NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 846 of 2015

Ragnath Nareti S/o Jhirkuram Nareti, Aged About 25 Years, R/o Village Donde, Thana and Tahsil -Pakhanjore, Distt -Uttar Bastar, Kanker, Chhattisgarh.

---- Appellant

Versus

1. Vinay Rai S/o Hiralal Rai, Aged About 52 Years, R/o Village Satyanand Palli, Thana and Tahsil -Pakhanjore, Distt -Uttar Bastar Kanker, Chhattisgarh.
2. Shivkumar @ Shivshanker Markam, S/o Barju Markam, Aged About 42 Years, R/o Sohgaon, Thana and Tahsil Pakhanjore, Distt -Uttar Bastar Kanker, Chhattisgarh.
3. The Oriental Insurance Ltd. Through M.B. Trade Centre Second Floor, Near Ghadi Chowk, Dhamtari, Chhattisgarh.

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

For Appellant	:	Mr. Shalvik Tiwari, Advocate on behalf of Shri Parag Kotecha, Advocate.
For Respondent Nos.1 and 2	:	None.
For Respondent No.3	:	Mr. N.K. Malviya, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

12/08/2021

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') challenging the award dated 30.03.2015 passed by learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District - Uttar Bastar, Kanker (CG) (for short 'Tribunal') in Claim Case No.28/13, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.9,500/- in injury case alongwith interest @ 6% per annum. While exonerating Insurance Company from its liability, fastened liability upon non-applicant Nos.1 & 2/owner & driver of offending vehicle to pay the amount of compensation.

2. Facts relevant for disposal of this appeal are that on 29.06.12 appellant (injured) alongwith his friends Rajendra Jain, Dev Nath, Suresh Komre & Rajesh Jain was traveling on goods vehicle Tata-709 bearing registration

No.CG-04-JC-3253, (for short 'offending vehicle'), after loading maize/corn on offending vehicle. When they were proceeding towards Rajnandgaon from Bande, on the way near village PV 78, Belgaal Square at about 5:00 – 5:30 pm, offending vehicle turned turtle due to rash and negligent driving of non-applicant No.2. In the aforementioned accident, appellant suffered grievous injuries. Rajendra Jain, Suresh Komre & Devkumar also suffered grievous injuries. Appellant was taken to Government Hospital, Pakhanjur, from where he was referred to District Hospital, Kanker.

3. Appellant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.1,45,000/- pleadings therein that on the date of accident, he was abled bodied person aged about 25 years, working as labourer and earning Rs.6,000/- per month. In the accident, he suffered fracture injury on his left thigh.

4. Non-applicant Nos.1 & 2/owner and driver of offending vehicle, submitted reply to application, denying facts pleaded therein. It was further pleaded that non-applicant No.1 employed non-applicant No.2 after perusing driving licence and looking to his experience. Non-applicant No.2 in discharge of his duty as ‘driver’ took offending vehicle to various cities but at no point of time Road Transport Officer or any other authority has pointed that driving license possessed by him to be fake or false. Non-applicant No.1 was not aware of fact that driving license possessed by non-applicant No.2 is fake and forged. Offending vehicle was insured with non-applicant No.3, hence liability, if any, to satisfy amount of compensation would be of non-applicant No.3.

5. Non-applicant No.3/Insurance Company also submitted its reply and resisted the claim. It was further pleaded that offending vehicle was plied

in breach of policy condition as on the date of accident non-applicant No.2 was not having valid and effective driving license to drive offending vehicle.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that appellant suffered grievous injuries on his left leg in motor-accident due to rash and negligent driving of offending vehicle by non-applicant No.2. Breach of Policy condition was found to be proved. Tribunal allowed application in part, awarded total compensation of **Rs.9,500/-** ie (i) Rs.2,000/- towards pain and sufferings, (ii) Rs.2,500/- towards expenses, (iii) Rs.3,000/- towards loss of income for a period of one month, (iv). Rs.2,000/- towards special diet.

7. Learned counsel for appellant submits that Tribunal erred in awarding very meager amount of compensation overlooking nature of injuries suffered by appellant. Tribunal has not awarded any amount of compensation towards permanent disability even when the appellant has placed on record disability certificate as Ex.P-9 issued by District Medical Board wherein there is mention of 15% permanent disability. On account of motor-accidental injuries, appellant suffered fracture of left femur to prove the same he has placed on record in-patient ticket of Govt. District Hospital, Kanker as Ex.P-8 where he took treatment from 29.06.2012 to 02.07.2012. Tribunal held that there was breach of policy condition because driver was not having valid and effective driving license on the date of accident, therefore, Tribunal ought to have directed Insurance Company to first deposit entire amount of compensation and then to recover it from the insured.

8. There is no representation on behalf of respondent Nos.1 & 2 despite service of notice.

9. Learned counsel for respondent No.3-Insurance Company submits that Tribunal considering pleadings, evidence and documents available on record awarded just amount of compensation which does not call for any interference. Tribunal recorded finding that injured persons were traveling on goods vehicle, risk of gratuitous passenger was not covered under the policy issued by respondent No.3-Insurance Company. Appellant along-with other labourers was traveling in goods vehicle, which amounts to breach of policy conditions. Tribunal further considered that license possessed by Non-applicant No.2 to be forged.

10. Heard learned counsel for the parties and perused record of claim case.

11. So far as submissions of learned counsel for appellant with regard to permanent disability is concerned, perusal of record shows that appellant placed on record in-patient ticket of Jeewan Deep Samity, Government Hospital, Kanker as Ex.P-8, which mentions that he was brought for treatment in hospital at 11:53 pm on 29.06.2012 where upon examination, fracture of left femur was diagnosed. Further placed on record disability certificate as Ex.P-9 issued by District Medical Board in which it is mentioned that appellant suffered 15% permanent disability. To prove permanent disability, appellant examined Dr. Vijay Shukla as AW-2, who proved issuance of disability certificate Ex.P-9. In his evidence, Dr.Vijay Shukla has categorically stated that appellant left lower limb was shortened by 1.5 inches.

12. In the case of **R.D. Hattangi vs. Pest Control (India) Pvt. Ltd. & ors** reported in **(1995) 1 SCC 551**, 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[1],** 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:-

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

1 (2011) 1 SCC 343

> 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). It is apparent that appellant not only prove his injuries by placing medical document of Jeewan Deep Samity, Government Hospital, Kanker as Ex.P-8 also placed on record disability certificate issued by District Medical Board as Ex.P-9 and proved the same by examining doctor AW/2. Tribunal has not considered these document for assessing just compensation in favour of appellant towards injuries suffered by him.

15.In view of aforementioned documentary and oral evidence of doctor available on record, I find it appropriate to award lumpsum compensation of Rs.25,000/- towards permanent disability. Appellant will be further entitled for Rs.5,000/- towards pain and sufferings, Rs.2,500/- towards medical expenses, Rs.8,000/- towards loss of income for a period of two months, Rs.2,000/- towards special diet, Rs.1,000/- towards conveyance expenses.

16.Now, appellant is entitled for a total compensation of R**s.43,500/-** (Rs.25,000 + Rs.5,000 + Rs.2,500 + Rs.8,000 + Rs.2,000 + Rs.1,000/-) instead **of Rs.9,500/-** 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.

17. As it is clear that deceased was a 'gratuitous passenger' traveling in goods vehicle, he was not an employee of insured and risk of deceased was not

covered under policy, hence, direction of pay and recover cannot be issued to insurer/respondent No.3. Prayer made by learned counsel for the appellant for issuance of direction of pay and recover cannot be allowed and it is hereby rejected.

18. In result, appeal is allowed in part and impugned award stands modified to the extent as indicated above. Liability to satisfy amount of compensation shall be upon non-applicant Nos.1 and 2.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-