IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 1063 OF 2017

Ramchandra s/o Kundanlal Soni,
aged about 35 years, Occ. - At present NIL,
R/o Manohar Chowk, Govindpur Road,
Gondia, Tahsil and District Gondia.

.... **APPELLANT**

// **VERSUS //**

1.The New India Assurance Company Limited,
through it's Branch Manager,
Rungta Complex, Jaistambh Chowk,
Ganesh Nagar, Gondia.

2. Dineshkumar s/o Beniram Pandhare,
aged about Major, Occ.- Driver,
R/o Sirpur, Post – Banathar,
Tahsil and Distt. Gondia.

3. Jaspal Singh K. Bhatia,
aged about – Major, Occ. - Business,
c/o Pal Automobile, Pouni,
Malanjkhand, Baihar,
Distt. Balaghat, also at
In front of Nirmal Talkies,
Besides Kathi & Kabab Restaurant,
Gondia, Distt. Gondia.

4. Surendra s/o Mansaram Naktode,
aged about – Major, Occ.- Business,
R/o at 207, Vardhaman Mahavir Ward,
Gondia.

5. Narendra s/o Anandrao Rotkar,
aged about – Major, Occ.- Business,
R/o Manohar Chowk, Gondia.

.... **RESPONDENTS**

WITH

FIRST APPEAL NO. 504 OF 2018

The New India Assurance Company Limited,
through it's Regional Manager,
Regional Office, Dr. Ambedkar Bhavan,
M.E.C.L. Premises, 4th floor,
High Land Drive, Seminary Hills, Nagpur.

.... **APPELLANT**

// **VERSUS** //

1. Ramchandra s/o Kundanlal Soni,
aged about 35 years, Occ. - NIL,
R/o Manohar Chowk, Govindpur Road,
Gondia, Tahsil and District Gondia.

2. Jaspal Singh K. Bhatia,
aged about – Major, Occ. - Business,
c/o Pal Automobile, Pouni,
Malanjkhand, Baihar,
Distt. Balaghat, also at
In front of Nirmal Talkies,
Besides Kathi & Kabab Restaurant,
Gondia, Distt. Gondia.

4. Surendra s/o Mansaram Naktode,
aged about – Major, Occ.- Business,

R/o at 207, Vardhaman Mahavir Ward,
Gondia.

5. Narendra s/o Anandrao Rotkar,
aged about – Major,
R/o Manohar Chowk, Gondia.

.... RESPONDENTS

In F.A. No. 1063/2017
Shri R.M. Pande, Advocate for appellant.
Shri M.B. Joshi, Advocate for respondent no. 1.

In F.A. No. 504/2018
Shri M.B. Joshi, Advocate for appellant.
Shri R.M. Pande, Advocate for respondent no. 1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 19/01/2021.

JUDGMENT :

1. The Claimants as well as the respondent-Insurance Company have challenged the judgment and award dated 24.05.2017 in Claim Petition No. 80 of 2014 whereby learned Member of Motor Accident Claim Tribunal, Gondia, partly allowed the petition under Section 166 of the Motor Vehicles Act, 1988 and awarded compensation of Rs.25,58,478/- with interest at the rate of 7% per annum from the date of the petition till final realization.

2. The brief facts necessary to decide the appeals, are as under;

(i) The Appellant -Ramchandra Soni and the New India Assurance Co. Ltd. Shall be hereinafter referred to as the Claimant and the Respondent – Insurance Company respectively. The Claimant had sustained injuries in an accident on 20.11.2013 involving Truck bearing No. MP-50-H00814, owned by Respondent-Jaspal Singh K. Bhatia and insured by the Respondent-Insurance Company. It is the case of the Claimant that, he was a pillion-rider on the motorcycle No. MH 35 Q 0127 driven by his friend Narendra Rotkar. The offending vehicle which was driven by the driver Dineshkumar Pandhare, collided against the motorcycle at Fulchur Naka. As a result, he sustained grievous injuries resulting in amputation of right leg. It is alleged that the accident was caused due to rash and negligent driving by the driver of the offending vehicle.

(ii) The Claimant filed an application under Section 166 of the Motor Vehicles Act, 1988 stating that at the relevant time he was 32 years of age and was working at Pawan Traders and receiving salary of Rs.8,000/- per month. He has suffered permanent disability of 80% which has adversely affected his earning capacity. The Claimant claimed total compensation of Rs.85,33,978/- from the owner, driver and Respondent-Insurance Company of the offending vehicle towards pecuniary and non-pecuniary loss.

(iii) The Respondent-Insurance Company claimed that the driver was not holding a valid and effective driving license. The Respondent-Insurance Company denied it's liability to indemnify the insured on the ground of the breach of the terms and conditions of the policy.

(iv) The Claim Tribunal framed the issues, and upon considering the evidence on record held that, the accident was caused due to the rash and negligent driving by the driver of the offending vehicle. The Claims Tribunal considered the income of the Claimant as Rs.6,000/- per month. The Tribunal considered the loss of earning capacity as 50% and applying multiplier of 17, the Claim Tribunal assessed loss of earning at Rs.18,36,000/-. The Claim Tribunal also awarded compensation of Rs.4,86,478/- towards medical expenses, Rs.36,000/- towards loss of actual earning for a period of 6 months, and Rs.1,00,000/- each towards pain and suffering and loss of amenities of life. The Tribunal, therefore, awarded total compensation of Rs.25,58,478/-. This judgment and award has been challenged in these appeals filed under Section 173 of the Motor Vehicle Act, 1988.

3. Having heard learned Counsel for the Claimant as well as Respondent-Insurance Company, the only point falling for consideration is whether the compensation awarded by the Tribunal is just and reasonable.

4. In the case of *Raj Kumar v/s. Ajay Kumar and anr.* ***reported in (2011) 1 SCC 343*** , the Hon'ble Supreme Court has laid down the following general principles for computation of compensation in injury cases :-

> *"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."

5. In the instant case, the factum of the accident is not in dispute. That the accident was caused due to rash and negligent driving of the driver of the offending vehicle is also not in dispute. He had sustained injuries in the accident resulting in amputation of right leg above knee. The doctor has assessed the permanent disability at 80%. The evidence of the Claimant indicates that he was 32 years of age was employed at Pawan Traders and was earning salary Rs.8,000/- per month. This statement has gone unchallenged. The Claimant had

also examined Pawan Agrawal, the proprietor of Pawan Traders. His evidence also proves that the Claimant was working in the firm for about 5 years and that he was paid salary of Rs.8,000/- per month. The evidence on record thus amply proves that the Claimant was employed at Pawan Traders and was earning of Rs.8,000/- per month.

6. The Tribunal has not relied upon the evidence of the Claimant solely on the ground that he had not produced income tax returns and had not disclosed his educational qualification. The Tribunal has also disbelieved the evidence of the employer for want of documentary proof. Learned Counsel for the Claimant has relied upon the decision of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. vs. Varsha Rajenda Pache* ***reported in 2017 SCC OnLine Bom 6726*** wherein this Court (Coram : G.S. Patel, J.) has observed that there is no reason to disbelieve the evidence of the employer in the absence of the any documentary evidence. It has been held that the fact that the witness is an employer is not a reason to consider him as unreliable witness, and that there is no need to always demand supporting document. This judgment has been referred to and relied upon in *Sushila wd/o Subhash Mendhe and anr. vs. National Insurance Company Ltd. and ors.* passed on 23.01.2018 in First Appeal No. 1062 of 2017.

7. In the instant case, as noted above, the evidence of the Claimant as regards his employment and income has gone unchallenged. Under the circumstances, there was no reason to disbelieve this evidence which was also corroborated by the employer. The Tribunal was therefore not justified in computing the compensation on the basis of notional income of Rs.6000/- per month when the evidence of the employer proves that the Claimants was earning Rs.8,000/- per month.

8. The annual income of the Claimant prior to the accident was Rs.96,000/-. The income of the Claimant would not have remained state. Considering hi age, promotional opportunity, annual increments and consequent rise in the salary etc., his income would have certainly enhanced. The Tribunal has not considered this aspect and has erred in not adding any amount towards future prospects. The Tribunal has also erred in adding 50% of the notional income while calculating loss of earning capacity. Under the circumstances, the compensation assessed by the Tribunal is not just compensation.

9. Considering the income of the Claimant at Rs.8000/- annual income works out to Rs.96,000/-. The Claimant was 32 years of age and was in permanent service. Adding ₹ 38,400/- being 40% of the

actual income, the total income works out to ₹ 1,34,400/- per annum. The evidence on record indicates that his left leg above knee had to be amputed due to injuries sustained in the accident. The doctor has assessed the extent of permanent disability at 80%. The loss of future earning depends upon the effect and impact of permanent disability on earning capacity. Considering the nature of the injury/disability vis-a-viz the nature of the work, the Tribunal has assessed the loss of earning capacity at 50%. Since there is no challenge to this assessment, the loss of earning capacity per annum is computed at Rs.67,200/-. Considering the age of the Claimant and applying multiplier of 16, loss of earning capacity, due to permanent disablement works out to Rs.10,75,200/-.

10. The Claimant has produced medical bills for Rs.5,91,000/-, which includes hospitalization expenses and cost of prosthetic leg, attendant charges, etc,. The Claimant is therefore entitled for sum of Rs.5,91,000/- towards medical and miscellaneous expenses. The Claimant was unable to resume his duties for a period of six months and would therefore be entitled for Rs.48,000/- towards actual loss of income. The Claimant is also entitled to a sum of Rs.3,00,000/- towards pain and suffering and loss of amenities of life, and Rs.75,000/- towards transport charges, future charges of prosthetic leg

and other miscellaneous expenses. The Claimant is therefore entitled to compensation of Rs.20,89,200/- which is rounded up to Rs.21,00,000/-, which is held to be 'just and reasonable' compensation.

11. Under the circumstances, the appeal filed by the Claimant is dismissed. The appeal filed by the respondent-Insurance Company is partly allowed. The Claimant is held to be entitled for compensation of Rs.21,00,000/- with interest at the rate of 7% per annum from the date of the application till realization.

12. The impugned judgment and award is modified accordingly.

13. The Claimant is permitted to withdraw the compensation of Rs.21,00,000/- with proportionate interest accrued thereon. The balance amount is ordered to be refunded to respondent-Insurance Company.

JUDGE

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