

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s).6912 OF 2024

DHANESWAR BISWAL

APPELLANT(S)

VERSUS

DIVISIONAL MANAGER & ANR.

RESPONDENT(S)

O R D E R

1. The appellant herein filed a claim petition before the Motor Accident Claims Tribunal, Jagatsinghpur for compensation for the injuries sustained by him in a motor vehicle accident occurred on 18.12.2008. On account of the injuries sustained, he incurred 40% permanent disability. The appellant-claimant was aged 42 years at the time of the accident. After appreciating the evidence on record and finding the appellant entitled to be compensated the Tribunal passed an award in MAC Case No.116/2009 on 14.01.2020 granting a compensation of Rs.8,70,386/- (Rupees Eight Lakhs Seventy Thousand Three Hundred and Eighty-Six only) payable with interest at the rate of 7% per annum from the date of filing of the claim petition viz., from 14.08.2009.

2. Seeking enhancement of compensation, the claimant-appellant filed MACA No.251/2021 before the High Court of

Orissa. At the same time, challenging the award of compensation the insurance company, which is the first respondent herein, also filed an appeal, being MACA No.692/2020. As per the common judgment dated 01.08.2022, the appeals were disposed of. The High Court modified the award passed by the Tribunal by reducing the quantum of compensation from Rs. 8,70,386/- to Rs.6,54,000/- (Rupees Six Lakhs and Fifty-Four Thousand only) besides reducing the rate of interest from 7% to 6%. The appellant preferred the captioned appeal on being aggrieved by the reduction of the quantum of compensation as also the rate of interest besides the rejection of his prayer for enhancement of the compensation awarded by the Tribunal.

3. Heard learned counsel for the parties.

4. At the outset, we make it clear that upon hearing the counsel on both sides and perusing the materials on record we are not inclined to consider the prayer of the appellant for enhancement of compensation. In fact, we think that the appellant has made out a case only for consideration of the question regarding the sustainability or otherwise of the reduction of compensation, by the High Court. It is not in dispute that the Tribunal had passed the award, accepting Ext.

P7 disability certificate, certifying the permanent disability of the appellant-claimant as 40%. Though, the appellant claimed his monthly income as Rs.9,500/- (Rupees Nine Thousand and Five Hundred only) claiming himself to be the owner of a stationery-cum-betel shop, in the absence of any evidence to establish his claim as businessman and also with respect to his monthly income the Tribunal took the monthly income of the appellant as Rs.8,400/- (Rupees Eight Thousand and Four Hundred only) treating him as a laborer at the time of accident. The Tribunal, after considering all the aspects of the matter and the relevant data and details, assessed the compensation payable to the appellant at Rs.8,70,386/- (Rupees Eight Lakhs Seventy Thousand Three Hundred and Eighty-Six only), with interest at the rate of 7% per annum from the date of filing of the claim petition. The impugned common judgment passed by the High Court would reveal that the award passed by the Tribunal was interfered with and the quantum of compensation was reduced mainly on re-assessment of the monthly income assessed by the Tribunal. Evidently, the High Court took it as Rs.6,000/- per month again, on guess-work. Obviously, taking into account the aforementioned extent of permanent disability viz., 40% the Tribunal granted an amount of Rs. 6,77,386/- towards loss of dependency. At the same time, reckoning the same extent of permanent disability but,

after modifying monthly income of the appellant as Rs. 6000/- and adding 25% thereof towards future prospects the High Court awarded an amount of Rs. 5,04,000/- as compensation for loss of future earnings. That apart, the High Court modified the medical expenses and allied expenses as Rs. 1,00,000/- as against the amount of compensation of Rs. 1,32,990/- granted by the Tribunal. So also, the High Court interfered with the amount of Rs. 60,000/- granted by the Tribunal towards pain and sufferings, loss of amenities and loss of expectation of life and reduced it as Rs. 50,000/- towards pain and sufferings and loss of amenities of life.

5. On an anxious consideration, we do not find any justification for such interference with the award of the Tribunal by the High Court as what was granted thereunder, according to us, was just compensation.

6. Firstly, we will consider whether the High Court was justified in interfering with the assessment of the monthly income of the appellant-claimant and to reduce it from Rs.8,400/- (Rupees Eight Thousand Four Hundred only) to Rs.6,000/- (Rupees Six Thousand only). He was aged 42 years at the time of the accident and the accident had occurred on 18.12.2008. Evidently, in this case, both the High Court and

Tribunal assessed the income of the appellant on guess-work. The appellant deposed that he was running a stationary-cum-betel shop and PW2, the eye-witness to the accident who was believed by the courts also deposed to the effect that the appellant was running such a shop. It is true that the appellant has not produced any documentary evidence to establish his employment and monthly income. In the absence of any documentary evidence the Tribunal treated him as a labourer and assessed his monthly income as Rs. 8400/- taking his daily wage as Rs. 280/-. In the contextual situation, it is relevant to refer to paragraph 9 of the impugned judgment of the High Court;

"9. As stated earlier, no documentary proof has been adduced from the side of the claimant to establish his income at Rs. 9,500/- per month. It is the oral statement of the claimant made during his evidence as P.W. 1. It is true that for a small businessman like a beetle shop owner, it would be inappropriate to always seek for documentary proof. Nevertheless, the oral statement of the claimant cannot be thrown aside in absence of any rebuttal material. At the same time such oral statement of the claimant without any supporting material should not be fully believed also. In such situation, drawing a balancing line considering the place of business, the nature of the shop and social status of the claimant, some guess-work is made and his income is assessed at Rs. 6,000/- per month and in my opinion this amount would

serve the purpose.

7. It is to be noted that the claim of the appellant with respect to his employment and monthly income was not believed by the Tribunal also and the Tribunal took the monthly income of the appellant as Rs. 8400/-. However, the award of the Tribunal at paragraph 2 would reveal that his version that he is a family man was not disbelieved. He deposed while being examined that he is depending on his daughter. When that be the nature of evidence, the assessment of the appellant's monthly income as Rs. 8400/- (Rs. 280/- per day) ought not to have been interfered with and substituted by Rs. 6000/- that too, by another guess-work assessment, in the absence of any perversity in the assessment of monthly income by the Tribunal especially taking note of the year of the accident, the fact that the appellant is a family man and further the cost of living during the relevant period. In short, according to us, taking into account the age of the appellant as well as the year of the accident and the other aspects mentioned hereinbefore, in the absence of any specific reason for interference with the monthly income fixed by the Tribunal (which could not have been, by any stretch of imagination, be said to be exorbitant or excessive) there was no reason for the High Court to interfere with it. We also find no good reason to sustain the interference and reduction effected by

the High Court in regard to the medical and other allied expenses and also the grant of Rs. 60,000/- towards pain and sufferings etc.

8. In view of the discussion as above, the impugned judgment is set aside and the award dated 14.01.2020 passed by the Tribunal granting just and proper compensation is restored. Since, it is not a case of death the amount of Rs. 6,77,386/- granted by the Tribunal towards loss of dependency is converted compensation for loss of future earning capacity. In short, the amount of Rs. 8,70,386/- as compensation granted by the Tribunal as per award dated 14.01.2020 is restored. We also do not find any reason why the interest awarded by the Tribunal was interfered with by the High Court. The Tribunal has granted interest only at the rate of 7% per annum. Hence, the aforesaid amount will carry interest 7% from the date of filing of claim petition, as ordered by the Tribunal.

9. The appeal is disposed of, as above.

10. Pending application(s), if any, shall stand disposed of.

.....J.
(C.T. RAVIKUMAR)

.....J.

(SANJAY KAROL)

**NEW DELHI;
OCTOBER 16, 2024**

ITEM NO.104

COURT NO.11

CORRECTED
SECTION XI-AS U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6912/2024

DHANESWAR BISWAL

Appellant(s)

VERSUS

DIVISIONAL MANAGER & ANR.

Respondent(s)

Date : 16-10-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE SANJAY KAROLFor Appellant(s) Mr. Shakti Kanta Pattanaik, AOR
Mr. Chittaranjan Mishra, Adv.
Mr. Avinash Kumar Jain, Adv.For Respondent(s) Dr. Sudhir Bisla, Adv.
Ms. Sumitra, Adv.
Mr. Satyendra Kumar, AORUPON hearing the counsel the Court made the following
O R D E RThe appeal is disposed of in terms of the signed order, placed
on the file.

Pending application(s), if any, shall stand disposed of.

(GEETA JOSHI)
SENIOR PERSONAL ASSISTANT(POOJA SHARMA)
COURT MASTER (NSH)

ITEM NO.104

COURT NO.11

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6912/2024

DHANESWAR BISWAL

Appellant(s)

VERSUS

DIVISIONAL MANGER & ANR.

Respondent(s)

Date : 16-10-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE SANJAY KAROL

For Appellant(s) Mr. Shakti Kanta Pattanaik, AOR
 Mr. Chittaranjan Mishra, Adv.
 Mr. Avinash Kumar Jain, Adv.

For Respondent(s) Dr. Sudhir Bisla, Adv.
 Ms. Sumitra, Adv.
 Mr. Satyendra Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order, placed on the file.

Pending application(s), if any, shall stand disposed of.

(GEETA JOSHI)
SENIOR PERSONAL ASSISTANT

(POOJA SHARMA)
COURT MASTER (NSH)