CGHC010202702022 2026:CGHC:46082

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR
MAC No. 764 of 2022

Roshan Bakhla S/o Late Imanvel Bakhla Aged About 35 Years R/o Village Jaamtoli (Manitoli), Tahsil And District Jashpur Chhattisgarh. (Claimant)

... Appellant.

versus

1 - Rohit Badaik S/o Gopal Ram Badaik Aged About 30 Years R/o Utrichoura, Tahsil Jashpur (Owner).

2 - Vipin Tigga S/o Sukhdev Tigga Aged About 55 Years Occupation Driver, R/o Village Bhalmanda, Tahsil And District Jashpur Chhattisgarh. (Driver).

... Respondent(s)

The date which the case is reserved for order	The date when Judgment is pronounced	The date when the Judgment is uploaded
09-10-2026	30-10-2026	30-10-2026

For Appellant-Claimant	Mr. Divyanand Patel, Advocate on behalf of Mr. Rishikant Mahobia, Advocate
For Respondents	None.

Hon'ble Shri Santosh Sharma, Judge

C A V Judgment

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the appellant/claimant seeking enhancement of the

amount of compensation, challenging the legality and validity of the impugned award dated 11.04.2022 passed by the Motor Accident Claims Tribunal, Jashpur, C.G (in short 'the Tribunal') in Claim Case No.15/2021, whereby the Tribunal has awarded total compensation of Rs.1,01,694/- to the appellant-claimant.

2. Relevant facts for disposal of this appeal are that on 11.12.2019 at residence of Victor Minj, paddy threshing work was being carried out by means of a thresher machine attached to tractor engine bearing Registration No. CG-14-MH-5711. During course of said work, Ranjit, who was engaged in threshing the paddy, asked the appellant to assist him and accordingly the appellant was feeding bundles of paddy into the thresher machine. At that time, Vipin Tigga, driver of tractor engine, allegedly operated the thresher machine attached thereto in a rash and negligent manner, as a result of which, appellant’s right hand was severed near the elbow, causing him to lose consciousness. Appellant was immediately taken to the District Hospital, Jashpur, where he was referred to the NH MMI Narayana Superspeciality Hospital, Raipur, Chhattisgarh, where he remained admitted from 16.12.2019 to 30.12.2019. On the basis of report lodged by the informant-Roshan Bakhla, an offence under Sections 279 and 338 of the Indian Penal Code was registered against the accused driver.

3. Appellant-claimant has filed a claim application/petition before the Tribunal claiming a total compensation of Rs.36,97,794/- under various heads stating that at the time of the alleged accident, appellant was a

healthy person aged about 35 years and was earning Rs.10,000/- per month by working as a labourer and engaging in agricultural activities.

4. Non-applicant Nos.1 & 2/owner and driver of tractor engine (respondent No.1 and 2 herein) filed reply to the claim application and denied the adverse averments made therein.

5. After considering the pleadings and evidence adduced by the respective parties, the learned Tribunal awarded a total sum of Rs.1,01,694/- as compensation to the claimant and fastened liability to satisfy the amount of compensation upon respondent Nos.1 and 2, jointly and severally.

6. Learned counsel for the appellant submits that the Tribunal has failed to appreciate that, owing to the injuries sustained in the accident, the appellant is unable to continue his business/work and has suffered a loss of income. The Tribunal ought to have assessed the compensation by taking into consideration the loss of income and loss of future earning capacity suffered by the appellant as a result of the accident. The appellant has sustained 70% permanent disability, as his right hand was completely amputated in the accident, thereby severely impairing his ability to perform his day-to-day activities and carry on his business. However, the Tribunal has failed to award adequate compensation commensurate with the nature and extent of the permanent disability suffered by the appellant. The amount of Rs.30,000/- awarded towards pain and suffering is grossly inadequate, having regard to the nature and severity of the injuries and permanent

disability sustained by the appellant. The amount of Rs.71,694/- awarded towards medical expenses is also on lower side. The Tribunal has failed to take into consideration the appellant's future prospects and the adverse impact of the permanent disability on his future earning capacity. As such, the impugned award be suitably modified and the amount of compensation be enhanced in accordance with law.

7. Heard learned counsel for the appellant and perused the records with utmost circumspection.

8. As per main pleading in the claim petition, main issue raised in this miscellaneous appeal for adjudication is, whether the award passed by the Tribunal is just, reasonable and proper ? In this regard, this Court has considered two important points, ie, (1.) Sources of income of claimant and (2) the ratio of disability in respect of work of claimant.

9. Now, point No.1 is being considered. As per pleadings in claim petition, at the time of the alleged accident, appellant was working as a labourer and also doing agricultural work and thereby earning Rs.10,000/- per month. Claim of the claimant with regard to labour work appears to be trustworthy as contents of FIR (Ex.A-01) itself shows that he was engaged as labourer at that point of time, but it cannot be said that he earned Rs.10,000/- per month from his labour work, hence, it would be appropriate to adopt unskilled wages rate prevailing at that point of time as per the Chhattisgarh Minimum Wages Notification issued by the office of Labour Commissioner, Chhattisgarh. Hence, considering the age of the deceased, his occupation and the year of accident i.e. 2019, this Court assessed the monthly income of the deceased at

Rs.8,600/-. Though the claimant has claimed that he was also working agricultural work, but he failed to substantiate this claim by adducing cogent and reliable evidence.

10. Now, point No.2 is being taken into consideration with regard to percentage of disability in respect of work. Learned Tribunal determined the percentage of disability as 70% but did not take into account its effect on whole body as well as loss of earning. A perusal of the impugned award reveals that the Tribunal has failed to consider the impact of the disability on the claimant's body as a whole. The Tribunal ought to have assessed the extent of functional disability and its consequential effect on the claimant's future earning capacity. Upon a person sustaining permanent disability in a motor accident, it is incumbent upon the Tribunal to determine the extent of permanent disability and assess the resultant loss of earning capacity, having regard to the nature of the disability, its impact on the claimant's functional abilities, and the nature of the occupation pursued by the claimant. The percentage of physical disability cannot, by itself, be treated as equivalent to the percentage of loss of earning capacity; the latter must be determined on the basis of the evidence available on record and the facts and circumstances of the case.

11. While considering the issue of assessment of compensation on account of disability, the Hon'ble Apex Court in case of **Raj Kumar v. Ajay Kumar & Anr.** [(2011) 1 SCC 343], has observed as under:

> "**9.** The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not,

with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%."

12. Further, in case of **Sarnam Singh versus Shriram General Insurance Company Limited [(2023) 8 SCC 193],** the Hon'ble Supreme Court observed thus:-

"**9**. The issue required to be considered in the present appeal falls in a very narrow campus. It is with the reference to the functional disability of the appellant for the purpose of assessment of compensation. The fact remains that he suffered injuries in a road accident on account of which his right lower limb was amputated. This resulted in permanent disability. There is a certificate produced by the appellant from Madan Mohan Malviya Hospital, (Government of NCT Delhi) showing his permanent physical disability at 85% with further note that the condition is not likely to improve and no further reassessment is recommended. The certificate was issued by a board of doctors on 28-3-2014. As per the photograph of the appellant appearing in the disability certificate, his right leg has been amputated

above the knee. The income of the appellant, his age and other factors are not in dispute.

10. As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this Court in Mohan Soni vs. Ram Avtar Tomar And Others [(2012) 2 SCC 267]. In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed at 60%. The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting. The High Court did not disturb the finding regarding loss of income on account of disability. This Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%.

11. Applying the same principle to the case in hand, we find that the appellant herein was working as a gunman with Bharat Hotel Limited. On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31.05.2015. It is not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman. This is his functional disability. He was 50 years & 5 months old at the time of

accident. Considering the aforesaid facts, in our view, the Tribunal was right in assessing the loss of earning capacity of the appellant at 100% and assessing the compensation accordingly. The High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment of High Court, despite there being a judgment of this Court available on the issue."

13. Tested on the touchstone of the aforesaid principles and considering the fact that in case at hand, claimant was working as labourer, his right hand was amputated below elbow, he will not be able to do physical work with full potential as was earlier done. So loss of functional disability would be 70% also and compensation under the head of loss of income must be awarded on the basis of above mentioned ratio of disablement.

14. Effect of earning in future must be taken into consideration. With regard to future prospects, in case of **Sidram versus Divisional Manager, United India Insurance Company Limited, [(2023) 3 SCC 439],** the Hon'ble Supreme Court held as under:

"**31.** It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is

no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases – and admits such possibility of future prospects, in case of the victim's death.

15. In view of the evidence available on record, the appellant suffered permanent disability on account of amputation of right hand, which will affect his earning for whole of his life, therefore, he is entitled for addition of amount towards future prospects in his income for the purpose of calculating amount of compensation. In the instant case, no document of proof of age has been placed by the claimant, therefore, age of claimant mentioned as 35 years in MLC (Ex.A-3) is taken into consideration for computing of compensation. Income of claimant is taken as Rs. 8,600/- per month as held above. By adding 40% of income towards future prospect, total monthly income of claimant comes to Rs. 12,040/- (8,600 + 40% of 8,600) and yearly income comes to Rs. 1,44,480/- (12,040 x 12). As held above that claimant suffered 70% loss of earning capacity, he will suffer annual loss of income to the extent of Rs. 1,01,136/- (70% of 1,44,480). On the date of accident, claimant was aged 35 years, therefore, as per **Sarla Verma and ors. Vs. Delhi Transport Corp. [(2009) 6 SCC 121],** by applying multiplier of 16, total loss of income comes to Rs. 16,18,176/- (1,01,136 x 16).

16. The Claims Tribunal has rightly awarded Rs. 71,694/- and Rs. 30,000/- towards medical expenses and pains & sufferings respectively.

17. Apart from this, looking to the period of treatment and nature of injury, it would be appropriate to award Rs.20,000/- under the head of special diet.

18. Claimant remained admitted in the MMI Narayana Super Specialty Hospital, Raipur, CG and, thereafter, undergone further treatment. He would have gone from his village-Jaamtoli (Manitoli), Jashpur to Raipur by hiring a vehicle. So compensation of Rs.20,000/- is also awarded to him under the head of transportation. In furtherance, compensation on another head, ie, expenses of attendant is also awarded Rs.10,000/- to the claimant.

19. Thus, in view of the foregoing discussions, observations and in light of the above referred judgments of the Supreme Court, following compensation is awarded to the claimant under the different heads :-

Sr. No.	**Heads**	**Compensation awarded by the Tribunal**	**Compensation awarded by this Court**
1	Loss of income	Nil	Rs. 16,18,176/-
2.	Towards medical expenses	Rs.71,694/-	Rs. 71,694/-
3.	Towards pain and suffering	Rs. 30,000/-	Rs. 30,000/-

4.	For transportation	NIL	Rs. 20,000/-
5.	For Special diet	NIL	Rs. 20,000/-
6.	For attendant	NIL	Rs. 10,000/-
	Total	**Rs.1,01,694/-**	**Rs. 17,69,870/-**

20. Now, the appellant/claimant is entitled to get compensation of **Rs**.17,78,470**/-** instead of **Rs.1,01,694/-.** The additional amount of compensation shall carry interest at the rate as awarded by the Tribunal. Rest of the conditions of the impugned award shall remain intact.

21. In the result, the appeal is **partly allowed** and the impugned award is modified to the extent as indicated herein-above.

Sd/-
(Santosh Sharma)
Judge

J/pathak/-

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