

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1207 of 2014

Smt. Amrit Bai W/o Gangaram Sinha Aged About 47 years,
R/o Dapka, Post- Khairagarh, P.S. And Tah. Khairagarh, Civil
and Revenue Distt. Rajnandgaon C.G.

---- Appellant

Versus

1. Madhusudan Mahobiya S/o Hemlal Mahobiya Aged About
48 Years, R/o Dhara, P.S. And Tah. Dongargarh, Distt.
Rajnandgaon C.G.

2. Smt. Tuleshwari Bai W/o Shailendra Verma Aged About 35
Years Through- Shiv Kumar Verma, R/o Village- Achholi, P.S.
And Tah. Dongargarh, Distt. Rajnandgaon C.G.

3. National Insurance Company Limited. Through- Branch
Manager, Branch Office, Kamth Line, Rajnandgaon, Distt.
Rajnandgaon C.G.

---- Respondent

For Appellant – Shri Abhishek Sharma, Advocate.
For Respondent No.3 – Shri Q. Aziz, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

22/07/2015

1. The appeal is against the award dated 26/08/2014 passed in claim case No.47/13 by the court of Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon. The appeal is by the claimant/injured.

2. Brief facts of the case are that on 2/04/2013 the appellant was travelling in a bus of Sai Kripa Bus Service bearing No.C.G. 08 M/0206 from Khairagarh to Dongargarh. Bus having been driven in rash and

negligent manner it turned turtle the right hand of claimant was severely damaged. Initially she was treated at hospital at Khairagarh, Thereafter, she was sent to District Hospital, Rajnandgaon and from there she was sent to Mekahara Hospital, Raipur wherein she was admitted from 2/04/2013 to 9/04/2013 and as a result of such accident her right hand was amputated over the elbow. It was stated that by such amputation the claimant could not discharge her job as she was earlier doing and had become dependent on the family members. It has been stated that before the accident the appellant used to do the job of sewing and used to get Rs.150 per day and also used to work as labour in Rojgar Guarantee and used to earn Rs.132/-. Consequently, on the different heads amount of Rs.17,60,000/- was claimed. It was stated that bus was being driven by non-applicant No.1 Madhusudan Mahobia and was owned by original non-applicant No.2 Tuleshwari Bai and was insured with National Insurance Company Limited non-applicant No.3. The non-applicants driver and owner of the vehicle contended that accident did not happen due to rash and negligent act of the driver and false averments have been made. It was further stated that vehicle was insured with non-applicant No.3 National Insurance Company Limited. The non-applicant No.3 the insurance company contended that at the time of the accident the driver of the vehicle did not have valid licence, therefore insurance company is not liable to make good the compensation for the accident.

3. Learned tribunal after evaluating the facts and evidence came to a finding that at the relevant time the offending vehicle i.e. bus being driven in a rash and negligent manner turned turtle which caused injury to the appellant, therefore the offending bus was liable for the cause of accident.

There is no challenge to such finding. In absence of any challenge to such finding, same are affirmed.

4. Learned counsel for the appellant further submits that in this case amputation was caused over the elbow of right hand of the claimant, therefore the disability has been assessed will amount to 100% to discharge the job and the tribunal has only assessed the disablement to the extent of 40% which needs to be suitably enhanced. It is further contended that for future treatment and pain and suffering meager amount has been awarded which too also needs re-consideration.

5. Per contra, learned counsel for the insurance company vehemently opposes the same and would submit that as per statement of the claimant herself, income from the agriculture is still continuing. Therefore, virtually there is no loss to the income. He further submits that learned tribunal has awarded just compensation which is well merited and do not call for any interference by this court.

6. I have heard learned counsel for the parties at length, perused the documents and the evidence.

7. Learned tribunal in its award passed the following award:-

S.No.	Head	Amount
1.	Loss of earning	Rs.1,87,200/-
2.	Medical	Rs.1305/-
3.	Pain and suffering	Rs.20,000/-
4.	Transportation	Rs.2000/-
5.	Special diet	Rs.2000/-

8. 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)]

9. 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."

10. 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.

11. Therefore, keeping in view the above principle laid down by Supreme Court, award made by the tribunal is re-assessed. The claimant in this case had stated that because of the accident her hand came under the bus and therefore initially she was treated at Khairagarh and thereafter at Raipur wherein her right hand was amputated over the elbow and after accident she had to visit four times to Mekahara Raipur. She has further stated that her husband is disabled and is not able to perform any job, therefore entire dependency is on the claimant/appellant. She further stated that she used to earn Rs.150/- per day by sewing and stitching and from agricultural work she used to earn Rs.50,000/- yearly and after accident she is not able to perform any job. Doctor Prakash Bhalerao

AW-1 stated that he had examined claimant and after examining according to the prescribed medical standard he has certified disability to the extent of 60%. Disability certificate is marked as Ex.P-1.

12. The medical report also corroborate the fact that right hand over the elbow has been amputated. It can be assumed that right handed person the hand is amputated certainly there would be disability. The functional disability in a given case may be to the extent of 100%. Here reading the statement of the claimant, she had stated that she was earning Rs.150 per day from sewing. Certainly there will be loss to the functional disability to perform the job as earlier she was doing. Tribunal has assessed the income of the injured to Rs.36,000/- per year meaning thereby Rs.3000/- per month. Considering the fact that Second Schedule as provided in Sub-Section (3) of Section 163-A of the Motor Vehicles Act has fixed notional income for period of 1994 to the extent of Rs.15,000/-. The court taking into price rise and the inflation may reconsider it in a given case assess it with the date of accident. Here accident had happened on 2/04/2013, therefore the assessment of income considering the fact, payment even to a ordinary labour would be not less than Rs.100/- per day, the amount of assessment of notional income of Rs.3000/- per month i.e. 36,000/- yearly as has been held by the tribunal appears to be just and reasonable.

13. Now coming to the quantum of loss of income. Tribunal has assessed disability to the extent of 40%. The disability certificate Ex.P-1 shows that disability is of 60%. If statement of the claimant is further considered. She has stated that she used to earn Rs.150 per day by sewing and from agricultural work she used to earn Rs.50,000/- yearly. It is

further stated in the cross examination that agriculture is still continuing, therefore it may be presumed that there is no loss to the agricultural income as it is being carried by their son. Functional disability with respect to the sewing and working when right hand has been amputated over the elbow certainly it may be to the extent of 100%. Therefore taking into Ex.P-1 wherein disability has been shown as 60%, functional disability in the opinion of this court also comes to not less than 60%. It is held that functional disability would be calculated to the extent of 60%. So the loss of income is re-assessed. as under.

14. The age has been proved by the claimant that at the time of accident she was aged about 50 years as would be evident from Ex.P-8 which is discharge certificate as also Ex.P-1 which is disability certificate wherein the age is shown as 48 years. Therefore, taking age that appellant was between 46 to 50 years, multiplier of 13 would be applicable. After applying multiplier of 13 to notional income of Rs.36,000/- per year it comes to Rs.4,68,000/-. Taking into consideration functional disability of 60%, amount of loss of earning comes to $4,68,000 \times 60\% = \text{Rs.}2,80,800/-$. Further more on account of medical expenses as per Ex.P-10 to P-13 amount of Rs.1305/- is also maintained. Further considering the fact that claimant was admitted to the hospital and her hand was amputated, therefore on the head of pain and agony amount of Rs.20,000/- is further enhanced to Rs.50,000/-. Learned tribunal has not granted any loss of earning during the period of treatment and considering the period of treatment, consolidated amount of Rs.3000/- is granted for loss of earning during the period of treatment. Further in future medical expenses, transportation amount of Rs.2000/- is granted which also needs to be re-

assessed and on the head of transportation expenses considering the fact that appellant has to travel from Khairagarh to Raipur for treatment the transportation charges of Rs.2000/- is further enhanced to Rs.5000/-. The tribunal has not granted any amount on the head of attendant. Taking into fact that for treatment claimant has to travel naturally she would need attendant, amount of Rs.5000/- is awarded for attendant. With respect to the special diet considering the nature of injury and the period amount of Rs.2000/- is further enhanced to Rs.5000/-. Therefore, the compensation is re-assessed as under:-

S.No.	Head	Amount
1.	Loss of earning	Rs.2,80,800/-
2.	For medical expenses as awarded by the tribunal	Rs.1305/-
3.	On the head of pain and agony	Rs.50,000/-
4.	For loss of earning during the period of treatment	Rs.3000/-
5.	For transportation charges	Rs.5000/-
6.	For attendant	Rs.5000/-
7.	For special diet	Rs.5000/-
	Total	Rs.3,50,105/-

15. Thus, the total compensation will be Rs.3,50,105/-. After deducting Rs. 2,12,505/- awarded by the tribunal, the enhancement would be Rs.1,37,600/-.

16. In the result, the appeal is partly allowed. The claimant will be entitled to the said sum of Rs.1,37,600/- in addition to what is

already awarded with interest at the rate of 9% per annum from the date of application of claim petition. No order as to costs.

Sd/-
(Goutam Bhaduri)
JUDGE

Gouri