

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1458 of 2015**

- Shiv Kumar, S/o Sant Ram Verma, Aged About 38 Years, R/o Village And Post Office- Bhainsa, Distt.- Baloda Bazar-Bhatapara, ChhattisgarhClaimant **---- Appellant**

Versus

1. Ajay Kumar, S/o Domar Sinha, R/o Dandesara, Thana- Kurud, Distt. Dhamtari, Chhattisgarh Driver Of Truck No. C.G.-07- ZC- 2886
2. Ram Chandra, S/o Kundanmal Panjwani, R/o Sunderganj Ward, Dhamtari, Thana And Distt. Dhamtari, Chhattisgarh Owner Of Truck No. C.G.-07- ZC- 2886
3. Reliance General Insurance Company Limited, Through In-charge Officer, Reliance General Insurance Company Limited, Ravi Bhawan, Jaistambh Chouk, Raipur, Tehsil And Distt.- Raipur, Chhattisgarh Insurer Of Truck No. C.G.-07 - Z C- 2886 **---- Respondents/Non-Applicants**

For Appellant	: Shri Priyesh Deep, Advocate on behalf of Shri Anumeh Shrivastava, Advocate
For Respondents- 1 and 2	: None appears
For Respondent-3	: Shri Shailesh Tiwari, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****06.08.2021**

- 1) Claimant has preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 23.04.2015 passed by 6th Additional Motor Accident Claims Tribunal, Raipur (For short, 'Claims Tribunal') in Claim Case No.140 of 2013, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded Rs.54,000/- as compensation in an injury case and fastened liability upon NA3/Insurance Company to satisfy amount of compensation.
- 2) Facts of the case in a nutshell are that on 31.01.2013 at about 11 pm, appellant was travelling on Motorcycle bearing No.CG04-DY 4256. When he reached near Sai temple of village Tilda, one Truck bearing

No.CG07-ZC2886 (hereafter, referred to as 'offending vehicle') driven by NA1 rashly and negligently, dashed Motorcycle. In the said accident, appellant suffered grievous injuries on his right hand and fracture of left shoulder with other injuries. Accident was reported to concerned Police Station, based upon which crime bearing No.40 of 2013 was registered against NA1.

3) Appellant filed an application before Claims Tribunal seeking compensation of Rs.11,40,000/-, pleading therein that appellant was working as Supervisor in Rice Mill, earning Rs.7,000/- per month, by which he was maintaining his family, and in future, his income could have been Rs.10,000/- per month. He suffered permanent disablement, due to motor accidental injuries.

4) NA1 and NA2, Driver and Owner of offending vehicle submitted reply to claim application denying the pleadings made in claim application. Report lodged before concerned Police Station is false and baseless. Offending vehicle was not involved in the accident but it has been falsely implicated. It is further pleaded that offending vehicle was insured with NA3/Insurance Company, NA1 was possessed with valid and effective driving licence on the date of accident. As such, liability to satisfy amount of compensation would be upon NA3.

5) NA3/Insurance Company submitted reply to claim application denying all pleadings made in claim application. Driver of offending vehicle and claimant were driving Motorcycle without there being valid and effective driving license. If the accident is said to be with involvement of offending

vehicle, then also, there is contributory negligence on the part of driver of both vehicles. There was no valid permit and fitness of offending vehicle, as such, there was breach of policy conditions. Insurance Company is not liable to indemnify the insured.

6) Learned Claims Tribunal, based upon pleadings and evidence brought on record by respective parties, held that claimant suffered injuries on his right hand and left shoulder, due to rash and negligent driving of offending vehicle driven by NA1. Permanent disability of appellant and breach of policy conditions were not found to be proved, and awarded Rs.54,000/- as total compensation.

7) Shri Priyesh Deep, learned counsel appearing on behalf of Shri Arvind Shrivastava, learned counsel for the appellant submits that learned Claims Tribunal erred in assessing compensation on lower side. He submits that Tribunal has not awarded any amount of compensation towards permanent disability, loss of earning, loss of amenities and joy in life and meagre amount is awarded towards grievous injuries, pains and suffering, nutritious diet, conveyance and medical expenses. On the date of accident appellant was working as Supervisor in Rice Mill but looking to nature of injuries suffered by him, he might not have worked for a couple of months but learned Claims Tribunal has not awarded any sum towards loss of income during the period of treatment. He submits that amount of compensation be suitably enhanced in facts and circumstances of the case.

8) It is also pointed out that though learned Claims Tribunal has taken into consideration documents enclosed along with record to show nature of

injuries ie Ex.P3 MLC report, Ex.P7 report of Sahu Diagnostics, Raipur showing nature of injuries but Claims Tribunal has not considered the same in its true perspective and awarded meagre sum of compensation.

9) Shri Shailesh Tiwari, learned counsel on behalf of Saurabh Sharma, for respondent-3/Insurance Company submits that in the facts and circumstances of the case, amount of compensation calculated and awarded by Tribunal, is just and proper. Appellant failed to prove any permanent disability suffered by him by placing admissible piece of evidence on record. Tribunal, considering nature of injuries, awarded Rs.25,000/- towards grievous injuries, Rs.13,928/- towards medical expenses, and Rs.15,000/- on all other heads including pain and suffering, nutritious diet, and conveyance etc.

10) I have heard learned counsel for the parties and also perused record of claim case.

11) Before proceeding further, I find it appropriate to have a glance of law laid down by Hon'ble Supreme Court for award of compensation in personal injury case. The heads required to be considered for awarding just compensation.

12) 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.

13) 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:-

“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....” (emphasis supplied)

14) Further, in case of **Raj Kumar** (supra), it is 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’.”

15) To appreciate submissions made by learned counsel for the parties, I find it appropriate to extract the heads on which amount of compensation is assessed and awarded by learned Claims Tribunal, which is as under:

1	Grievous injuries	Rs.25,000/-
2	Medical expenses	Rs.13928.44/-
3	Mental agony, pain and suffering	Rs.5,000/-
4	Nutritious diet	Rs.5,000/-
5	Conveyance	Rs.5,000/-
	Total	Rs.53,928.44 (rounded off to Rs. 54,000/-)

16) Tribunal has considered documents placed on record as in Paragraph 24 of impugned order. Ex.P5 and P6 are diagnostic reports referred by Dr Amit Agrawal. Ex.P7 and P8 dated 02.02.2013 are MRI reports of Dr Chandrika Sahu, Sahu Diagnostics, Raipur, copy of MLC report is placed on record as Ex.P3. Other documents are of Criminal case and medical bills. Medical bills placed on record as Ex.P13 to P30. Document Ex.P8 would show nature of injuries suffered by appellant in accident, which reads as under:

- 1) No evidence of nerve root avulsion. No pseudomeningoceles.
- 2) Displaced fracture in the spinous process of C7, D1 & D2 vertebrae.
- 3) Loss of disc height and annular posterior disc bulge at C5-C6 causing cord indentation and indentation of bilateral exiting nerve roots with bilateral neural foraminal (R>L).
- 4) Comminuted fracture in the body and acromion of left scapula with marked surrounding soft tissue edema.
- 5) Subluxation of left shoulder joint with posterior rotation of head of humerus.
- 6) Mild shoulder joint effusion.
- 7) Haemorrhage and edema in posterior paraspinal muscles in cervico-dorsal region on left side, muscles around the left shoulder joint and muscles in the upper anterior chest wall and in left supra clavicular region.
- 8) Suspicious fracture of the left clavicle in the middle third.
- 9) Subtle T2 hyperintense signal in the cord at C6 & C7 levels - ?
Edema/contusion
Needs clinical correlation.

17) Nature of injuries as mentioned above in Ex.P8 suffered by the appellant would show that he suffered injuries of severe nature, but learned Claims Tribunal awarded only Rs.5,000/- towards pain and sufferings, which

in opinion of this Court, is on lower side. Looking to nature of injuries, part of body, I find it appropriate to award **Rs.20,000/-** towards pains and suffering and **Rs.30,000/-** towards grievous injuries, instead of Rs.25,000/-.

18) Looking to nature of injuries as mentioned in Ex.P8, appellant might not have worked for a considerable period. I find it appropriate to hold that appellant might not have worked for a period of two months. As there is no proof of income available on record, I find it appropriate to assess income of appellant on Notional basis as Rs.4,500/- per month and loss of earning during period of treatment to be **Rs.9,000/-** (4500 x 2)

19) Tribunal has not awarded any amount towards loss of amenities and joy in life for which appellant is also entitled for.

20) Submission of learned counsel for appellant that the Tribunal erred in not awarding expenditure towards treatment vide Ex.P29 and Ex.P30 is concerned, these money receipts are on letter head of doctor Amit Agrawal, who is shown to be MS(Ortho). It bears original seal and signature. When once the nature of injuries is proved from other documents available on record, ie Ex.P3 and Ex.P8, I do not find any reason to disbelieve the claim of appellant of his treatment and payments made against it. Taking note of the nature of injuries, appellant might have required physiotherapy and x-ray, hence I find it appropriate to allow and award the money receipt Ex.P30 wherein bill number is mentioned as 1267. Hence the appellant will be entitled for **Rs.45,000/-** towards his treatment.

21) Considering entire facts of the case, nature of injuries as mentioned in Ex.P8, as also ruling of Hon'ble Supreme Court in aforementioned cases, I

find it appropriate to award amount of compensation to appellant/claimant as under:

Appellant is entitled for Rs.30,000/- towards grievous injuries, Rs.20,000/- towards pain and suffering, Rs.9,000/- towards loss of earning for two months, Rs.15,000/- for loss of amenities and joy in life, Rs.13,928.44/- + 45,000/- for medical expenses, Rs.5,000/- for nutritious diet, and Rs.5,000/- for conveyance.

22) Now, appellant/claimant will be entitled for Rs.1,42,928.44/- (30000 + 20000 + 9000 + 15000 + 13928.44 + 45000 + 5000 + 5000), rounded off to Rs.1,42,928/-, instead of Rs.54,500/-.

23) 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.

24) Appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE