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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 907 of 2015**

Rekhram, son of Shri Kapoor Singh Dhruw, aged about 33 years, Caste Gond, resident of Village Kanesar, Police Station and Tahsil Chhura, District Gariyaband, Chhattisgarh.

---- Appellant**Versus**

1. Narottam Kumar Kuldeep, son of Aasharam Kuldeep, aged about 22 years, resident of Village Shobha, Tahsil Mainpur, District Gariyaband, Chhattisgarh.
2. Onkar Shah, son of Late Trilok Shah, aged about 55 years, resident of Village Chhura, Police Station and Tahsil Chhura, District Gariyaband, Chhattisgarh.
3. The Branch Manager, through the Oriental Insurance Company Limited, Chawla Complex, Sai Nagar, Devendra Nagar Road, Raipur, Police Station and District Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Shri A.D. Kuldeep, Advocate
For Respondents 1 & 2	: None
For Respondent No. 3	: Shri H.S. Patel, Advocate

(Proceedings through Video Conferencing)**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****23.08.2021**

1. Challenge in this appeal is to the impugned award dated 13.05.2015 passed by Additional Motor Accident Claims Tribunal, Gariyaband, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.19 of 2014 whereby learned Claims Tribunal allowed an application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') in part and awarded Rs.29,857/- as total compensation along with interest at the rate of 9% per annum from the date of filing of claim application till its realization in an injury case.

2. Brief facts relevant for disposal of this appeal, are that, on 06.01.2014, appellant was travelling on motorcycle along with one Tikam Dhruw and going to Bhainsamuda from Village Pendri, while so, when they reached near Kharkhara-Sivni Turn, one Scorpio vehicle bearing No.CG-06/A/8811 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 coming from Chhura, dashed the motorcycle of appellant and caused accident, In the said accident, appellant suffered grievous injuries over his head, nose, right leg, waist and other parts of body. Appellant was initially taken to Community Health Centre, Chhura, District Gariyaband from where he was referred to higher Hospital. Appellant was admitted at Dr. Bhimrao Ambedkar Memorial Hospital, Raipur, took treatment as inpatient from 06.01.2014 to 27.01.2014.
3. After recovery from injuries, appellant filed an application under Section 166 of M.V. Act seeking total compensation of Rs.45,00,000/- pleading therein that in motor accident, he suffered fracture injury over his right tibia and fracture of pelvic bone leading to permanent disability. Prior to date of accident, appellant was working as Labourer, but on account of motor accidental injuries, he is not able to perform his work, which he was doing prior to the date of accident.
4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application, denying the

facts pleaded therein. It was further pleaded that amount of compensation claimed is highly exaggerated. On the date of accident, non-applicant No.1 was possessed with valid and effective driving licence and offending vehicle was insured with non-applicant No.3, as such, liability, if any, to satisfy the compensation would be upon non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, resisting the claim. It was further pleaded that offending vehicle was insured as 'private vehicle', but on the date of accident, it was being plied as 'commercial vehicle', there was breach of policy conditions. It was further pleaded that appellant not suffered any permanent disability.
6. On appreciation of pleadings, evidence and material brought on record by the respective parties, Tribunal held that Rekhram Dhruw suffered motor accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1, permanent disability and breach of policy conditions were not found to be proved and awarded Rs.29,857/- as total compensation.
7. Shri A.D. Kuldeep, learned counsel for the appellant would submit that learned Claims Tribunal erred in awarding meagre amount of compensation. He further submits that in the accident, appellant suffered fracture of pelvic and fracture of tibia-fibula. He took treatment as inpatient from

06.01.2014 to 27.01.2014. Appellant appeared before the Medical Board on 12.03.2014 and thereafter, on 05.11.2014. In disability certificate dated 12.03.2014, Medical Board assessed permanent disability of appellant to the extent of 80% vide Ex.P/25 and in disability certificate dated 05.11.2014, which was issued by same Medical Board, found 60% permanent disability on the appellant vide Ex.P/8. It is contended that learned Claims Tribunal has not awarded any amount towards permanent disability misreading the evidence of Dr. G.M. Dhruw (AW-2), who is member of Medical Board. In alternate, it is submitted that Claims Tribunal ought to have awarded compensation towards grievous injuries if not found permanent disability proved. It is further contended that learned Claims Tribunal has awarded an amount of Rs.6,000/- towards loss of income during the period of treatment assessing the income of appellant to be Rs.3,000/- per month, Rs.6,000/- towards special diet, conveyance expenses and attendant, Rs.2,857/- towards medical expenses and Rs.15,000/- towards mental pain and agony, which is on lower side. He lastly submits that considering the nature of injuries, disability certificate issued by Medical Board and evidence of Dr. G.M. Dhurw (AW-2) being member of Medical Board, amount of compensation be enhanced suitably.

8. Per contra, Shri H.S. Patel, learned counsel for respondent No.3/Insurance Company supporting the award passed by learned Claims Tribunal, would submit that appellant failed to prove permanent disability suffered by him. Two disability certificates are placed on record, but doctor examined to prove the disability certificate could not be able to justify the reason for issuance of disability certificates, hence, learned Claims Tribunal rightly disbelieved the evidence of disability suffered by appellant to the extent of 60%. He further submits that learned Claims Tribunal awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference.
9. I have heard learned counsel appearing for the respective parties and perused the record carefully.
10. Perusal of impugned award would show that learned Claims Tribunal awarded Rs.6,000/- towards loss of income during the period of treatment, Rs.6,000/- towards special diet, conveyance expenses and attendant, Rs.2,857/- towards medical expenses and Rs.15,000/- towards mental pain and agony.
11. To appreciate the submissions made by learned counsel for the appellant with regard to nature of injuries and permanent disability, I have perused the documents placed on record by the appellant in support of his contention. MLC report is placed on record as Ex.P/5 dated 06.01.2015, i.e. date of

accident wherein it is mentioned that fracture of right lower limb 1/3rd. Ex.P/7 is discharge ticket of Dr. Bhimrao Ambedkar Memorial Hospital, Raipur showing admission of appellant on 06.01.2014 and date of discharge is 27.01.2014. Appellant took treatment for about 21 days as inpatient. In discharge ticket, it was diagnosed as fracture of acetabular/acetabulum right and fracture of tibia-fibula 1/3rd right leg apart from other injuries. After about 1½ months of his discharge from Dr. Bhimrao Ambedkar Memorial Hospital, Raipur, appellant appeared before District Medical Board, Gariyaband because appellant is resident of Village Kanesar, Police Station and Tahsil Chhura, District Gariyaband. Medical Board examined the appellant on 12.03.2014 and issued disability certificate (Ex.P/25) mentioning 80% disability. Appellant again appeared before the District Medical Board Gariyaband on 05.11.2014 wherein after examination of appellant, Medical Board assessed 60% disability and further it is mentioned that there is no necessity of revaluation of percentage of disability vide Ex.P/8.

12. To prove the disability certificate, appellant examined Dr. G.M. Dhruw (AW-2), who in his evidence has admitted that Medical Board issued two disability certificates Ex.P/25 dated 12.03.2014 and Ex.P/8 dated 05.11.2014. He admitted that he found fracture of right hip and fracture of

tibia-fibula, for which, Medical Board issued disability certificate mentioning 80% disability. He further admitted in view of disability certificate vide Ex.P/8, appellant will face problems in execution of work. Doctor who was examined before Claims Tribunal was Orthopedic Specialist and issued disability certificate Ex.P/8 showing disability with respect to right leg. He was cross-examined extensively. He stated that Chairman of Medical Board was not Orthopedic Surgeon or Specialist and he is not aware as to how it is mentioned "disability certificate is for one year". Disability suffered by the appellant cannot be cured in one year.

13. Taking into consideration the nature of injuries suffered by appellant, part of body, nature of work and fact that appellant took treatment for about 21 days as inpatient at Dr. Bhimrao Ambedkar Memorial Hospital, Raipur and further two disability certificates (Ex.P/25 and Ex.P/8) issued by District medical Board, Gariyaband, which are proved by one of the doctor of Medical Board who is Orthopedic Specialist, in the considered opinion of this Court, learned Claims Tribunal erred in disbelieving the evidence brought on record by the appellant with respect to disability. The finding recorded by learned Claims Tribunal to the effect that appellant failed to prove the disability, is not sustainable and is hereby set aside.

14. Now, the question would arise as to what would be loss of earning capacity in view of nature of permanent disability suffered by him. The occupation of appellant is shown as Labourer. For working as Labourer, a person should have all the four limbs healthy and working, if any one of the limb out of four suffers any disability, then definitely Labourer would suffer loss in his earning capacity. Dr. G.M. Dhurw, Orthopedic Surgeon/Specialist has clearly stated that disability shown in disability certificate (Ex.P/8) is with regard to affected part of body. Appellant suffered permanent disability on account of fracture suffered by him in right acetabulum bone and fracture of tibia-fibula 1/3rd right leg. Looking to nature of occupation i.e. Labourer as pleaded and stated by appellant/claimant, he has to do heavy work, lift carry load, has to walk from one place to another for the purpose of work, hence, if not entire 60% to be assessed as loss of earning capacity of appellant, then also looking to the nature of injuries, part of body affected, evidence of Dr. G.M. Dhruw (AW-2) and disability certificates (Ex.P/25 and Ex.P/8), in the opinion of this Court, loss of earning capacity of appellant can be assessed as 20%. It is ordered accordingly.
15. The aforementioned assessment of loss of earning capacity by this Court is upon considering ruling of Supreme Court in case of **R. D. Hattangadi v. Pest Control (India) Pvt. Ltd.**

and others reported in **(1995) 1 SCC 551** and **Raj Kumar v. Ajay Kumar and another** reported in **(2011) 1 SCC 343**.

16. Learned counsel has assessed the income of appellant as Rs.3,000/- per month, which in the opinion of this Court considering the date of accident i.e. 06.01.2014 and age of appellant as 34 years, is on lower side. In absence of proof of income, proper course of assessing the income of victim is to be on notional basis, for which, certain factors like nature of occupation, age of victim, wage structure, cost of living, price index and date of accident etc. are required to be taken into consideration. Upon taking into consideration the aforementioned factors, I find it appropriate to reckon the income of appellant as Rs.4,500/- per month treating him to be manual Labourer. As this Court has held that appellant suffered loss of earning capacity to the extent of 20%, therefore, amount of compensation is to be assessed by applying multiplier system.
17. Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** has considered the issue of award of compensation towards future prospects and held that where the victim/deceased is less than 40 years of age and not in permanent employment, there shall be addition of 40% of established income towards future prospects for ascertaining total income on the date of accident. In the case at hand, appellant was less than 40

years of age on the date of accident, hence, I find it appropriate to add 40% of established income towards future prospects. It is ordered accordingly.

18. Apart from the medical expenses, learned Claims Tribunal has awarded Rs.6,000/- towards loss of income during the period of treatment for two months, Rs.6,000/- towards special diet, conveyance expenses and attendant and Rs.15,000/- towards mental pain and agony. The award of compensation awarded on aforementioned heads in the fact of the case, appears to be on lower side.
19. Hon'ble Supreme Court has issued guidelines for awarding amount of compensation in personal injury cases in case of **R. D. Hattangadi v. Pest Control (India) Pvt. Ltd.** (supra) and held thus :

“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.”

20. For the foregoing reasons as well as the facts and circumstances of the case, I deem it fit and proper to recalculate the amount of compensation as under :

Income of appellant is assessed as Rs.4,500/- per month and Rs.54,000/- per annum. By adding 40% of the income towards future prospects, total annual income of appellant will come to Rs.75,600/- ($54,000 \times 40\% = 21,600$ and $54,000 + 21,600$). As this Court held that appellant suffered 20% loss of earning capacity, annual loss of income of appellant will come to Rs.15,120/- ($75,600 \times 20\%$). On the date of accident, appellant was shown to be in age group of 31-35 years of age, therefore, in view of law laid down by Hon'ble Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, appropriate multiplier would be 16. By applying the multiplier of 16 to annual loss of income, total loss of future income of appellant will come to Rs.2,41,920/- ($15,120 \times 16$).

Apart from above loss of income, appellant will be further entitled for Rs.20,000/- towards loss of amenities and joy in life, Rs.20,000/- towards pain and suffering, Rs.18,000/- ($4,500 \times 4$) towards loss of income during the period of treatment, Rs.10,000/- towards conveyance expenses, Rs.5,000/- towards special diet, Rs.6,000/- towards attendant and Rs.2,857/- towards medical expenses (as awarded by learned Claims Tribunal).

21. Now, appellant/claimant is entitled for total compensation of Rs.3,23,777/- ($2,41,920 + 20,000 + 20,000 + 18,000 +$

10,000 + 5,000 + 6,000 + 2,857) instead of Rs.29,857/- as awarded by learned Claims Tribunal. Enhanced amount of compensation shall carry interest at the rate of 7% per annum from the date of filing of claim application till its realization. Liability to satisfy the amount of compensation shall be upon non-applicants No.1 to 3 jointly and severally. Other conditions imposed by learned Claims Tribunal will remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh