NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1283 of 2015

- Ku. Pinki Kukreja, D/o Pawan Kukreja, Aged About 21 Years, R/o Village Ratna Bandha Chouk District Dhamtari Chhattisgarh..........Claimant

---- Appellant

Versus

1. Puran Giri S/o Siya Giri R/o Village Borid Road, Purur, Thana Gurur, Tahsil - Gurur, District Balod Chhattisgarh........Driver of Offending Vehicle Truck No. C G 05/ B /3609
2. Balram Sahu S/o Bahur Singh Sahu, Aged About 40 Years R/o Gokulpur Ward, Dhamtari Tahsil And District Dhamtari Chhattisgarh.............Owner of Offending Vehicle Truck No. C. G. 05/ B/ 3609
3. Shriram General Insurance Company Limited E - 8, Apip Ricco, Satpura Jaipur Rajasthan.........Insurer of Offending Vehicle Truck No. C G 05/ B/ 3609

---- Respondents

For Appellant	:	Shri AL Singraul, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent- 3	:	Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board
(Proceeding through Video Conferencing)

02.09.2021

1. Challenge in this appeal is to the award dated 29.06.2015, passed by Additional Motor Claims Tribunal, Dhamtari (for short, 'Claims Tribunal') in Claim Case-125 of 2014, whereby learned Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total sum of Rs.5,03,200/- as compensation with interest @ 6% per annum from the date of filing of claim application till its realization in a permanent disability case.

2. Facts relevant for disposal of this appeal are that on 13.09.2012 at about 1 pm (noon), when the appellant was standing on roadside at Sihava Chowk Dhamtari in front of Ratan Stores, one Truck bearing No.CG 05B-3609 (hereafter, referred to as 'offending vehicle'), driven by NA1 rashly and negligently, dashed her, upon which she fell down and her right leg came under

wheels of offending vehicle. She was immediately taken to Masihi hospital, Dhamtari, but looking to nature of injuries, she was shifted to Ramkrishna Care Hospital, Raipur, where she took treatment as inpatient.

3. Appellant/claimant filed an application under Section 166 of Act of 1988, seeking compensation of Rs.32 lakhs on different heads, pleading therein that on the date of accident, injured/appellant was aged about 21 years. She was doing the work of Tailoring and earning Rs.10-15 thousand per month, but on account of motor accidental injuries, she suffered permanent disability and unable to do any work.

4. NA1 and 2, Driver and Owner of offending vehicle submitted reply to claim application denying the facts pleaded therein. It was also pleaded that on the date of accident, claimant herself was driving two-wheeler Scooty and its owner and Insurer have not been arrayed as party respondents. NA1 was possessed with valid and effective driving license on the date of accident and offending vehicle was insured with NA3 Insurance Company, as such, liability, if any, to satisfy amount of compensation, if any, would be upon NA3.

5. NA3/Insurance Company submitted reply to claim application resisting the claim. It was further pleaded that NA1 was not possessed with valid and effective driving license on the date of accident, and offending vehicle was being plied in breach of policy conditions.

6. Learned Claims Tribunal, on appreciation of pleadings and evidence brought on record by respective parties, held that claimant suffered motor accidental injuries on account of rash and negligent driving of offending

vehicle by NA1 and income of appellant/claimant was not found to be proved. Tribunal upon appreciation of evidence, also held that claimant suffered 30% permanent disability, breach of policy conditions were not found to be proved and awarded Rs.5,03,200/- towards compensation, including Rs.2,78,756/- towards medical expenses.

7. Shri AL Singraul, learned counsel for the appellant would submit that on the date of accident, claimant/appellant was a major girl, aged about 21 years. She was engaged in business of Tailoring and earning Rs.10-15 thousand per month but learned Claims Tribunal has not considered her income pleaded and stated by appellant in her evidence, and erroneously, assessed her monthly income as Rs.3,000/- only, which is on lower side, when accident is of 13.09.2012. Tribunal though assessed permanent disability of appellant to the extent of 30% and calculated loss of future income, but in the facts of the case, Tribunal erred in not adding any amount of compensation towards future prospects, erred in awarding consolidated amount of Rs.30,000/- towards pain and suffering, special diet, grievous injuries and others. Tribunal has not awarded any amount towards loss of income during the period of treatment, attendant, conveyance expenses, loss of amenities and joy in life and further, not awarded any amount towards loss of marriage prospects. He submits that compensation be suitably enhanced considering facts and circumstances of the case as well as nature of injuries suffered by appellant.

8. Shri Deepak Gupta, learned counsel for respondent- 3 opposes the submissions of learned counsel for the appellant. He submits that Tribunal has accepted Disability Certificate issued by Medical Board and

percentage of disability mentioned therein as 30%. Tribunal further assessed loss of future earning to the extent of 30%. Entire medical bills placed on record and proved by claimant have been awarded, which comes to Rs.2,38,756/-. Amount of compensation awarded by learned Claims Tribunal is just and proper, which does not call for any interference.

9. I have heard learned counsel for the appellant and also perused the record of claim case.

10. Perusal of record would show that along with application for grant of compensation, claimants have filed documents of criminal case as Annexure P1 to P7. MLC report of Rama Krishna Care Hospital is placed on record as Ex.P8, wherein it was diagnosed that fracture of right Tibia and Fibula-lower 1/ 3rd , MLC report is dated 13.09.2012 ie date of accident. Ex.P9 is document of Rama Krishna Care Hospital, Department of Orthopaedics, wherein Final Diagnosis was observed as "Compound Communited Fracture TF L/ 4th with Flap Avulsion RT LEG Skin". Appellant in support of pleading with regard to nature of injuries suffered by her has placed on record, Medical documents and bills of treatment as well as purchase of medicines from Ex.P10 to P84. Permanent Disability Certificate issued by the District Medical Board is placed on record as Ex.P89. Submissions of learned counsel for the appellant with regard to assessment of income of appellant/claimant of Rs.3,000/- to be on lower side, age of claimant is shown to be 21 years on the date of accident, even if the appellant/claimant failed to prove nature of her occupation as pleaded in claim application, then also, income can be assessed, considering claimant at least, to be a manual labourer.

11. Taking into consideration date of accident 13.09.2012, wage structure, cost of living, I find it appropriate to assess income of appellant/claimant as Rs.4,000/- per month. Tribunal accepting evidence of Dr VK Pandey, and proof of Ex.P9 Disability Certificate, has recorded finding that appellant suffered 30% permanent disability and assessed loss of future income as 30%. When Tribunal based upon evidence has assessed 30% permanent disability and 30% future loss of income, then Claims Tribunal ought to have added 40% of established income of appellant/claimant towards future prospects for assessing her total income, because of her permanent disability, she will suffer for whole of her life.

12. Hon'ble Supreme Court in case of **National Insurance Company Vs Pranay Sethi** reported in 2017 16 SCC 680, has considered the issue with regard to award of compensation towards future prospects and held that where deceased/victim is below the age of 40 years and not in permanent employment, there shall be addition of 40% of his/her established income to assess total income.

13. In view of above, there shall be addition of 40% of established income towards future prospects for computing the total income of appellant.

14. Award of compensation in an injury case has been considered by Hon'ble Supreme Court in case of **R.D. Hattangadi vs M/s Pest Control (India) Pvt. Ltd. and others** reported in AIR 1995 SC 755, as also in case of **Raj Kumar Vs Ajay Kumar and another** reported in 2011 (1) SCC 343.

15. Hon'ble Supreme Court in the matter of **R.D. Hattangadi** (supra) for calculating loss of amount of compensation on the head of non-pecuniary damages, held as under:-

> "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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> 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."

16. Further in case of **Rajkumar Vs Ajay Kumar** (supra), considering the heads of awarding amount of compensation in personal injury/permanent disability case held thus:

> "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 (ii)-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. Decisions of this Court and the 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 account of permanent disability-Item (ii) (a). We are concerned with that assessment in this case."

Tribunal should not act like silent spectator as held by Hon'ble Supreme Court in the matter of **Raj Kumar** (supra) and held thus:

"5. The provision of the Motor Vehicles Act, 1988 (`Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer vs. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi vs. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to `hold an enquiry into the claim' for determining the `just compensation'."

17. Keeping in mind aforementioned rulings of Hon'ble Supreme Court if the facts of case are taken, Tribunal even after recording that appellant suffered 30% permanent disability, awarded consolidated sum of Rs.30,000/- only, towards pains and suffering, special diet, grievous injuries.

18. In view of above, and taking into consideration aforementioned rulings of Hon'ble Supreme Court, in considered opinion of this Court, appellant/claimant shall be entitled for amount of compensation on the heads of pain and suffering, loss of amenities and joy in life , attendant, conveyance, special diet, loss of income during the period of treatment and loss of marital prospects as the appellant/claimant is a major girl, aged about 21 years.

19. For the foregoing reasons, amount of compensation to be awarded requires re computation as under:

a) Income of appellant/claimant is assessed as Rs.4,000/- per month and Rs.48,000/- per annum.

b) Upon adding 40% towards future prospects, total annual income of appellant comes to Rs.67,200/- {48000 + (48000 x 40/100)}

c) Tribunal has held that appellant has suffered 30% loss of future income and 30% permanent disability. Hence, her annual loss of income will be Rs.20,160/- (67200 x 30/100)

d) Upon applying multiplier of 18, her total loss of future income comes to Rs.3,62,880/- (20160 x 18)

e) Appellant/claimant is also entitled for Rs.2,78,756/- towards medical expenses based on documents placed on record.

f) Apart from total loss of income and medical expenses, appellant shall be entitled for **Rs.30,000/-** towards pains and suffering, **Rs.30,000/-** towards loss of amenities and joy in life, **Rs.20,000/-** towards loss of marital prospects, **Rs.5,000/-** towards attendant, **Rs.15,000/-** towards conveyance as the appellant after accident, took treatment at Dhamtari, Raipur and also in Mumbai.

g) Looking to nature of injury and permanent disability suffered by appellant, I find it appropriate to award loss of income during the period of treatment for four months ie **Rs.16,000/-** (4000 x 4)

20. Now, appellant claimant shall be entitled for total sum of **Rs.7,57,636/-** (362880 + 278756 + 30000 + 30000 + 20000 + 5000 + 15000 + 16000) as compensation instead Rs.5,03,200/- as awarded by the Tribunal.

21. Aforementioned amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
JUDGE

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