned counsel for appellant submits that the Claims Tribunal erred in assessing income of appellant-

claimant on lower side. Appellant in his claim application has pleaded that prior to date of accident, he was working as driver with one Raju Seth for driving his motor van and tractor, but even then learned Claims Tribunal has assessed monthly income of appellant as Rs.3,000/- per month only. He submits that on the date of accident, even a manual labourer would have earned more than Rs.3,000/- per month, hence, income of appellant be assessed as Rs.4,500/- per month, as pleaded and stated by him. He further contended that appellant suffered amputation of his left leg above knee. Appellant appeared before the Medical Board for issuance of disability certificate. The doctors who examined appellant have issued disability certificate mentioning that appellant suffered 75% permanent disability, which was proved by doctor (AW-2). The Claims Tribunal has held that appellant suffered 75% loss of earning capacity which in the facts and circumstances of case cannot be said to be proper assessment. Appellant in his evidence and pleadings has stated that he was working as driver for earning his livelihood, therefore, even though the Medical Board has assessed permanent disability to the extent of 75% on account of amputation of left leg above knee, but for the purpose of ascertaining loss of earning capacity, appellant being driver has suffered 100% loss of earning capacity because he would not be able to drive any four wheel motor vehicle in future. It is further contended that the Claims Tribunal apart from awarding compensation of Rs.4,32,000/-

towards loss of earning capacity, awarded Rs.1,48,640/- as compensation towards medical expenses/ bills, but no compensation is awarded towards future prospects and under other heads. He submits that the Claims Tribunal erred in applying multiplier of 16 treating injured-appellant to be of 31 years age. He submits that date of birth of appellant is mentioned as '15-7-1984' in his driving license (Ex.P-74), accident occurred on 21.5.2013 and as such, on the date of accident, he was about 29 years old. Hon'ble Supreme Court in case of **Sarla Verma vs. Delhi Transport Corporation** reported in **(2009) 6 SCC 121** has held that multiplier of 17 would be applicable if on the date of accident, injured/victim was in the age group of 25 to 30 years. He submits that amount of compensation on other pecuniary and non-pecuniary damages be also awarded and accordingly, amount of compensation be suitably enhanced.

8. Mr. Anumeh Shrivastava, learned counsel for respondent No.3-Insurance Company submits that considering amputation of left leg above knee and disability certificate (Annexure P-1) issued by the Medical Board, the Claims Tribunal has held that appellant suffered 75% loss of earning capacity, therefore, amount of compensation awarded towards loss of earning capacity cannot be said to be on lower side. Hence, amount of compensation awarded by the Claims Tribunal is just and proper, which does not call for any interference.

9. I have heard learned counsel for the parties and perused

record of claim case.

10. So far as first ground raised by learned counsel for appellant that assessment of income of appellant done by Claims Tribunal as Rs.3,000/- per month is concerned, in claim application claimant-appellant has pleaded that he was working as Driver and driving motor van & tractor of one Raju Seth of village Bagdehi, but in support of his pleading he has not filed any document nor examined his employer. But, appellant has placed on record a copy of his driving license as Ex.P-74 according to which appellant is authorized to drive 'motorcycle with gear and light motor vehicles'. Date of issuance of license is '3.5.2008' and it is valid upto '30.5.2028'. In view of availability of aforementioned document on record, the Claims Tribunal, in the opinion of this Court, erred in not considering plea of appellant that he was working as driver of light motor vehicles and further erred in assessing monthly income of appellant as Rs.3,000/-, which is even on lower side for assessing income of a manual labour on the date of accident in question. Taking into consideration the date of accident, pleadings, documentary and oral evidence brought on record by appellant that he was working as driver of motor Van and tractor, I find it appropriate to assess income of appellant as Rs.4,500/- per month, as pleaded and stated by appellant. It is ordered accordingly.
11. When amount of compensation is to be awarded considering permanent disability of claimant, in the opinion of this Court,

there will be an addition of amount of compensation towards future prospects, as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** because loss of earning capacity will be for whole of his life and he will suffer loss of income on each day of his life. In case at hand also, claimant-appellant on the date of accident was 30 years old and was not in permanent employment, hence there will be addition of 40% of established income of appellant towards future prospects for ascertaining his total income for calculating amount of compensation. It is ordered accordingly.

12. From the medical documents available on record it is apparent that immediately after accident, on 21.5.2013 appellant was admitted in Christian Hospital, Dhamtari where he took treatment as inpatient till 10.6.2013 (Ex.P-73). During the course of treatment, left leg above knee of appellant was amputated. Due to complications on amputated portion of left leg, appellant was again admitted in Ojaswi Nursing Home, Dhamtari on 29.11.2013 where he took treatment till 2.12.2013 (Ex.P-72). Thereafter, on 3.1.2014 due to discharge of pus from operated area, appellant was again admitted in Christian Hospital, Dhamtari where re-amputation and debridgement was done (Ex.P-71), he was discharged on 11.1.2014. Documents placed on record show that appellant remained admitted in Raipur Hospital & Research Centre, Raipur from 16.9.2014 to 20.9.2014 where 'pus discharging sinus from

thigh amputation stump' was diagnosed and appellant had to again undergo surgery on 17.9.2014. It is mentioned in discharge ticket (Ex.P-8) under heading 'Patient Summary' that operated twice elsewhere, but not relieved.

13. From the aforementioned medical documents and the fact that left leg above knee of appellant was amputated, it can be safely presumed that after accident dated 21.5.2013, appellant must have suffered continuous mental-physical pain and agony; he must have required one attendant, whether paid or family member, during his treatment; he must have taken special diet for the purpose of speedy recovery; he must have incurred expenses in travelling from his place of resident to hospital and back etc. However, Claims Tribunal has not awarded any amount towards pain & sufferings, attendant, special diet, conveyance, loss of income during treatment period etc. Award of compensation in personal injury case has been considered by Hon'ble Supreme Court in case of **R.D. Hatangadi vs. M/s Pest Control (India) Pvt. Ltd.** reported in **AIR 1995 SC 755** while dealing with the issue of grant of compensation for pain and permanent disability suffered by victim has held thus:-

“17.“When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award

must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000/- in respect of claim for pain and suffering and Rs.1,50,000/- in respect of loss of amenities of life....”

Further, Hon’ble Supreme Court in case of **Raj Kumar vs. Ajay Kumar & anr** reported in **(2011) 1 SCC 343** while considering award of compensation in personal injury case in amputation suffered by appellant has held thus:-

“9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole

body, cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.”

Considering the given facts and circumstances of case and aforementioned rulings of Hon'ble Supreme Court, this Court is of the opinion that appellant claimant is certainly entitled for amount of compensation under the heads 'pain & sufferings, loss of amenities & joy in life, attendant, special diet, conveyance'. It is ordered accordingly.

14. So far as submission made by learned counsel for appellant that appellant suffered 100% loss of earning capacity is

concerned, loss of earning capacity is to be assessed considering the nature of permanent disability and occupation of injured. Claimant has pleaded that he was working as driver of motor Van & Tractor and thereby earning his livelihood. In support of this plea, appellant has placed on record copy of his driving license issued by the Licensing Authority concerned authorizing him to drive 'motorcycle with gear and light motor vehicles'. In view of above evidence available on record, pleading of appellant that he was engaged as driver is acceptable and can be taken into consideration for ascertaining his loss of earning capacity. Hence, it is held that on the date of accident, appellant was working as driver of motor vehicle.

15. So far as assessment of loss of earning capacity is concerned, appellant with amputated leg cannot be able to drive motor vehicles and thus he has not only lost his employment but also deprived from his earning by doing work of driver. Hon'ble Supreme Court in case of **S. Suresh vs. Oriental Insurance Co. Ltd. & anr** reported in (2010) 13 SCC 777 has considered the issue with regard to loss of earning capacity of a driver who suffered permanent disablement due to amputation of part of his leg and held thus:-

“8. In support of the plea, reliance is placed on a four-Judge Bench decision of this Court in *Pratap Narain Singh Deo v. Srinivas Sabata*¹. In that case, a carpenter had suffered amputation of his left arm from the elbow. This Court held that this amounted to

a total disability as the injury was of such a nature that *the claimant had been disabled from all work which he was capable of performing at the time of the accident*. It was observed as under:

“5.The expression "total disablement" has been defined in Section 2 (1) I) of the Act as follows:

'(I) "total disablement" means such disablement whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

"The injured workman in this case is carpenter by profession....By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only.'

This is obviously a reasonable and correct finding”

In our view, the ratio of the said judgment is squarely applicable to the facts at hand.

9. We are of the opinion that on account of amputation of his right leg below knee, he is rendered unfit for the work of a driver, which he was performing at the time of the accident resulting in the said disablement. Therefore, he has lost 100% of his earning capacity as a lorry driver, more so, when he is disqualified from even getting a driving licence under the Motor

Vehicles Act, 1988.

10. In the result, the appeal is allowed; the judgment of the High Court is set aside and the compensation awarded by the Commissioner is restored. There will, however, be no order as to costs.”

16. In case of **Raj Kumar (supra)** Hon'ble Supreme Court has considered the issue of loss of earning capacity of a Carpenter, whose one hand was amputated, and held thus:-

“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 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.”

17. Taking into consideration aforementioned rulings as also facts of case at hand, in the considered opinion of this Court the appellant has suffered 100% loss of earning capacity. It is ordered accordingly.
18. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimant/appellant herein.
19. As discussed above, income of appellant-claimant is taken as Rs.4,500/- per month and as at the time of accident claimant-appellant was 30 years of age and was not in permanent employment, therefore, in view of law laid down in case of **Pranay Sethi's case** (supra), income of appellant-claimant is required to be enhanced by 40% towards future prospects, which comes to Rs.6,300/- (4500+1800). Annual income of

appellant for the purpose of calculating compensation comes to Rs.75,600/-(6300x12). In case at hand, on the date of accident appellant-injured was in the age group of 25 to 30 years, hence, as per decision of Hon'ble Supreme Court in case of **Sarla Verma (supra)** multiplier applicable would be '17'. By applying multiplier of 17, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency comes to Rs.12,85,200/- (75600x17). As already held in preceding paragraph that appellant suffered 100% loss of earning capacity, therefore, appellant has suffered loss of income of Rs.12,85,200/-. Besides this, appellant is also entitled for Rs.35,000/- towards pain and sufferings; Rs.10,000/- towards special diet & conveyance and Rs.10,000/- towards attendant. In addition to aforementioned amount of compensation, appellant-claimant will also be entitled for Rs.1,48,640/- towards medical expenses, as awarded by the Claims Tribunal. Now appellant-claimant will be entitled for total amount of compensation of Rs.14,88,840/- (1285200+ 35000+10000+10000+148640) in place of Rs.5,80,640/-, as awarded by Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till its realization.

20. As regards award of penal interest of 9% p.a. if amount of compensation is not deposited/paid within stipulated time, there is no provision in the Act of 1988 for imposing penal interest. As the award of penal interest by Claims Tribunal is

contrary to the provisions of the Act of 1988, the same is liable to be and is hereby set aside.

21. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants / respondents No.1 to 5 as compensation shall be adjusted from the total amount of compensation as calculated above.

22. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-