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HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 94 of 2015**

Rakesh Kaushal S/o Nemdhari Kaushal, Aged About 30 Years, R/o Village Jhulnakala, Post & Police Station Pathariya, Revenue District Mungeli, Civil District Bilaspur, C.G.

---- Appellant**Versus**

1. Itawari Kenwat S/o Adhnawa Kenwat, Aged About 43 Years, R/o Village Donaki, Police Station & Tahsil Bilha, District (Revenue & Civil) Bilaspur, C.G. Probably Address through Pradip Krishna Store, Main Road Bilha, Kesla, Tahsil-Bilha, District (Revenue & Civil) Bilaspur C.G.
2. Pradip Sharma S/o Kishori Lal, R/o Sadar Bazar, Bhatapara, Police Station & Tahsil Bhatapara, Tahsil and District (Revenue & Civil) Balodabazar Bhatapara C.G. Probably Address through Pradip Krishna Store, Main Road Bilha, Kesla, Tahsil Bilha, District (Revenue & Civil) Bilaspur C.G.
3. Branch Manager, The Oriental Insurance Company Limited, Branch Office Rama Trade Centre, Near Rajiv Plazam, Purana Bus Stand Bilaspur, Tahsil & District (Revenue & Civil) Bilaspur C.G.

---- Respondents

For Appellant	: Shri Anand Kesharwani, Advocate
For Respondents No.1 & 2	: None
For Respondent No. 3	: Shri Raj Awasthi, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

15.07.2021

1. This appeal has been filed by appellant/claimant under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 06.09.2014 passed by Second Additional Member of First Additional Motor Accident Claims Tribunal, Bilaspur (hereinafter

referred to as 'Claims Tribunal') in Claim Case No.42 of 2013 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') in part and awarded a total sum of Rs.1,31,215/- (after deducting 30% towards contributory negligence) as compensation in an injury case.

2. Brief facts for disposal of this appeal are that, on 17.08.2021, appellant/claimant was travelling on his motorcycle bearing No.CG10/EC/3263 and travelling from Sargaon to Bilaspur, while so, one Truck bearing No.CG04/ZC/5495 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the motorcycle of appellant. In the said accident, appellant suffered grievous injuries over his left leg, thigh, hand, waist and chest. Incident was reported to concerned Police Station, based upon which, crime was registered against non-applicant No.1.
3. Appellant filed an application under Section 166 of M.V. Act before competent Claims Tribunal pleading therein that in the accident, he suffered 50% permanent disability; on the date of accident, he was working as Salesman in Bavli Seva Sahkari Samiti Maryadit, earning Rs.8,000/- per month; he was also receiving commission of Rs.7,000/- per month, he incurred Rs.2,50,000/- for his treatment and claimed Rs.12,25,000/- as total compensation on different heads.
4. Non-applicants No. 1 and 2, who are driver and owner of offending vehicle submitted reply to claim application, denying the facts

pleaded therein. It was further pleaded that appellant has not produced documents of ownership of motorcycle; accident was not a result of rash and negligent driving of non-applicant No.1; appellant was not possessed with valid and effective driving licence and on the date of accident, Thaneshwar was driving the motorcycle. It was further pleaded that appellant upon mounting of pressure on non-applicant No.2 (owner of offending vehicle), already taken Rs.20,000/- towards treatment and Rs.10,000/- towards medicines, ambulance and doctor. It has been lastly pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company, as such, non-applicants No.1 and 2 are not liable to pay any amount of compensation.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, denying the pleadings made therein and further pleaded that on the date of accident, appellant was not possessed with valid licence to drive motorcycle and he was under intoxicating condition, which was the cause of accident. It was further pleaded that appellant has not made owner and Insurance Company of motorcycle as party non-applicants, as such, there was non-joinder of necessary party. It was also pleaded that non-applicant No.1 drove the offending vehicle in breach of policy conditions as he was not possessed with valid and effective driving licence. Non-applicant No.2 has not supplied registration, fitness of offending vehicle, hence, there was breach of policy conditions.

6. On appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that accident took place on account of rash and negligent driving of offending vehicle by non-applicant No.1 (driver of offending vehicle); appellant suffered 30% permanent disability in the accident; there was contributory negligence on the part of appellant, calculated total sum of Rs.1,87,450/- and after deducting 30% of the amount towards contributory negligence on the part of appellant, awarded a total sum of Rs.1,31,215/- as compensation.
7. Shri Anand Kesharwani, learned counsel for the appellant submits that learned Claims Tribunal erred in holding the appellant to be contributory negligent only on the ground that appellant failed to produce his driving licence, which is not sustainable. He further submits that merely not having licence with driver of motorcycle in itself will not be sufficient to hold said driver to be contributory negligent in the accident in absence of any further evidence, hence, finding recorded by learned Claims Tribunal to the effect that appellant was also contributory negligent be set aside. It is contended that learned Claims Tribunal erred in awarding meagre amount of compensation in the facts and circumstances of the case even after recording a finding that appellant suffered 30% permanent disability. Learned Claims Tribunal has not assessed income of appellant in proper manner. Once the Claims Tribunal disbelieved the nature of employment and income in absence of any evidence, then

learned Claims Tribunal ought to have considered the occupation of appellant at least as labourer and ought to have calculated the income and amount of compensation. It is contended that no compensation is awarded under the heads of pain and suffering, loss of amenities and joy in life overlooking the fact that on the date of filing of claim application, appellant was aged about 30 years. Amount of Rs.20,000/- awarded towards permanent disability is also on the lower side and submits that appellant be awarded suitable amount of compensation in the facts and circumstances of the case.

8. Per contra, Shri Raj Awasthi, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal based upon the evidence and material available on record, awarded just compensation, which does not call for any interference. He further submits that appellant has not produced copy of driving licence, hence, Claims Tribunal has rightly drawn inference that on the date of accident, appellant was not possessed with valid and effective driving licence to drive motorcycle and held the appellant to be contributory negligent. It is contended that learned Claims Tribunal has already awarded amount of compensation under different heads, for which, appellant was entitled for.
9. I have heard learned counsel for the parties and perused the record carefully.
10. So far as the submission made by learned counsel for appellant with regard to finding of contributory negligence to be erroneous is

concerned, learned Claims Tribunal has discussed issue No.4 in paragraphs-9 to 11 of impugned award. Learned Claims Tribunal has considered that accident was due to head on collision and further considered that appellant failed to produce his driving licence. Learned Claims Tribunal held that driving of motorcycle without licence will come within act of 'negligence' and held the appellant to be contributory negligent to the extent of 30% as appearing from paragraph-20 of the impugned award. Merely non-production or proof of driving licence by one of the drivers of two vehicles involving in accident will not in itself be sufficient to hold that driver who has not proved the driving licence, to be contributory negligent in the accident, more so, when it is for the driver of motorcycle.

11. Contributory negligent is a fact, which is required to be proved by the person ascertaining it. The issue with respect to contributory negligent of one of the drivers on account of non-possession of valid and effective driving licence has been considered by Hon'ble Supreme Court in the matter of **Sudhir Kumar Rana v. Surinder Singh and others** reported in **(2008) 12 SCC 436** wherein Hon'ble Supreme Court held as under :-

“9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence

but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.”

12. In the case at hand, non-applicants/respondents have not brought any evidence to prove the negligence on the part of appellant in the accident, but learned Claims Tribunal arrived at a finding of contributory negligence only on the ground that appellant was not possessed with valid driving licence, hence, in the facts of the case, in view of aforementioned ruling of Hon'ble Supreme Court, finding recorded by learned Claims Tribunal with regard to contributory negligence is not sustainable and is hereby set aside.
13. So far as the submission made by learned counsel for the appellant with regard to award of meagre amount of compensation and non-award of amount of compensation on different heads is concerned, Hon'ble Supreme Court has issued guidelines for awarding amount of compensation in personal injury cases in case of **R. D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others** reported in (1995) 1 SCC 551 and held thus :

“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.** Further, effect of percentage of permanent disability on the earning capacity has been considered by Hon'ble Supreme Court in case of **Raj Kumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343** wherein Hon'ble Supreme Court has as under :

“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, the 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.

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the

earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* (2010) 10 SCC 254 and *Yadava Kumar v. National Insurance Co. Ltd.* (2010) 10 SCC 341).

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”. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the “just compensation”. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary

and a Handbook for evaluation of permanent physical impairment (for example the *Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons*, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.”

15. In the case at hand, though learned Claims Tribunal has held that appellant suffered 30% permanent disability on his leg based on the disability certificate (Ex.P/57) issued by District Medical Board, Bilaspur wherein percentage of disability is mentioned as 50%. Learned Claims Tribunal further discussed in paragraph-17 of impugned award that appellant has failed to produce any evidence with regard to his employment and earning and disbelieved the same in absence of any proof with regard to nature of employment and income. In the facts of the case, Tribunal ought to have considered the occupation of claimant to be an ordinary manual labourer and would have assessed the income on notional basis keeping in mind the date of accident, wage structure, cost of living, etc. In the instant case, as appellant failed to produce any document with regard of nature of employment and income, in the opinion of this Court, taking

into consideration the date of accident to be of 2012, income of appellant can be assessed as Rs.4,000/- per month.

16. As the appellant has suffered permanent disability on his leg, which will affect his future earnings because he has been treated to be manual labourer, therefore, there shall be an addition of amount in the monthly/annual income of appellant as held by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**. On the date of accident, appellant was 30 years of age i.e. less than 40 years, therefore, there shall be an addition of 40% of established income towards future prospects for ascertaining total income on the date of accident.
17. Learned Claims Tribunal has awarded lumpsum amount of Rs.20,000/- towards permanent disability without applying the multiplier system. Disability certificate issued by Medical Board vide Ex.P/7 mentions 50% permanent disability. Dr. S.S. Bhatia was examined as AW-2 to prove disability certificate. In his evidence, this witness stated that there was fracture of right femur, right tibia and lateral condyle. On the date of examination, bone was not united. On question of Tribunal, he clarified that after union of bones, there will be 30% disability. Tribunal assessed 30% permanent disability. Taking into consideration finding recorded by learned Claims Tribunal that appellant suffered 30% permanent disability on account of fracture suffered on his right femur, tibia and lateral condyle, in the opinion of this Court to award just compensation, it will be

appropriate to calculate the amount of compensation under the head of permanent disability by applying the multiplier system. Learned Claims Tribunal has not awarded any amount towards pain and suffering and loss of amenities and joy in life, in the facts of the case, for which, appellant is entitled for.

18. As this Court has treated the occupation of appellant to be a manual labourer in absence of any document or any proof with regard to nature of employment, hence, looking to part of body where appellant has suffered permanent disability will definitely affect his working and efficiency, which may definitely lead to loss of earning capacity with permanent disability on right thigh, tibia and lateral condyle. Appellant might not be able to do all nature of labour work, hence, in the opinion of this Court, even if loss of earning capacity cannot be accepted as 30%, but looking to the part of body where appellant has suffered permanent disability, I find it appropriate to hold that appellant suffered 20% loss of earning capacity.

19. For the forging reasons as well as the facts and circumstances of the case, I deem it fit and proper to recalculate the amount of compensation as under :

The monthly income of appellant is taken as Rs.4,000/- per month and Rs.48,000/- per annum. By adding 40% of the income towards future prospects, total annual income of appellant will come to Rs.67,200/- ($48,000 \times 40\% = 19,200$ and $48,000 + 19,200$). As this Court held that appellant suffered 20% loss of earning capacity, total

annual income of appellant will come to Rs.13,440/- (67,200 x 20%). On the date of accident, appellant was shown to be 30 years of age, therefore, in view of law laid down by Hon'ble Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, appropriate multiplier would be 17. By applying the multiplier of 17, total loss of future income will come to Rs.2,28,480/- (13,440 x 17). Apart from above loss of income, appellant will be further entitled for Rs.25,000/- towards pain and suffering, Rs.25,000/- towards loss of amenities and joy in life, Rs.10,000/- towards special diet, Rs.8,000/- towards assistant and Rs.5,000/- towards conveyance expenses and Rs.1,44,450/- towards medical treatment (as awarded by learned Claims Tribunal).

- 20.** Now, appellant is entitled for total compensation of Rs.4,45,930/- (2,28,480 + 25,000 + 25,000 + 10,000 + 8,000 + 5,000 + 1,44,450) instead of Rs.1,31,215/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 7% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.
- 21.** In the result, the appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-

(Parth Prateem Sahu)
Judge