HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 815 of 2016

Yogendra Kumar Rai S/o Shri Narendra Rai, Aged About 32 Years, R/o Village and Post Rumga, District Bilaspur, Chhattisgarh.

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Versus

1. Rajjak Husain S/o Shri Ramjan Minya, Aged About 26 Years R/o Village Newdola, P.S Kali Mandir, Rajnagar, District -Anuppur, Madhya Pradesh. (Driver).
2. Ganesh Prasad Kenwat, S/o Heeralal Kenwat, Aged About 55 Years, R/o Village Shekwa, P.O. Kotmi, District Bilaspur, Chhattisgarh. (Owner).
3. The Oriental Insurance Company Limited Branch Office Manendragarh Road Near Ambedkar Chowk, Ambikapur, District Sarguja, Chhattisgarh.

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

For Appellant	:	Mr. D.L. Dewangan, Advocate.
For Respondent Nos.1 and 2	:	None.
For Respondent No.3	:	Mr. Raj Awasthi, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

24/09/2021

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned Additional Motor Accident Claims Tribunal, Pendraroad, Bilaspur, (CG) (for short 'Tribunal') vide award dated 01.03.2016 in Claim Case No.89/2011, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.3,37,280/- in an injury case.

2. Facts relevant for disposal of this appeal are that on 09.3.2011, when appellant was going to his medical store situated at Pendraroad from village Rumga on his motorcycle, reached near village Kotmi, one Tractor bearing registration No.MP-18-H-3801, (for short 'offending vehicle'), driven by non-applicant No.1 rashly and negligent dashed his motorcycle and caused accident. In the accident, appellant suffered grievous injuries over his person, he was taken to Primary Health Centre, Pendraroad. Looking to his injuries, he was referred to higher hospital and was brought

to Khanduja Hospital, Bilaspur. He took treatment as in-patient from 12.04.2011 to 14.04.2011.

3. Appellant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.20,47,349/- mentioning therein that on the date of accident, he was running medical store and earning Rs.10,000/- per month. On account of motor-accidental injuries, he became permanently disabled, he could not able to do any work for about 6 months and thereby suffered loss of income.

4. Non-applicant Nos.1 & 2/driver and owner of offending vehicle, submitted reply and resisted the claim. It was further pleaded that accident was result of rash and negligent driving of motorcycle by claimant. Motorcycle of claimant was not insured, amount of compensation claimed is highly exaggerated.

5. Non-applicant No.3/Insurance Company also submitted its reply to claim application denying facts pleaded therein. It was further pleaded that claimant himself is responsible for accident. Due to his rash and negligent driving, he met with accident with catch wheel of offending vehicle. Offending vehicle was being driven in breach of policy conditions, hence, Insurance company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1, in which appellant suffered 40% permanent disability. Breach of Policy condition was not found to be proved. Tribunal allowed application in part, awarded total compensation of **Rs.3,37,280/-** alongwith interest @ 6% per annum, fastened liability upon non-applicant No.3-Insurance Company to pay the amount of compensation.

7. Learned counsel for appellant/claimant submits that Tribunal erred in awarding meager amount of compensation. Tribunal assessed income of deceased as Rs.3,000/- per month only which in the facts and circumstances of this case is on lower side. Appellant suffered grievous injuries and took treatment as in-patient from 09.03.2011 to 19.03.2011 at Khanduja Orthocare and Accident Hospital, Bilaspur. He also underwent operation due to which, he could not able to do his work during the period of his treatment but Tribunal has not awarded any amount towards loss of his earning during period of treatment. Tribunal even arriving at finding that appellant suffered 40% permanent disability resulting into 40% loss of income, has not added any compensation towards future prospects. As appellant suffered permanent disability, he will suffer loss of earning during whole of his life, hence, amount towards future prospects is to be added as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[1]., Tribunal has not awarded any amount of compensation towards loss of amenities and joy in life and attendant. Tribunal awarded meager amount towards pains and suffering, conveyance expenses and special diet. He prays that amount of compensation be suitably enhanced.

8. Learned counsel for respondent No.3-Insurance Company submits that claimant has not proved his income by placing admissible piece of evidence on record. In absence of proof of income, Tribunal justified in assessing income of appellant on notional basis. Tribunal awarded amount towards loss of income considering loss of earning capacity to the extent of 40% based on disability certificate placed on record and proved by appellant. Amount of compensation awarded to claimant in the facts and circumstances of the case is just and proper.

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1 (2017) 16 SCC 680

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

10. So far as submission of learned counsel for appellant, with respect to income of appellant assessed by Tribunal is concerned, perusal of record would show that in claim application claimant pleaded that on the date of accident he was running medical store and earning Rs.10,000/- per month but not placed on record any license issued by the Competent Authority for the said purpose. Except pleading and oral statement, no admissible piece of evidence is available on record showing nature of occupation and his income as pleaded and stated by him. Even if appellant has failed to prove nature of occupation and his earning than also income is to be assessed on notional basis keeping in mind age of appellant, nature of occupation, wage structure and cost of living on the date of accident ie on 09.3.2011. Appellant can be treated to be manual labour and taking into consideration the aforementioned factors, I find it appropriate to assess income of deceased as Rs.4,000/- per month. It is ordered accordingly.

11. Appellant placed on record discharge tickets of Khanduja Orthocare and Accident Hospital, Bilaspur as Ex.P-58 wherein it is mentioned that he suffered fracture of "Rt Patella and Rt Humerus bone". It also mention about treatment of acetabulum bone. He underwent operation and took treatment from 09.03.2011 to 19.03.2011. Thereafter, he took treatment from Apollo Hospital, Bilaspur, Samarpan Hospital, Raipur and Balaji Hospital, Raipur which shows nature of injuries suffered by him, but Tribunal has not awarded any amount towards attendant, loss of income during the period of treatment, loss of amenities and joy in life due to permanent disability.

12. In case of **R.D. Hattangi Vs. Pest Control (India) Pvt. Ltd. & Ors[2],** 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."

13. In case of **Rajkumar vs. Ajay Kumar & Anr[3],** 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:-

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2 (1995) 1 SCC 551.
3 (2011) 1 SCC 343

"6. The heads under which compensation is awarded in personal injury cases are the following :

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.

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 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."

14. Considering the facts of the case in the light of aforementioned judgment passed by Hon'ble Supreme Court in case of **R.D. Hattangi** (supra) **&**

Rajkumar (supra) wherein Hon'ble Supreme Court has laid down guidelines for awarding compensation towards pecuniary/non-pecuniary damages, I find it appropriate to award Rs.16,000/- (Rs.4,000/- X 4) towards loss of income during the period of treatment for 4 months, Rs.4,000/- towards attendant, Rs.20,000/- towards pains and suffering, Rs.20,000/- towards loss of amenities and joy in life. Apart from this, appellant is also entitled for a sum of Rs.96,880/- towards medical expenses, Rs.7,500/- towards conveyance expenses and Rs.5,000/- towards special diet as awarded by Tribunal.

15. Coming to next argument advanced by learned counsel for appellant that Tribunal erred in not awarding any amount towards future prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that in case deceased, victim of motor accident, not in permanent employment and below the age of 40 years, an addition of 40% of establish income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

16. Indisputably, in case at hand, on the date of accident, deceased was aged about 30 years and not in permanent employment, therefore, there shall be an addition of 40% of established income towards future prospects to income of deceased for assessing total income for the purpose of calculating compensation.

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

18. Income of appellant is taken as Rs.4,000/- per month. By adding 40% of established income towards future prospects, total monthly income of appellant comes to Rs.5,600/- (Rs.4,000 + 40% of 4,000) and annual income as Rs.67,200/- (12 X 5600). Tribunal held loss of earning capacity of claimant to the extent of 40%, hence, annual loss of earning suffered by claimant will be Rs.26,880/- (40% of Rs.67,200/-). On the date of accident, claimant was in the age group of 30 to 35 years, therefore, appropriate multiplier would be 16. By applying multiplier of 16, total loss of earning comes to Rs.4,30,080/- (Rs.26,880 X 16).

19. Now, appellants/claimants shall be entitled for a total compensation of **Rs.5,99,460/-** (Rs.4,30,080/- + Rs.16,000/- + Rs.4,000/- Rs.20,000/- + Rs.20,000/- + Rs.96,880/- + Rs.7,500/- + Rs.5,000/-) instead of **Rs.3,37,280/-** 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. Amount of compensation already deposited by respondent No.3-Insurance Company shall be adjusted from calculated amount of compensation.

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

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-