NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 365 of 2015

Nathuram Suryavanshi S/o Banuram Suryavanshi, Aged About 39 Years, R/o Village Koudiya, P.S. Sipat, District Bilaspur Chhattisgarh.

---- Appellant

Versus

1. Ramesh Kumar Vijay S/o Ramlal, Aged About 23 Years, R/o Village Hindadih, P.S. Sipat, District Bilaspur, C.G., Through Owner, M/s Hind Energy And Kole Benification India Pvt. Ltd. Proprietor-Satish Agrawal Office First Floor, Rama Trade Center, Opposite Rajive Plaza, Bush Stand Bilaspur, Chhattisgarh.
2. M/s Hind Energy And Kole Benification (India) Pvt. Ltd. Proprietor-Satish Agrawal, Office First Floor, Rama Trade Center, Opposite Rajive Plaza, Bus Stand Bilaspur, Chhattisgarh.
3. Bajaj Allianz General Insurance Company Ltd. Through Branch Manager Shop No. O.C.-2 Chhattisgarh Complex, Opposite To Raja Hotel, Near Bus Stand, Tahsil And District Bilaspur, C.G. At Present 3rd Floor Gurukripa, Ashish Auto Mobile Vayapar Bihar Road, Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	: Shri Anand Kumar Gupta, Advocate
For Respondents No.1 & 2	: None
For Respondent No.3	: Shri Aditya Pandey, Advocate on behalf of Shri Abhishek Sinha, Advocate

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Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

28.01.2021

1. Appellant/claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated

28.07.2014 passed by the Fourth Additional Member to the Court of First Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.14 of 2013 whereby learned Claims Tribunal allowed the application in part and awarded Rs.4,55,000/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal, are that, on 05.01.2011, appellant/claimant was travelling on Auto-rickshaw from Nawadeeh Chowk to Bilaspur, when Auto-rickshaw reached near pond just ahead Nawadeeh Chowk, one Hyva Truck bearing No.CG-10/C/3428 (hereafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the Auto-rickshaw, and caused accident. In the aforesaid accident, appellant/claimant suffered grievous injuries over his person including injury over his right elbow, left arm, left hip and both the knees. During the course of treatment, it was diagnosed that there was fracture of pelvic bone. Appellant was immediately taken to Primary Health Center, Seepat, from where, he was referred to higher Hospital, upon which, he was admitted at Chhattisgarh Institute of Medical Sciences (CIMS), Hospital Bilaspur (C.G.). Accident was reported to concerned Police Station, based upon which, crime was registered against non-applicant No.1.

3. After recovery from injuries to some extent,

appellant/claimant filed an application under Section 166 of the M.V. Act pleading therein that he suffered grievous injuries over his right elbow, left arm, left hip and both the knees, he underwent operation, steel rod was implanted from waist till thigh. It was further pleaded that on account of injuries suffered by him, he suffered permanent disability, deprived of his earning and claimed Rs.13,74,000/- as total compensation on different heads.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application pleading therein that accident was a result of negligence on the part of driver of the Auto-rickshaw, in which, appellant/claimant was travelling. It was further pleaded that driver, owner and insurer of Auto-rickshaw have not been impleaded as party respondents, hence, claim application was not maintainable on account of non-joinder of necessary party. Injuries suffered by appellant/claimant was simple in nature, but only to get higher amount of compensation, false case has been setup. Offending vehicle was insured with non-applicant No.3, if it is found that non-applicant No.1/driver of offending vehicle is negligent, then non-applicant No.3/Insurance Company is liable to satisfy the amount of compensation.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made therein,

pleaded that accident was a result of rash and negligent driving of Auto-rickshaw by non-applicant No.1. It was further pleaded that there was no negligence on the part of non-applicant No.1 in the facts of the case, it is a case of contributory negligence. It was also pleaded that claim case was not maintainable due to non-joinder of necessary party because driver, owner and insurer of Auto-rickshaw have not been impleaded as party non-applicants. Non-applicant No.1 was not possessed with valid and effective driving licence and there was no valid permit and fitness of the offending vehicle.

6. On appreciation of pleadings, evidence and material placed on record by respective parties, learned Claims Tribunal allowed the application filed under Section 166 of the M.V. Act in part and while assessing 50% loss of earning capacity due to permanent disability awarded Rs.4,55,000/- as total compensation.

7. Shri Anand Kumar Gupta, learned counsel for the appellant/claimant submits that learned Claims Tribunal looking to the nature of permanent disability, part of the body affected and occupation of appellant/claimant to be of Mason ought to have assessed 100% loss of earning capacity. Due to the nature of injuries and disability appellant/claimant is not able to do any work. He further pointed out that learned Claims Tribunal has assessed the

income of deceased as Rs.4,500/- per month only whereas he was working as Mason, which comes within the category of skilled labour. It is contended that income ought to have been assessed as Rs.6,000/- per month. Amount of compensation towards future prospect is not awarded overlooking the fact that appellant/claimant was only 39 years of age on the date of accident. Claims Tribunal apart from amount of compensation towards loss of earning capacity has awarded consolidated amount of Rs.50,000/- only towards medical treatment, pain and suffering, attendant, transportation and nutritious diet, which is much on the lower side. No amount is awarded towards loss of income during the period of treatment, loss of amenities and joy in life. He submits that amount of compensation be enhanced suitably.

8. Per contra, Shri Aditya Pandey, learned counsel for respondent No.3/Insurance Company submits that taking into consideration the date of accident i.e. of 05.01.2011, learned Claims Tribunal has correctly assessed the income of appellant/claimant. Claims Tribunal upon accepting disability certificate placed on record has assessed 50% loss of earning capacity and calculated the amount of compensation. It is contended that amount of compensation calculated and awarded is just and proper in the facts and circumstances of the case, which does not call for any

interference.

9. We have heard learned counsel for the respective parties and perusal the record carefully.

10. Appellant/claimant in support of claim application has filed documents of criminal case wherein he has placed on record medical slip of Radiologist Department of CIMS Hospital, Bilaspur. As per discharge ticket of CIMS Hospital, Bilaspur, it is shown that appellant/claimant took treatment as inpatient from 07.01.2011 to 08.02.2011. He again took treatment at Gayatri Hospital, Bilaspur from 08.02.2011 to 18.02.2011 where he undergone operation. Disability certificate placed on record as Ex.A/80 issued by District Medical Board, Bilaspur mentioning 50% disability. Claims Tribunal has assessed the loss of earning capacity to the extent of 50%. When learned Claims Tribunal came to the conclusion that appellant/claimant suffered loss of earning capacity to the extent of 50%, then Claims Tribunal ought to have awarded loss of future prospects also as held by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**, the loss of earning capacity is for whole of his life. In the case at hand, appellant on the date of accident was 39 years of age, hence, there shall be addition of 40% of established income towards future prospects for calculating the total income of appellant/claimant.

11. Learned Claims Tribunal has not awarded any amount towards loss of income during the period of treatment. Looking to the nature of injuries, period of treatment, part of body where appellant/claimant suffered permanent disability, we find it appropriate to award loss of income during the period of treatment for five months as Rs.22,500/- (4,500 x 5).

12. Learned Claims Tribunal has also not awarded any amount towards loss of amenities and joy in life, for which, appellant/claimant is also entitled because he has to live with permanent disability for whole of his life. The amount awarded by Claims Tribunal consolidatedly towards medical treatment, pain and suffering, attendant, travelling and nutritious diet also appears to be on lower side, which requires enhancement.

13. The Hon'ble Supreme Court in case of **R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others** reported in **(1995) 1 SCC 551** has considered the heads under which, compensation to be awarded 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."

14. For the forging reasons as well as the facts and circumstances of the case, we deem it fit and proper to recompute and recalculate the amount of compensation as under :

The income of appellant/claimant is taken as

Rs.4,500/- per month and Rs.54,000/- per annum as assessed by learned Claims Tribunal. After adding 40% of established income towards future prospects, total annual income of appellant/claimant will come to Rs.75,600/- (54,000 x 40% = 21,600 and 54,000 + 21,600). On the date of accident, appellant/claimant was aged about 39 years, hence, appropriate multiplier will be 15. Upon applying the multiplier of 15, total income will come to Rs.11,34,000/- (75,600 x 15). As held by learned Claims Tribunal, appellant/claimant suffered 50% loss of earning capacity, hence, loss of income of appellant/claimant will come to Rs.5,67,000/- (11,34,000 x 50%).

Apart from above amount of compensation, looking to the nature of injuries and permanent disability suffered by the appellant/claimant as well as the law laid down by Hon'ble Supreme Court in **R.D. Hattangadi** (supra), appellant/claimant will be entitled for pecuniary and non-pecuniary damages, hence, he will be entitled for Rs.30,000/- towards pain and suffering, Rs.30,000/- towards loss of amenities and joy in life, Rs.10,000/- towards attendant and Rs.20,000/- towards medical expenses, transportation and nutritious diet. Appellant will be entitled for loss of income during the period of treatment for five months i.e. Rs.22,500/- (4,500 x 5).

15. Now, appellant/claimant is entitled for total compensation of

Rs.6,79,500/- (5,67,000 + 30,000 + 30,000 + 10,000 + 20,000 + 22,500) instead of Rs.4,55,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Penal interest of 9% per annum awarded by learned Claims Tribunal is set aside as under the M.V. Act, there is no provision to award penal interest. Other conditions imposed by learned Claims Tribunal shall remain intact.

16. For the foregoing reasons, the appeal is allowed in part and impugned award is modified to the extent as indicated herein-above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh