NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1573 of 2015

- Ram Gopal Karsh S/o Shri Ram, aged about 39 Years R/o Saragaon, Tahsil- Champa, District Janjgir-Champa, Chhattisgarh At Present R/o Darri, Tahsil- Katghora, Revenue and Civil District Korba, Chhattisgarh.

---Appellant

VERSUS

1. Ram Prakash Pandey S/o Het Ram Pandey, aged about 51 Years R/o Saragaon, Tahsil Champa, Revenue and Civil District Janjgir-Champa, Chhattisgarh **------Driver**

2. M/s. Prime Net Global Limited R/o Choubey Colony, Raipur, Through P.I.L. Champa, District Janjgir-Champa, Chhattisgarh

-----Owner

3. Reliance General Insurance Company Limited, Through Branch Manager, Branch Office, Raipur, District Raipur, Chhattisgarh

----Respondents

For Appellant	:	Mr. Dashrath Kushwaha, Advocate
For Respondent 2	:	Mr.Vaibhav Kartikeya Agrawal, Advocate on behalf of Mr. Om Prakash Agrawal, Advocate
For Respondent 3	:	Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

ORDER ON BOARD

09/09/2021

1. Challenge in this appeal is to the award dated 26.03.2015 passed by Learned Additional Motor Accident Claims Tribunal, Katghora C.G. (for short “Claims Tribunal”) in claim case no. 36/2011, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 in part, awarded Rs.2,49,071/- as total compensation in an injury case with interest @ 6% per annum from the date of filing of claim application till its realization.

2. Facts relevant for disposal of this appeal are, that on 13.02.2011 at about 6.30am, appellant was travelling on his bicycle near Chamri pond Saragaon. At that relevant time one truck bearing registration no. OR14 J 7051 (henceforth "offending vehicle") driven rashly and negligently by non-applicant 1 dashed bicycle driven by appellant and caused accident. In the accident, appellant suffered grievous injuries over his right leg apart from other injuries. He suffered crush injury over his right leg. Appellant after taking treatment from hospital has filed application under Section 166 of the Act seeking compensation of Rs.15,00,000/- pleading therein that on the date of accident he suffered crush injury and multiple fracture injuries on his right leg. On account of motor accidental injuries, he suffered permanent disability to the extent of 38% and is unable to do any work.

3. Non-applicants 1 and 2 submitted their reply to the claim application pleading therein that the accident was a result of negligence on the part of claimant himself. Non-applicant 1 was possessed with valid and effective driving licence on the date of accident. Offending vehicle was insured with non-applicant 3/ Insurance Company, as such, liability to satisfy the amount of compensation would be upon non-applicant 3.

4. Non-applicant 3/ Insurance Company submitted its reply denying the facts pleaded therein, it was further pleaded that on the date of accident non-applicant 1 was not possessed with valid and effective driving licence, as such, there was breach of policy conditions, hence, Insurance Company is not liable to satisfy amount of compensation.

5. Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties held that appellant suffered permanent disability on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant 1. Breach of policy conditions was not found to be proved. Tribunal held that appellant suffered 16% loss of earning capacity. Income of appellant is assessed as Rs. 4000/- per month and adding medical expenses of Rs. 1,41,551/- awarded total sum of Rs. 2,49,071/- as compensation.

6. Mr. Dashrath Kushwaha, learned counsel for appellant submits that learned Claims Tribunal erred in awarding meagre sum of compensation in the facts and circumstances of the case. Appellant suffered crush injury leading to multiple fracture injuries on his right leg. Appellant appeared before the Medical Board, upon examining by team of doctor issued disability certificate mentioning 38% permanent disability of appellant, but the Tribunal erroneously assessed loss of earning capacity to the extent of 16% only. He submits that Claims Tribunal ought to have assessed loss of earning capacity of appellant to the extent of 38% as mentioned in the disability certificate. Income assessed by Claims Tribunal of Rs. 4000/- per month only is not proper. Appellant on the date of accident was 39 years of age and was working under the Contractor, hence, Claims Tribunal ought to have assessed income of appellant as Rs. 8000/- per month as pleaded in the claim application. The Tribunal though held loss of earning capacity of appellant as 16% but not awarded any amount of compensation towards future prospects. Tribunal overlooking the documents with regard to treatment ie. Medical prescription and discharge ticket issued by several hospitals

where appellant took treatment erred in not awarding any amount of compensation towards other heads like conveyance, special diet, attendant, pain and sufferings, loss of amenities and joy in life and loss of income during the treatment period. It is also contented that Claims Tribunal erred in assessing age of appellant as 44 years overlooking the age of appellant as mentioned in the disability certificate issued by Medical Board and the pleadings of appellant wherein he pleaded his age 39 years. He submits that even if age of deceased could not be proved in the facts of the case then the age of appellant as mentioned in the disability certificate issued by Medical Board could have been considered. He submits that amount of compensation be suitably enhanced.

7. Mr. Sourabh Sharma, learned counsel for Respondent 3/ Insurance Company while opposing the submissions made by learned counsel for appellant would submit that the disability certificate issued by Medical Board mentions 38% permanent disability but the doctor examined by appellant to prove disability certificate in his evidence has stated that the permanent disability is with regard to part of body suffered injury and not for the whole body. For the purpose of calculating disability of whole body percentage of disability mentioned in the disability certificate is to be divided by 2.5%. In evidence disability suffered is stated as “foot dropped; ankle stiffness”. 2.5% of 38% comes little less than 16%. Tribunal after rationalizing the percentage of disability assessed loss of earning capacity and calculated amount of compensation. He submits that amount of compensation awarded by Tribunal is just and proper which does not call for any interference.

8. I have heard leaned counsel for the respective parties and also perused the record of claim case.

9. Appellant met with an accident on 13.2.2011. He took treatment initially in Orthocare centre of Dr. R.K. Das wherein he has been shown to be admitted from 15.02.2011 till 23.02.2011, where he underwent operation. Vide Ext. P-68, doctor recorded "crush injury right lower limb with degloving of skin; both bones right leg segmental fibula; skin loss over popliteal fossa and calf". Thereafter, appellant again took treatment at Ladikar Multi specialty Hospital, Lithotripsy Centre, Bilaspur where he remained admitted from 21.04.2011 to 08.06.2011. In discharge ticket, it is mentioned as "Two and a half month old fracture; Tibia and fibula right leg, complete loss of skin over whole leg from knee to ankle, gross infection & pus discharge. Vide Ext. P-66, appellant took treatment from Nayak Nursing Home, Champa, wherein the date of visit to hospital is mentioned as 04.01.2012. On diagnosis, it was found and mentioned in Ext. P-71 as:-

- "*right common femoral, superficial femoral and deep femoral arteries are showing normal color flow velocity & spectral waveform;*
- *right lower anterior, lower posterior tibial with dorslis pedis arteries shows good color with triphasic flow pattern;*
- *right popliteal artery and vein could not be visualized due to patient position;*
- *right upper anterior tibial and upper posterior tibial artery could not be visualized due to bandage."*

10. Disability certificate issued by Medical Board is placed on record as Ext. P-7 wherein cause of disability is shown to be right foot drop; ankle stiffness and percentage of disability is mentioned as

38% for all limb. Appellant examined himself as AW-1 to prove his case, AW-2 Mahavir Singh Rathore to prove the accident and AW-3 Dr. Rudrapal Singh to prove disability certificate. Doctor in his evidence has stated that the disability certificate was issued mentioning 38% permanent disability but for the whole body percentage of disability as mentioned in disability certificate is to be divided by 2.5%. Age of appellant has been mentioned as 40 years. He also pointed out that nature of disability suffered by appellant Ramgopal ie. foot drop and ankle stiffness of right leg.

11. Sofar as the submission made by learned counsel for appellant with regard to assessment of loss of earning capacity by Claims Tribunal is concerned, percentage of disability mentioned in the disability certificate and the evidence of doctor appears to be contradictory. In the disability certificate signed by team of doctors shows 38% disability in relation to his all limbs meaning thereby permanent disability of 38% for whole body. In the cases of grant of compensation under the Motor Vehicles Act it is to be looked into the result of loss of earning capacity due to permanent disability suffered by injured, considering his nature of employment/ occupation. In the case at hand, appellant failed to prove his nature of occupation, hence, in such circumstances, appellant can be treated as manual labourer and loss of his earning capacity is to be assessed on that basis. For labourer a person should be abled by all his four limbs whereas from the disability certificate issued by Medical Board Ext. P-7, it is mentioned that appellant suffered permanent disability to the extent of 38% on all his four limbs, therefore, to consider loss of earning capacity in the facts of the case and looking to the nature of occupation of appellant, I find it appropriate to assess loss of

earning capacity as 25% instead of 16% as assessed by Tribunal. Claims Tribunal in absence of proof of income considering the date of accident of the year 2011 has rightly assessed income of appellant as Rs. 4000/- per month.

12. Once it is held that appellant suffered loss of earning capacity due to permanent disability then he will suffer loss of earning for whole of his life, therefore, award of compensation towards future prospects is also to be considered. Award of compensation towards future prospects has been considered by Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680*** in which it is held that where the age of victim/ deceased was below 40 years of age and not in permanent employment, then there will be addition of 40% in the established income and addition of 25% where victim/ deceased was in the age group of 40-50 years.

13. In the case at hand, pleading of claimant is that he was 39 years of age on the date of accident and in the disability certificate issued by Medical Board, age of appellant is mentioned as 40 years. Considering the proceedings in which compensation is sought by filing appeal and the object of the Motor Vehicles Act, I find it appropriate to reckon the age of appellant as less than 40 years as mentioned in disability certificate and to add 40% of established income in the income of appellant towards future prospects. It is ordered accordingly.

14. Tribunal considering the age of appellant to be 44 years has applied multiplier of 14 whereas in view of age of appellant reckoned by this Court as below 40 years, appropriate multiplier will be 15. It is ordered accordingly. Tribunal has not awarded any

amount of compensation on other heads. The issue with regard to amount of compensation to be awarded on other heads in personal injury case has been considered by Hon'ble Supreme Court in ***R.D. Hattangadi v. Pest Control India Ltd.*** **reported in 1995 (1) SCC 551** and ***Rajkumar v. Ajay Kumar and another*** reported in **(2011) 1 SCC 343**.

15. In view of the above, considering the entirety of the facts and circumstances of the case, period of treatment of appellant and nature of injury, I find it appropriate to award Rs. 8,000 towards attendant for a period of 2 months, Rs. 10,000/- towards conveyance, Rs. 5,000/- towards special diet, Rs. 25,000/- towards pain and sufferings, Rs. 25,000/- towards loss of amenities and joy in life and Rs. 20,000/- towards loss of income for five months considering the period of treatment.

16. For the foregoing reasons, amount of compensation to be awarded to appellant/ claimant requires re-computation as under.

17. Income of appellant is assessed as Rs. 4000/- per month ie. Rs. 48000/- per annum. Upon adding 40% towards future prospects in the established income, total annual income of appellant will come to Rs. 67,200/-, as held in preceding paragraph; loss of earning capacity to be 25%, annual loss of earning capacity will come to Rs. 16,800/-. Upon applying multiplier of 15 to the annual loss of earning, total loss of earning will come to Rs. 2,52,000/- [Rs.16800x15]. Besides the loss of earning, appellant is further be entitled for Rs. 1,41,551/- towards medical expenses as awarded by learned Claims Tribunal.

18. Now the appellant shall be entitled for total sum of **Rs. 4,86,551/-** [Rs.2,52,000+ Rs.8,000+ Rs.10,000+ Rs.5,000+ Rs.25,000+ Rs.25,000+ Rs.20,000+ Rs.1,41,551] as compensation instead of Rs. 2,49,071/- as awarded by Claims Tribunal. Enhanced amount of compensation shall carry interest @ 7% p.a. from the date of filing of claim application till its realization. Other conditions of impugned award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Pawan