

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 440 of 2011**

Smt. Vishnulata, W/o Lal Deepak Singh, A/A 50 years, R/o Gulmohan Colony, Gali No. 3, Mamta Nagar, Ward No. 4, Tahsil and District Rajnandgaon (CG)

---- Appellant

Versus

1. Sunny @ Saurabh Shrivastava, S/o Sewak Lal Shrivastava, A/a 21 years, R/o Jamatpara, Ward No.21, Thana Basantpur, Rajnandgaon, Tahsil and District Rajnandgaon (CG)
2. Sewak Lal Shrivastava S/o Kundan Lal Shrivastava, A/A 59 years, R/o Jamatpara, Ward No. 21, Thana Basantpur, Rajnandgaon, Tahsil and District Rajnandgaon (CG)
3. The New India Insurance Company Ltd., Through Regional Officer, Regional Office Thakkar Chambers, In Front of Project Auto Mobiles, G.E. Road, Power House, Bhilai, District Durg (CG)

---- Respondents

And**MAC No. 441 of 2011**

Pritam @ Golu Singh S/o Lal Deepak Singh, A/a 26 years, R/o Gulmohan Colony, Gali No.3, Mamta Nagar, Ward No.4, Tahsil and District Rajnandgaon (CG)

---- Appellant

Versus

1. Sunny @ Saurabh Shrivastava, S/o Sewak Lal Shrivastava, A/a 21 years, R/o Jamatpara, Ward No.21, Thana Basantpur, Rajnandgaon, Tahsil and District Rajnandgaon (CG)
2. Sewak Lal Shrivastava S/o Kundan Lal Shrivastava, A/A 59 years, R/o Jamatpara, Ward No. 21, Thana Basantpur, Rajnandgaon, Tahsil and District Rajnandgaon (CG)
3. The New India Insurance Company Ltd., Through Regional Officer, Regional Office Thakkar Chambers, In Front of Project Auto Mobiles, G.E. Road, Power House, Bhilai, District Durg (CG)

---- Respondents

M.A.(C) No.440/2011

For Appellant	:	Shri Anumeh Shrivastava, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate
For Respondents No.1 and 2	:	Dispensed with service of notice.

M.A.(C) No.441/2011

For Appellant	:	Shri Anumeh Shrivastava, Advocate
For Respondent No.1	:	Shri Abhishek Sharma, Advocate
For Respondent No.3	:	Shri Hanuman Prasad Agrawal, Adv.
For Respondent No.2	:	Unserved as died.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****09/07/2015**

- Both the appeals are being decided together as they arise out of a same accident and common award. The challenge in both the appeals is to the quantum of compensation by the claimants. Miscellaneous Appeal (C) No.440/2011 is preferred by injured/claimant Smt. Vishnulata and Miscellaneous Appeal (C) No.441/2011 is preferred by injured/claimant Pritam alias Golu Singh. Miscellaneous Appeal (C) No.440/2011 and Miscellaneous Appeal (C) No.441/2011 arise out of a common award dated 10-9-2010 passed by the Additional Motor Accidents Claims Tribunal, Rajnandgaon (FTC) in Claim Case No.42/2009 (Smt. Vishnulata v. Sunny alias Saurabh Shrivastava and others) and Claim Case No.40/2009 (Pritam alias Golu Singh v. Sunny alias Saurabh Shrivastava and others), respectively.
- Brief facts of both the cases are that an accident occurred on 3-10-2008. As per the pleadings, both the claimants/appellants were travelling in a Maruti Omni Van bearing registration No.CG 08 5524 and while they were coming back from Ratanpur to Rajnandgaon in the said Van which was being driven by respondent No.1 Sunny alias Saurabh Shrivastava in rash and negligent manner, the Van dashed with a tree. As a result of the accident, the claimants/appellants sustained grievous injuries. The appellants were admitted to the hospital for treatment.

3. A claim petition, being Claim Case No.42/2009, was preferred by claimant/appellant Vishnulata in which the Tribunal awarded a total sum of Rs.1,35,100/-. Claimant/appellant Pritam also preferred a claim petition, being Claim Case No.40/2009 in which the Tribunal awarded a total sum of Rs.96,700/-. Both the claimants/appellants have separately challenged the quantum of compensation awarded to them by the instant appeals.
4. It is not in dispute that at the relevant time the Maruti Omni Van bearing registration No.CG 08 5524 was owned by respondent No.2 Sewak Lal Shrivastava and was being driven by respondent No.1 Sunny alias Saurabh Shrivastava. It is also not in dispute that the offending vehicle was, at the relevant time, insured with respondent No.3 The New India Assurance Company Limited.
5. The Tribunal, after evaluating the facts and the evidence available on record, came to a conclusion that at the relevant time of the accident, the offending vehicle was being driven in rash and negligent manner which resulted into the accident. The said finding is not in challenge by either of the parties, therefore, in absence of challenge to the finding, the same is affirmed.
6. Shri Anumeh Shrivastava, learned counsel appearing for the appellants in both the appeals would submit that the Tribunal has failed to assess the loss caused and the suffering of the claimants/appellants. As against the evidence on record, he would further submit that the Tribunal has despite the fact that the evidence of permanent disability is on record failed to assess the same in the correct perspective to grant just compensation. He would further submit that ignoring the severity of injuries sustained by the appellants, meagre sum has been awarded in various heads. He

prays for suitable enhancement in the compensation awarded to the appellants by the Tribunal.

7. *Per contra*, Smt. Chitra Shrivastava, Shri Hanuman Prasad Agrawal and Shri Abhishek Sharma, learned counsel appearing for the respective respondents in the instant appeals would submit that the award of compensation passed by the Tribunal is well merited in terms of the evidence on record. They would further submit that no sufficient evidence is available on record to grant compensation towards loss of future prospects. Consequently, the award passed in favour of the claimants/appellants is well merited and does not call for any interference.
8. I have heard learned counsel appearing for the parties and perused the material and evidence available on record.
9. I shall first take-up Miscellaneous Appeal (C) No.440/2011 filed by claimant Smt. Vishnulata.

Miscellaneous Appeal (C) No.440/2011

10. Miscellaneous Appeal (C) No.440/2011 preferred by claimant Vishnulata arises out of Claim Case No.42/2009 wherein the award of compensation of Rs.1,35,100/- has been passed by the Tribunal distributing the compensation as under:

Sl. No.	Head	Amount (Rs.)
1.	Medical Treatment	18,100
2.	Attendant	5,000
3.	Transport	12,000

4.	Special Diet	5,000
5.	Loss of Income	10,000
6.	Future Treatment	30,000
7.	Permanent Disability	50,000
8.	Pain and Mental Agony	5,000
<u>TOTAL=</u>		1,35,100

11. According to the evidence adduced on record in this case, claimant/appellant Vishnulata suffered fracture of both legs, severe fracture below her knee. She suffered fracture of right hand and sustained injuries on face and at shoulder. As per the evidence, she was initially admitted to Hospital at Durg on 3-10-2008. Thereafter, subsequently, she was shifted to Sector-9 Hospital, Bhilai and ultimately shifted to Medical College, Nagpur wherein she remained admitted from 4-10-2008 to 3-11-2008. In her deposition, it is stated that she incurred expenses of Rs.1,50,000/- for treatment since she had undergone six surgeries. She has further stated that the treatment is being further continued till date and for future expenses she has to be dependent. It is also stated in her deposition that she used to earn Rs.1,500/- to Rs.2,000/- by stitching etc. apart from her household job and during such period she has to get an attendant and pay an amount of Rs.1,500/- per month. The documents have been exhibited regarding treatment from Ex.P-23 to P-32 and Ex.P-34 to 43. Dr. Y.K.Tiwari who treated claimant Vishnulata has also been examined as AW-2. According to Dr. Y.K.Tiwari, he had examined claimant Vishnulata. She was aged about 48 years. On examination, Dr. Y.K.Tiwari found that claimant Vishnulata had suffered fracture on both legs, tibia and he also found stiffness in her

both ankle-joints. After the examination, a certificate of disability to the extent of 50% was given to her which is marked as Ex.P-33. The doctor has further stated that for future expenses as per Ex.P-99 the claimant has to undergo in future the surgery.

12. It is a settled law that the compensation in personal injury cases should be determined under the following heads:

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)]

13. The Hon'ble Supreme Court, in **Govind Yadav v. New India Insurance Company Limited, (2011) 10 SCC 683**, while considering the principles under which the pecuniary compensation is to be granted, held in para 11 as under:

“11. The personal sufferings of the survivors and disabled persons are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term ‘compensation’ used in Section 166 of the Motor Vehicles Act, 1988 (for short, ‘the Act’) would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident.”

14. The Hon’ble Supreme Court, while adjudicating the quantum of compensation, has reiterated the law laid down in **Raj Kumar v. Ajay Kumar and another, (2011) 1 SCC 343** and has held that a person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.
15. Therefore, keeping in view the above principles laid down by the Hon’ble Supreme Court, the award made by the Tribunal in this case is reassessed.
16. So far as the pecuniary loss is concerned, as stated, claimant Vishnulata used to earn Rs.1,500/- to Rs.2,000/- per month apart from her household job. It would be relevant to mention that the contribution made towards household job also cannot be ignored as it plays a very vital role in a family. Therefore, in the opinion of this Court, the loss of income

Rs.1,500/- to Rs.2,000/- per month as has been stated is to be assessed along with the fact that the claimant shall be restricted in performing her household job after the accident of the like nature wherein she suffered fracture of her both legs and as would be evident from the disability certificate wherein her disability has been assessed to 50% and consequently functional disability to perform the household job and other job which she was discharging cannot be ignored. Therefore, in the facts of the case, as the injured/claimant was discharging household job, therefore, the loss of earning has been granted as of Rs.10,000/- is reassessed. The income of the claimant/appellant can be accepted to be the notional income of Rs.3,000/- per month in view of the statement of the appellant that she was earning Rs.1,500/- to Rs.2,000/- per month from sewing and as has been observed she was doing the job of household, therefore, the notional income is assessed to be Rs.3,000/- per month and for 12 months it comes to Rs.36,000/-. The injured/claimant has been shown to be 48 years old, therefore, the multiplier of 13 would be applicable. So, the assessment is made as under:

Rs.3,000x12	=	Rs.36,000/-
Rs.36,000x13	=	Rs.4,68,000/-

17. Thereafter, taking into consideration the certificate of permanent disability which is shown as 50% the functional disability can be assessed to 30%, i.e., Rs.4,68,000x30%=Rs.1,40,400/- and, therefore, the amount of loss of earning is reassessed to Rs.1,40,400/-.
18. The sum of Rs.18,100/- has been granted by the Tribunal towards medical expenses. Considering the evidence, the same is also

maintained since it falls in line to the documents Ex.P-23 to P-32 and Ex.P-34 to 43 and further from Ex.P-44 to P-92. In the opinion of this Court, the same also does not require reassessment. The Court has granted the amount of Rs.5,000/- for attendant, Rs.12,000/- for transport and Rs.5,000/- for special diet. These three sums also do not require any reassessment. The sum of Rs.30,000/- has been granted for future treatment. Considering the nature of the certificate issued by the treating doctor that again the claimant/appellant has to undergo treatment/operation, the same is enhanced from Rs.30,000/- to Rs.50,000/-. In the head of non-pecuniary damages, the Tribunal has granted a lump sum amount of Rs.50,000/-. Considering the nature of the injuries and the trauma which the appellant suffered, the damages for pain, loss of amenities and expectation of life, the amount of Rs.50,000/- is enhanced to Rs.1,00,000/-. Therefore, the amount of compensation is reassessed as under:

Sl. No.	Head	Amount (Rs.)
1	For Loss of Earning	1,40,400
2	For Medical Expenses	18,100
3	For Attendant	5,000
4	For Transport	12,000
5	For Special Diet	5,000
6	For Future Treatment	50,000
7	For Damages for Pain, Loss of Amenities and Expectation of Life	1,00,000
<u>TOTAL=</u>		3,30,500

Miscellaneous Appeal (C) No.441/2011

19. Now, I shall take-up Miscellaneous Appeal (C) No.441/2011 preferred by claimant Pritam alias Golu Singh. Miscellaneous Appeal (C) No.441/2011 arises out of Claim Case No.40/2009 in which the Tribunal has awarded compensation as under:

Sl. No.	Head	Amount (Rs.)
1	For Medical Expenses	34,200
2	For Attendant	1,000
3	For Travel	1,000
4	For Special Diet	500
5	For Future Earning/Loss of Income	15,000
6	For Permanent Disablement	40,000
7	For Pain and Agony	5,000
<u>TOTAL=</u>		96,700

20. In this case, on examination of the evidence available on record, it is found that claimant/appellant Pritam has stated that by such accident both of his ankles got fractured and he was admitted to the hospital at Sector-9, Bhilai from 3-10-2008 to 6-10-2008. It is further stated that because of the accident, he has suffered permanent disability and is being treated by the doctors. The witness has stated that before the accident, he was discharging the duties of a mechanic. After the accident, he could not discharge the duties of mechanic in the same intensity in which he used to discharge before the accident. This has caused loss of his earning. Dr.

Y.K.Tiwari, who treated the claimant/appellant, has been examined as AW-2. He has stated that being a member of the District Medical Board, Rajnandgaon, he had examined claimant/appellant Pritam and on examination, he found that both the ankles had got fractured and the ankle joint had become stiff. Therefore, his disability was assessed as 50%. The same is also proved by Ex.P-39. In the cross-examination, the claimant/appellant has admitted at paragraph 12 that he could not discharge the job of mechanic for 5-6 months, however, since the date he was discharging the job of mechanic after the accident, he faces difficulty while discharging the job while standing. Therefore, the loss of income stated is only to the extent of 5-6 months. The Tribunal has assessed the loss of income to Rs.15,000/-. Considering the statement made by the appellant himself that he was earning Rs.4,500/- per month as salary, the loss of income for 5-6 months is enhanced from Rs.15,000/- to Rs.20,000/- in lump sum. The Tribunal has awarded an amount of Rs.1,000/- for the attendant which too appears to be too meagre and, therefore, the same is enhanced from Rs.1,000/- to Rs.5,000/-. Under the head travel, a sum of Rs.1,000/- has been granted by the Tribunal. Taking into consideration the fact that the appellant was admitted in the hospital for 5-6 days and thereafter visited the doctor, the amount of Rs.1,000/- appears to be just and proper. Furthermore, the Tribunal has awarded a sum of Rs.34,200/- for medical expenses. Taking into consideration the documents Ex.P-56 to P-77 and Ex.P-78 to P-97, the amount of Rs.34,200/- for medical expenses also appears to be just and proper. The amount of Rs.500/- granted by the Tribunal towards special diet appears to be too meagre. The claimant/appellant suffered the consequence of the accident for 5-6 months. Therefore, the amount granted under the head special diet is enhanced from Rs.500/- to

Rs.5,000/-.

21. Reading of the impugned award would show that no amount has been granted for future treatment. Taking into account that both the ankles of the claimant/appellant had got fractured and stiffness occurred, it is quite obvious that the appellant would require treatment in future. Therefore, a sum of Rs.25,000/- is awarded under the head future treatment. Lastly, for permanent disablement a sum of Rs.40,000/- and for pain and agony a sum of Rs.5,000/- has been awarded by the Tribunal. Considering the documents relating to medical treatment, disablement certificate and the nature of pain and agony which the appellant suffered, the amount of Rs.40,000/- + Rs.5,000/- is reassessed and the same is enhanced from Rs.45,000/- to a consolidated amount of Rs.75,000/-. The compensation reassessed above in this case is as under:

Sl. No.	Head	Amount (Rs.)
1	For Medical Expenses	34,200
2	For Attendant	5,000
3	For Travel	1,000
4	For Special Diet	5,000
5	For Future Earning/Loss of Income	20,000
6	For Permanent Disablement and Pain and Agony	75,000
7	For Future Treatment	25,000
<u>TOTAL</u> =		1,65,200

22. In the result, the compensation awarded by the Tribunal in Miscellaneous

Appeal (C) No.440/2011 is enhanced from Rs.1,35,100/- to Rs.3,30,500/- and the compensation awarded in Miscellaneous Appeal (C) No.441/2011 is enhanced from Rs.96,700/- to Rs.1,65,200/-. The total amount of compensation of Rs.3,30,500/- awarded in Miscellaneous Appeal (C) No.440/2011 and the total amount of compensation of Rs.1,65,200/- awarded in Miscellaneous Appeal (C) No.441/2011 shall carry simple interest @ 9% per annum from the dates of filing the respective claim petitions before the Tribunal till realisation. Rest of the impugned award shall remain unchanged. Both the miscellaneous appeals are allowed to the extent indicated above. No order as to costs.

Sd/-
(**Goutam Bhaduri**)
JUDGE