

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 159 of 2016

Pusau Ram @ Sujeet Kumar Kewat, S/o Horilal Kewat, Aged About 27 Years, R/o Lakhodana Changori, PS -Kota, Tahsil Kota, District Bilaspur Chhattisgarh.

---- Appellants

Versus

1. Ramlal Yadav S/o Shri Ram Yadav, Aged About 43 Years, R/o Village Mitthu Nawagaon, PS. Kota, Tahsil Kota, District Bilaspur Chhattisgarh.
2. Late Sh. Dadu Ram Singh S/o Late Sh. Chhttur Singh, Through His Wife Smt. Ramayan Bai, W/o Late Sh. Dadu Ram, Village Litia, PS. Kota, Tahsil Kota, District Bilaspur Chhattisgarh.
3. I.C.I.C.I. Lombard General Insurance Company Limited, Through Branch Manager, Branch Office 2nd Floor V. R. Plaza, Link Road, Bilaspur, Tahsil and District Bilaspur Chhattisgarh.

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

For Appellants	: Mr. Rohan Patnaik, Advocate on behalf of Mr. Gautam Khetrpal, Advocate.
For Respondent Nos.1 and 2	: None.
For Respondent No.3	: Mr. Tessy Abraham, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

10/09/2021

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned 9th Motor Accident Claims Tribunal, Bilaspur, (CG) (for short 'Tribunal') vide award dated 29.10.2015 in Claim Case No.98/2014, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.2,10,200/- in injury case.
2. Facts relevant for disposal of this appeal are that 14.10.13 at about 10:00 pm, appellant alongwith his friend Indal Das (Pillion Rider) was returning back to his house situated in village Lakhodana from Kota on his motorcycle bearing registration No.CG-10-EA-8112 after closing his repairing shop/garage. When they reached near Family Daba, another motorcycle bearing CG-10-EE-1304 (for short 'offending vehicle') driven rashly and negligently by non-applicant No.1, dashed motorcycle of

appellant and caused accident. In the accident, apart from other injuries appellant suffered grievous injuries on his head. He was immediately taken to Government Hospital, Kota and thereafter to CIMS, Hospital, Bilaspur from where he was taken to Mekahara Hospital, Raipur. But looking to his condition, he was again brought back to Bilaspur for his treatment at Apollo Hospital, Bilaspur, where he took treatment as 'in-patient'.

3. Appellant-claimant filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.12,00,000/- pleadings therein that on the date of accident, appellant was working as motorcycle mechanic and earning Rs.9,000/- per month. In the accident, he suffered fracture injury on his head. He took treatment from 15.10.13 to 24.10.13 at Apollo Hospital, Bilaspur and during this period, he underwent head surgery. On account of motor-accidental injuries, he has suffered permanent disability.
4. Non-applicant Nos.1 & 2/driver and owner offending vehicle, submitted reply to claim application denying the facts pleaded therein. Accident from offending vehicle is also denied. It was further pleaded that accident was result of negligence on the part of claimant himself. On the date of accident, offending vehicle was insured with non-applicant No.3-Insurance Company. Hence, liability if any, to pay the amount of compensation would be upon respondent No.3.
5. Non-applicant No.3/Insurance Company also submitted its reply and resisted the claim. It was further pleaded that there was breach of policy condition as on the date of accident non-applicant No.1 was not having valid and effective driving license. Hence, Insurance Company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that claimant suffered motor-accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1. Breach of Policy condition and contributory negligence on the part of claimant was not found to be proved. Accordingly, Tribunal allowed application in part, awarded total compensation of Rs.2,10,200/- including Rs.1,90,200/- towards medical expenses alongwith interest @ 7.5% per annum, fastened liability upon non-applicant Nos.1 to 3, jointly and severally to pay amount of compensation.
7. Learned counsel for appellant/claimant submits that Tribunal erred in awarding very meager amount of compensation. Tribunal awarded medical bills placed on record and Rs.20,000/- towards pains and suffering only and have not awarded any amount of compensation towards other pecuniary/non-pecuniary damages suffered by appellant. Tribunal not awarded any amount towards conveyance expenses even when the facts and evidence available on record clearly shows that after accident, he was immediately taken to Government Hospital at Kota, thereafter shifted to CIMS Hospital Bilaspur from where looking to nature of injuries, he was referred to Mekahara Hospital, Raipur. Thereafter, he was again brought back to Bilaspur and admitted in Apollo Hospital for treatment. Appellant has also placed on record bills for shifting him by Ambulance and other taxi bills, but that were not considered and awarded by Tribunal. Amount under grievous injuries, loss of amenities and joy in life, attendant, special diet and loss of income during the period of treatment is not awarded. Hence, amount of compensation be suitably enhanced.

8. Learned counsel for respondent No.3-Insurance Company submits that Tribunal awarded entire medical bills placed on record by claimant. Other bills of Ambulance and Taxi were not proved by examining owner of Travel Agency or the person who had issued bills of Ambulance and Taxi. Hence, Tribunal is justified in not considering and awarding those bills. Tribunal already awarded sufficient amount towards pains and suffering looking to the injuries of appellant. After considering the nature of injuries, bills and evidence brought on record by claimant, Tribunal awarded just amount of compensation to claimant which does not call for any interference.
9. I have heard learned counsel for the parties and perused record of claim case.
10. Perusal of record would show that accident took place near Tahsil Kota, Distt Bilaspur. FIR was lodged in PS -Kota on 16.11.13 after discharge of appellant from Hospital. In FIR it is mentioned that accident took place near Family Dhaba at Kota. In pleadings and evidence, appellant specifically stated that after accident, he was taken to Government Hospital, Kota from where he was referred to CIMS, Hospital, Bilaspur but looking to mis-management in Hospital and for taking proper care of patient, he was shifted to Mekahara Hospital, Raipur through Ambulance. Doctor present there examined the appellant and advised the attendant of appellant to shift him to Apollo Hospital upon which, appellant was again brought back to Bilaspur and admitted in Apollo Hospital Bilapur on 15.10.2013. Discharge ticket of Apollo Hospital is placed on record as Ex-A/30 wherein date of admission of appellant is mentioned as "15.10.2013" and date of discharge as "24.10.2013". In-patient bills of Apollo Hospital

are placed on record as Ex-A-9 wherein date and time of admission of appellant in Apollo Hospital is mentioned as "15.10.2013".

11. In 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."

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.

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."

12. 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 :

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.

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 account of permanent disability - item (ii)(a). We are concerned

¹ (2011) 1 SCC 343

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.”

13. 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 accident took place in night at about 10:00 pm on 14.10.2013, thereafter appellant got admitted in Apollo Hospital on 15.10.10 at 10:00 pm, photograph of appellant after accident is available on record from which it appears that pleadings and statement of appellant that after accident he took treatment at Government Hospital, Kota, CIMS Hospital, Mekahara Hospital Raipur and Apollo Hospital, Bilaspur to be correct and not concocted. But Tribunal overlooking these evidence has not awarded any amount towards conveyance expenses.
14. Appellant in support of pleadings in respect of expenditure incurred by him towards conveyance has filed receipt of Rs.14,700/- of Amit Travels for Ambulance charges on 15.10.13, Rs.5,000/- of Sapna Tours and Travels for transportation from Kota to CIMS, Rs.2,000/- of receipt dated 15.11.13 of Sapna Tours and Travels from Kota to Apollo.
15. Considering the aforementioned receipts available on record though the appellant has not examined author of cash memo but in the facts and circumstances of this case and looking to the nature of injuries and treatment taken by appellant, I find it appropriate to award lumpsum amount of Rs.20,000/- towards conveyance expenses. It is ordered accordingly.
16. Appellant in support of his pleadings and claim to prove nature of injuries has placed on record discharge summary of Apollo Hospital as Ex.A/30, perusal of which shows that he was diagnosed “Left fronto-teporo-parietal

acute extradural hematoma with depresses” and operated for “Left fronto-temporo-parietal craniotomy & evacuation of acute extradural”.

17. In CT Scan following injuries have been found by the doctors :-

“**CT Scan Brain (P) done which showed** -Multiple sino-orbital & Cranial fractures with hemorhages, EDH along left frontal & parietal convexities, contusions in left basitrontal.

18.Appellant underwent surgery and took treatment as in-patient from 15.10.13 to 24.10.13, injuries suffered by appellant are grievous in nature but Tribunal has not awarded any amount towards grievous injuries, hence, I find it appropriate to award Rs.20,000/- towards grievous injuries.

19.Considering the nature of injuries, I find it fit to award Rs.10,000/- towards loss of amenities and joy in life, Rs.5,000/-towards attendant, Rs.5,000/- towards special diet.

20.True it is that appellant could not able to prove his nature of occupation, but on the date of accident, appellant was aged about 27 years, therefore, looking to the nature injuries, he might not be able to perform any work for some time for his earning, hence, I find it appropriate to award lumpsum amount of Rs.15,000/- towards loss of income during the period of treatment.

21.Appellant will be further entitle for Rs.1,90,200/- towards treatment and medical expenses & Rs.20,000/- towards pains and sufferings, as awarded by Tribunal.

22.Now, appellant/claimant is entitled for total compensation of **Rs.2,85,200/-**
(Rs.20,000/- + Rs.20,000/- + Rs.10,000/- + Rs.5,000/- + Rs.5,000/- +

Rs.15,000/- + Rs.1,90,200/- + Rs.20,000/-) instead of **Rs.2,10,200/-** as awarded by Tribunal. This amount of compensation will carry interest @ 7.5% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

23. In result appeal is allowed in part and impugned award stands modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-