NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 395 of 2015

Ramcharan Pardhi S/o Late Sant Ram, Aged About 29 Years, R/o: Stationpara, Thana & Distt - Mahasamund, Chhattisgarh.

----Appellant/claimant.

Versus

1. Mohd Abdul Kalam S/o Mohd Abdul Salim, Aged About 26 Years, R/o Village- Ganjpara Ward No.10, Mahasamund Distt.- Mahasamund, (CG).

   ---- Non-applicant No.1/(Driver).

2. M. R. Komra S/o Late Banau Ram, Aged About 46 Years, R/o- House No. B-4 Tulsshi Parisher B. Fesh -1 Awadhpuri (Khujarikala), District : Bhopal, Madhya Pradesh. **---- Non-applicant No.2/(Owner).**

3. I.C.I.C.I. Lombard General Insurance Company Ltd, Near Ravi Bhawan Jai Stambh Chowk G.E. Road Raipur, District : Raipur, (CG).

   ---Non-applicant No.3/Respondents.

For Appellant	:	Mr. A. L. Singroul, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Mr. Tessy Abraham, Advocate on behalf of Mr. Amrito Das, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J
Order on Board

Per Parth Prateem Sahu, J
20.01.2021

1. Appellant/claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of amount of compensation awarded by learned 2nd Additional Motor Accident Claims Tribunal, Mahasamund, Distt -Mahasamund, (CG) (for short, 'Tribunal') vide award dated 21.11.2014 in Claim Case No.H.45/2014, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded total compensation of 4,02,400/- in personal injury case.

2. Facts relevant for disposal of this appeal are that on 27.11.2013 at about 07:00 PM, when appellant was standing on road side, one Swift Car bearing registration No.MP04/CF/1867, (for short, 'offending vehicle'), driven by non-applicant No.1 rashly and negligently, knocked him and caused accident. In the

said accident, appellant suffered grievous injuries on his head, leg and other parts of his body. After accident, he was immediately taken to Government Hospital, Mahasamund and looking to seriousness of injuries, he was brought to Ashadeep Hospital, Raipur, where he took treatment for about one month. During the course of treatment, his right leg was amputated above knee.

3. Appellant/claimant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.22,00,000/- pleading therein that on the date of accident, he was aged about 29 years, working as maker of 'brooms' and thereby earning Rs.300/- per day. On account of motor-accidental injuries, he became permanently disabled and unable to earn his livelihood.

4. Non-applicant Nos.1 & 2, driver and owner of offending vehicle, submitted reply to application, while denying adverse pleadings made therein pleaded that amount of compensation claimed is highly exaggerated. On the date of accident, offending vehicle was insured with non-applicant No.3-Insurance Company.

5. Non-applicant No.3/Insurance Company submitted its reply to application, while denying pleadings made therein pleaded that accident was a result of negligence on the part of claimant. In alternate, plea of contributory negligence was also taken. On the date of accident, offending vehicle was plied in breach of policy condition as non-applicant No.1 was not possessed with valid and effective driving license.

6. On 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. Contributory negligence and breach of policy condition were not found to be proved. By assessing loss of earing capacity to the extent of 40% and

monthly income as Rs.3,000/-, awarded total compensation of Rs.4,02,400/- alongwith interest at the rate of 8% p.a., fastened liability upon non-applicants, jointly & severally, to satisfy the amount of compensation.

7. Learned counsel for the appellant/claimant submits that Tribunal has assessed loss of earning capacity to the extent of 40% overlooking the certificate of 70% issued by the Medical Board. Tribunal erred in assessing monthly income of claimant as Rs.3,000/- per month only, overlooking the nature of occupation, date of accident and other factors. Tribunal ought to have assessed income of not less than Rs.6,000/- per month. No compensation is awarded towards future prospects and attendant. Tribunal awarded Rs.2,600/- towards loss of income during period of treatment and Rs.5,000/- towards pain & sufferings and loss of amenities & joy in life, which are on lower side. The amount of compensation be enhanced suitably. In support of his submissions, he relied upon the decisions of Hon'ble Supreme Court in cases of **Jagdish v. Mohan and Ors[1]; Sanjay Kumar v. Ahsok Kumar & Another[2] & Kajal v. Jagdish Chand & Ors[3].**

8. Learned counsel for respondent No.3/Insurance Company submits that claimant failed to prove his income by placing admissible piece of evidence on record. In absence of any proof of income, Tribunal is justified in assessing income of claimant as Rs.3,000/- per month on notional basis. Tribunal considering nature of disability, occupation and evidence available on record, assessed loss of earning capacity of claimant to the extent of 40% which does not call for any interference. Amount of compensation awarded by Tribunal cannot be said to be on lower side, rather it is just and proper in the given facts and circumstances of the case and does not call for any interference.

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1 (2018) 4 SCC 571
2 (2014) 5 SCC 330
3 (2020) 4 SCC 413

9. We have heard learned counsel for the respective parties and perused the record of claim case.

10. As regards submission made by learned counsel for the appellant with regard to injuries, amputation of right leg and permanent disability affecting loss of earing capacity. Perusal of MLC report (Ex.P-5) would show that appellant suffered crush injury on his lower limb and the doctor has opined that tyres of heavy vehicle rolled-over his leg. As per Ex.P-6 ie discharge ticket of Ashadeep Hospital, Raipur, appellant took treatment from 28.01.13 to 23.02.13. Upon diagnosis it is found that appellant suffered crush injury over right thigh and compound fracture femur and during the course of treatment, his leg was amputated on 05.02.2013. Ex.P-102 is the disability certificate issued by District Medical Board, Mahasamund in which it is mentioned that appellant suffered 70% disability on account of amputation of right leg. To prove disability certificate, Dr. Nand Kumar Mandpay was examined as AW-2, who in his evidence stated that 70% permanent disability is assessed for whole body. Appellant was examined as AW-1 and he in his evidence stated that he was engaged in manufacturing and selling of 'brooms'. Loss of earning capacity is to be considered keeping in mind the part of body which is affected due to permanent disability and nature of occupation of injured (claimant). In view of above medical documents available on record, it is clear that appellant suffered 70% of permanent disability due to amputation of his right leg above knee.

11. In case at hand, appellant whose occupation was making and selling of brooms would show that after manufacturing of brooms, he has to travel for selling the same may be in different markets and places which requires all the 4 limbs to be healthy and working but with the disability suffered by him, he may not be able to carry luggage (Brooms) and travel for selling it in different places.

12. In case of **R. D. Hattangi vs. Pest Control (India) Pvt. Ltd. & Ors**[4], 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.”

[4] (1995) 1 SCC 551

13. In case of **Rajkumar vs. Ajay Kumar & Anr[5],** 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.
>
> 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 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."

[5] (2011) 1 SCC 343

14. While assessing loss of earning capacity due to permanent disability Schedule - I of the Employee's Compensation Act, 1923 (for short, 'Act of 1923') may also be taken into consideration for the purpose of assessing loss of earning capacity. If the facts of the present case are taken into consideration, appellant's right leg was amputated above knee (middle thigh). In Part II of Schedule -I percentage of loss of earning capacity for amputation below middle thigh has been mentioned as 70. In view of evidence of doctor AW-2 and taking into consideration the aforementioned rulings of Hon'ble Supreme Court, we are of the considered view that finding recorded by Tribunal assessing loss of earning capacity of appellant to the extent of 40% is not sustainable and it is hereby set aside, we hold that appellant suffered loss of earning capacity to the extent of 70%.

15. So far as submission with regard to income of claimant is concerned, appellant failed to prove his income as pleaded in claim application as Rs.300/- per day. But then it is bounden duty of the Courts and Tribunal to assess income of victim of motor-accident on notional basis, keeping in mind date of accident, occupation, cost of living, wage structure etc. Taking into consideration above factors, we find it appropriate to asses income of claimant at Rs.4,500/- per month.

16. As appellant suffered permanent disability on account of amputation of right leg from above knee, which will affect his earing for whole of his life, he is entitled for addition of amount towards future prospects in his income for the purpose of calculating amount of compensation. Issue with regard to award of future prospects has been considered by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[6] and held that in case deceased, victim of motor accident, was not in permanent employment and

[6] (2017) 16 SCC 680

below age of 40 years, an addition of 40% of establish income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

17. Indisputably, in case at hand, on the date of accident, claimant (injured) was aged about 29 years and not in permanent employment, therefore, this Court is of the considered view that claimant is entitled for an addition of 40% of established income of deceased towards future prospect.

18. Tribunal has awarded only Rs.2,600/- towards loss of income during the period of treatment, overlooking the period of treatment and consequences after discharge from hospital. Appellant might have taken rest for couple of months for getting the wound to be completely cured. He could not be able to perform his work atleast for period of 4 months, hence, he will be entitled for Rs.18,000/- towards loss of income during period of treatment (4 X 4,500/-).

19. Coming to submission with regard to award of amount of Rs.5,000/- towards pains and suffering & loss of amenities and joy in life is on lower side.

20. In case of **Laxman Alias Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd and Anr**[7], Hon'ble Supreme Court has considered not only the heads towards loss of earning capacity but also on other heads and held thus :-

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7 (2011) 10 SCC 756

> "15. The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earning and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

21. The Aforementioned rulings have been relied upon by Hon'ble Supreme Court with approval in case of **Jagdish (supra)** and **Kajal (supra),** while computing amount of compensation in permanent disability case.

22. In view of above, it is apparent that Tribunal has not awarded sufficient amount of compensation towards pain and sufferings & loss of amenities and joy in life. In the facts of the case, we find it appropriate to award Rs.50,000/- towards pain & sufferings and Rs.50,000/- towards loss of amenities & joy in life taking into consideration age of appellant to be 29 years on the date of accident.

23. Tribunal has not awarded any amount of compensation towards attendant for which, we find it appropriate to award Rs.8,000/- for the period of 2 months (Rs.4,000 X 2).

24. For the foregoing reasons, we propose to recompute the amount of compensation to be awarded to the appellant.

25. Income of claimant is taken as Rs.4,500/- per month as held above. By adding 40% of established income towards future prospects, total monthly income of claimant comes to Rs.6,300/- (Rs.4,500 + 40% of 4,500) and accordingly yearly income comes to Rs.75,600/- (12 X 6,300). As held above that claimant suffered 70% loss of earning capacity, he will suffer annual loss of income to the extent of Rs.52,920/- (70% of Rs.75,600). On the date of accident, claimant was in the age group of 26 to 30 years, therefore,

appropriate multiplier would be 17. By applying multiplier of 17, total loss of income comes to Rs.8,99,640/- (Rs.52,920 X 17).

26. Apart from this, claimant is further entitled for a sum of Rs.50,000/- towards pain, sufferings & trauma, Rs.50,000/- towards loss of amenities & joy in life, Rs.18,000/- towards loss of income during the period of treatment, Rs.8,000/- towards attendant and also Rs.1,50,000/- towards treatment and transportation as awarded by Tribunal.

27. Now, claimant will be entitled for a total compensation of **Rs.11,75,640/- (**Rs.8,99,640/- + Rs.50,000/- + Rs.50,000/- + Rs.18,000/- + Rs.8,000/- + Rs.1,50,000/-) instead **of Rs.4,02,400/-** as awarded by Tribunal. This amount of compensation shall carry interest @ 8% p.a. from the date of filing of application till its realization. 50% of the enhanced amount shall be kept in fixed deposit with any nationalized bank for a period of three years. Rest of the conditions of impugned award shall remain intact.

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

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

Jamal/-