

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1334 of 2015**

Judgment Reserved On : 01/11/2021

Judgment Delivered On : 16/11/2021

- Manish Kumar Khaparde S/o Late Bhavan Singh, Aged About 20 Years
R/o Saat-Para, P.S. And Tahsil- Abhanpur, Distt. Raipur, Chhattisgarh

---- Appellant/Claimant**Versus**

1. Narsingh Gond S/o Jagannath Gond, R/o Sec.-7, Street No.26, Qtr. No. 26-D, Bhilai, P.S. Kotwali, Distt. Durg, Chhattisgarh

(Driver Of Bus No. C.G. 04/ E/ 1282)

2. Bhavesh Dubey S/o Mani Lal Dubey, Through M/s Dubey Travels, Pandari Bus Stand, Raipur, Tah. And Distt. Raipur, Chhattisgarh

(Owner Of Bus No. C.G. 04/ E/ 1282)

3. The Oriental Insurance Co. Ltd., Through Divisional Manager, The Oriental Insurance Company Ltd., Near Kachery Chowk, Jail Road, Raipur, Distt. Raipur, Chhattisgarh

(Insurer Of Bus No. C.G. 04/ E/ 1282)

---- Respondent

For Appellant : Shri Amiyakant Tiwari, Advocate.

For Respondent No.3 : Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Deepak Kumar Tiwari, J**C A V Order**

1. The appellant would call in question the impugned order dated 27.2.2015 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.17/2013 whereby the appellant has been awarded compensation of Rs.3,39,000/- jointly and separately, which

was directed to be deposited within one month from the date of award. Interest @ 6% was also awarded from the date of filing of claim petition till the actual payment is made. By way of present Appeal the appellant seeks to enhance the award amount.

2. Facts of the case, in brief, are that on 10.11.2012 at about 10.30 pm the present appellant along with his friends was going to Abhanpur in a auto-rickshaw bearing registration No.CG-04/T/7773. When they reached near Village Gotiyardih, respondent No.1 dashed the said auto-rickshaw by driving the Bus No.CG-04E/1282 in a rash and negligent manner resulting into grievous injuries to the present appellant and death of two persons. In the said accident, the appellant had received several injuries including multiple fracture on his right hand, jaw and right leg. He also received injury on his head resulting in blood clotting, as a result thereof his left hand and left leg were paralyzed. The eye ball of right eye came out because of which the appellant lost proper vision.
3. It was argued that at the time of accident the appellant was aged about 20 years and was working as Wall Putty Worker. He used to earn Rs.250/- per day. The appellant has now become a permanent disable person and unable to perform his work due to paraplegic condition, as also because of loss of vision. In order to prove the factum of permanent disability, the appellant examined Dr. PK Gupta (AW-2), who proved the endorsement in the official register and the disability certificate assessing the extent of disablement up to 45%.
4. While deciding the claim of the appellant, the Claims Tribunal accepted the evidence of the doctor and found the disablement up to 45% but did

not accept the plea that the appellant was earning Rs.250/- per day and assumed his income at the rate of Rs.36,000/- per annum and applied multiplier of 17. Since in the said accident the appellant is found to suffer only 45% permanent disability, in that event the compensation was assessed at Rs.6,12,000x45% which comes to Rs.2,75,400/-. The Claims Tribunal allowed Rs.52,200/- for medical expenses, Rs.5400/- towards special diet and Rs.6,000/- towards pain and suffering.

5. I have heard learned counsel for the parties and perused the record.
6. Manish Kumar (AW-1) is the injured in whose favour the Medical Board has issued 45% permanent disability certificate (Ex.-P/68). By the impugned award, after considering the age of the victim and applying multiplier of 17, the following compensation was awarded:-

Sr. No.	Heads	Amount
1.	For loss of earning	Rs.2,75,400/-
2.	For treatment supported by the medical bills	Rs.52,200/-
3.	For Special Diet	Rs.5400/-
4.	For pain and suffering	Rs.6,000/-
	Total	3,39,000/-

7. Learned counsel for the appellant submitted that the Tribunal has not properly assessed the loss of earning capacity. The victim was doing the work of Painting and was earning Rs.250/- per day. Looking to the nature of job, his income has to be presumed 100%. In the said accident, the injured has sustained injuries on his jaw, right leg, blood

clotting on his head and fracture on the right hand. His left hand and left leg were paralyzed. Dr. PK Gupta, Member of the Medical Board, has proved the disability certificate and stated that the victim has suffered Locomotor disability on left upper and lower limb. The Medical Board opined that it was a case of Post Head injury Residual Hemiparesis. In the cross-examination, he has admitted that the disability was counted for a particular limb and not for the whole body. As the injured has no permanent job and for want of documentary evidence, then in such cases, normally guess work is required. Hence, the Tribunal has rightly assessed the notional income of the victim at Rs.3,000/-.

8. After considering the age of injured to be 20 years, multiplier of 17 has been applied. In **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another** (2009) 6 SCC 121} it was held by the Hon'ble Supreme Court that the multiplier of 18 for the age group of 15-20 years should be applied. Therefore, the correct multiplier of 18 has to be applied instead of 17. Looking to the nature of disability, the learned Tribunal has rightly found his functional disability and loss of income at the same rate of 45%, as assessed by the Medical Board. Therefore, this Court after considering the evidence, does not find any justification to change the assessment, as the finding is rational on this score.
9. Learned Tribunal has not awarded any amount on the head of future prospects. Even in injury cases the future prospects is given. In the matter of **Lalan D. Alias Lal Vs. Oriental Insurance Company Ltd.** {AIR Online 2020 SC 734, decided on 17th September, 2020}, applying

the ratio given in the matter of **National Insurance Company Ltd Vs. Pranay Sethi and Others** {(2017) 16 SCC 680}, it was observed that where the victim had no permanent job and self employed, the loss of future prospects at the rate of 40% is to be added for below the age of 40 years.

10. Therefore, loss of earning is assessed on notional yearly income Rs.36,000x18x45% at Rs.2,91,600/- in which 40% for future prospects i.e. the amount of Rs.1,16,640/- is to be added on this head. Thus total amount on this head comes to Rs.4,08,240/-.

11. For the treatment supported by the medical bills, the Tribunal has awarded Rs.52,200/-. Looking to the nature of injuries, the victim would have to take some treatment in the future also and some bills may not have been filed, therefore, on this head, Rs.20,000/- is required to be added. Hence total amount on this head comes to Rs.52,200+20,000/- = 72,200/-.

12. For loss of expectancy of life, no amount has been awarded, therefore, Rs.10,000/- is added on this head.

13. For pain and suffering, an amount of Rs.6,000/- is awarded, which is modified at Rs.10,000/-. For Special Diet, only Rs.5400/- has been awarded, which is required to be modified at Rs.10,000/-. On the head of attendant, no amount has been awarded, therefore, an amount of Rs.10,000/- is awarded on this head also.

14. Thus, the claimant would be entitled for the following compensation :-

Sr. No.	Head	Amount
1.	Loss of Earning	Rs.2,91,600/-

2.	For Future Prospects	Rs.1,16,640/-
3.	For Medical treatment	Rs.72,200/-
4.	For loss of expectancy of life	Rs.10,000/-
5.	For pain and suffering	Rs.10,000/-
6.	For Special diet	Rs.10,000/-
7.	For attendant	Rs.10,000/-
	Total	Rs.5,20,440/-
	Amount already awarded	Rs.3,39,000/-
	Enhanced amount	Rs.1,81,440/-

15.The appellant is held to be entitled for total compensation of Rs.5,20,440/- with 6% interest per annum from the date of filing of claim petition i.e. 8.4.2013 till its realization. Other conditions of the award passed by the learned Claims Tribunal shall remain in tact.

16.In the result, the Appeal filed by the Claimant is allowed in part to the extent as indicated above.

Sd/-
(Deepak Kumar Tiwari)
Judge

Barve