

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 132 of 2009

1. Smt. Hardeep Kaur, W/o. Jaswant Singh, aged about 55 years, R/o. Santra Badi, P.S. Mohan Nagar, Tahsil and District Durg (C.G.)

---- Appellant.

Versus

1. Ghanshyam Banjare, S/o. Ram Charan Banjare, aged about 23 years, R/o. Village Sawatpur, Post Sargaon, P.S. Hirri, District Bilaspur (C.G.)
2. Ram Charan Banjare, S/o. Bisahu Ram Banjare, aged about 55 years, R/o. Village Sawatpur, Post Sargaon, PS Hirri, District Bilaspur
3. Bajaj Allianz Insurance Co. Ltd., Through its Branch Manager, Shiv Mohan Bhavan, Vidhan Sabha Road, Pandri, Raipur (C.G.)

---- Respondents

For Appellant	:	Mr. M.P.S. Bhatia, Advocate with Mr. Manoj Jaiswal, Advocate.
For Respondent No.3.	:	Mr. S.S. Rajput, Advocate with Ms. Renu Singh, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

01/09/2015

1. Challenge in this appeal is to the award dated 29.08.2008, passed in Claim Case No.26/2007, by the 7th Motor Accident Claims Tribunal (F.T.C.), Durg, District Durg, whereby as against the claim made for Rs.6,90,000/-, an award of Rs.2,27,157/- was passed.
2. The appeal is by the claimant/injured.

3. Briefly stated facts of the case are that 24.07.2006, the claimant, Smt. Hardeep Kaur while was crossing the road in front of place known as Maharaja Dhaba at that time, vehicle motor cycle bearing No.C.G.10-E-6411, driven by the original non-applicant No.1, Ghanshyam Banjare in rash and negligent manner dashed the claimant, whereby she fell down and sustained severe injuries near her eye, wrist and left leg below the knee was fractured. It was stated that, the claimant was admitted to the hospital from 25.07.2006 to 12.09.2006 and at the time of the accident, she used to earn Rs.3,000/- per moth. Consequently, for the accident caused on different head an amount of Rs.6,90,000/- was claimed for.
4. The non-applicant No.1 and 2, the driver and owner of the offending vehicle remained ex-parte before the Court below.
5. The non-applicant No.3, the insurance company refuted the averments of the claim petition and it was stated that while crossing the road, the claimant/appellant had sustained injuries, therefore, she herself was negligent. She has not taken care while crossing the road, consequently, the accident happened. It was further contended that at the time of the accident, the driver of the offending vehicle has committed breach of terms of insurance policy, consequently, the insurance company is not liable to make good the compensation.
6. The learned Claims Tribunal after evaluating the entire evidence on record came to a conclusion that at the relevant time, the offending vehicle was driven in rash and negligent manner had dashed the claimant/appellant, thereby she sustained severe injuries on her

different part of the body including fracture. There is no challenge to such finding by the respondents and in absence of any challenge to the same, the finding arrived at by the learned Tribunal are affirmed.

7. Mr. M.P.S. Bhatia, learned counsel appearing on behalf of the appellant would submit that the learned Claims Tribunal has wrongly assessed the income and failed to grant just compensation. He would further submit that the claimant/appellant was treated at different hospital for her injury and was operated, therefore, proper award of compensation should have been made. He further submits that the learned Claims Tribunal has not awarded any amount towards future medical expenses looking to the injury of the appellant and that should also be awarded.
8. Per contra, learned counsel appearing on behalf of the insurance company vehemently opposed the argument and would submit that the award is well merited, which do not call for any interference.
9. I have heard the learned counsel for the parties at length, perused the documents and the evidence on record.
10. Certain bunch of documents has been placed on record in this appeal. Perusal of the document shows that these documents were not placed before the Claims Tribunal while the claim was adjudicated as the award is passed on 29.08.2008. Perusal of the documents shows that it pertains to the treatment of the claimant/appellant and are the photocopies of the bills, therefore, unless it is exhibited and admitted in the evidence, this can not be considered simply by taking it on record. No prayer is made to admit these documents as an evidence, therefore, the case is considered

on the basis of the document exhibited during the trial.

11. The learned Claims Tribunal has awarded Rs.1,18,757/- expenses towards medical treatment, Rs.5,000/- for pain and agony. Rs.4,000/- for special diet and Rs.4,000/- as traveling allowance. Rs.9,000/- towards pecuniary damages and Rs.86,400/- for disabilities.
12. Claimant, Smt. Hardeep Kaur in her statement has stated that because of the accident, she fell down on her head and sustained injuries near right eye. She sustained 15 stitches on her wrist and the entire hand was injured. The left leg below the knee, bone was broken into two pieces and also flesh came out and therefore, grafting is made from the other part of the right leg. Internal injury was also sustained. It is further stated that after the accident, she was admitted to CIMS, Bilaspur, thereafter, was referred to Apollo Hospital and thereafter she was further admitted to the Bhilai Hospital, wherein she was admitted for two months from 25.07.2006 and treatment continued, thereafter, she was admitted to the Shravan Hospital, Nagpur in the month of January. She has further stated that before the accident, she used to do the work of sewing and embroidery and used to earn Rs.3,000/- per month. She has further stated that she has incurred the expenses of Rs.20,000/- for transportation, Rs.10,000/- for special diet and Rs.2,00,000/- for treatment.
13. The learned Claims Tribunal has awarded Rs.1,18,757/- for treatment on the basis of the bills and the documents placed before the Court below. Before this Court, the claimant though have placed

a bunch of bills, which shows that she was treated even after the discharge and the bills shows that they are of the year 2008, September onwards.

14. Dr. Akhilesh Yadav in this case has been examined as PW-3. He has stated that he had examined the claimant/appellant and has found that appellant/claimant had 30% of disabilities. Therefore, considering the fact that no amount has been awarded for future treatment, in view of the statement and the document and the nature of the injuries, an amount of Rs.25,000/- is awarded for future treatment.
15. The Tribunal has awarded Rs.5,000/- for pain and agony. I have gone through the documents of the treatment, which shows that the appellant/claimant was subjected to operations and grafting was also made, therefore, looking to such aspect, on the head of pain and agony, the amount of Rs.5000/- awarded towards pain and agony is enhanced to Rs.50,000/-. With respect to special diet, the Tribunal has awarded Rs.4,000/-, the same do not require reconsideration and same is maintained. However, the amount of Rs.4,000/- awarded for transportation appears to be less, considering the fact that the appellant was treated at different hospital, first at Bilaspur, thereafter at Bhilai and thereafter at Nagpur, therefore, the amount of Rs.4,000/- granted for transportation is enhanced to Rs.10,000/-. The amount of Rs.9,000/- awarded towards loss of pecuniary damages is also maintained in facts and evidence available in the case. The amount of Rs.86,400/-, which is assessed on the basis of the disabilities to

the extent of 30% also do not require any consideration. Therefore, the amount of compensation, is reassessed as under :-

S.No	Heads	Calculation
(i)	For medical treatment	Rs. 1,18,757.00
(ii)	For future medical treatment	Rs. 25,000.00
(iii)	For pain and agony	Rs. 50,000.00
(iv)	For special diet	Rs. 4,000.00
(v)	For transportation	Rs. 10,000.00
(vi)	For pecuniary damages	Rs. 9,000.00
(vii)	For disabilities	Rs. 86,400.00
	Grand Total	Rs. 3,03,157.00

16. Thus the total compensation is recomputed as Rs.3,03,157/-. After deducting Rs.2,27,157/- as awarded by the Tribunal, the enhancement would be Rs.76,000/-.
17. In the result, the appeal is allowed in part. The appellant will be entitled to the said sum of Rs.76,000/- in addition to what is already awarded by the Claims Tribunal.
18. Now coming to the interest, the Supreme Court in **Asha Verman & others V. Maharaj Singh & others (supra)** held in para 19 that the High Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the principles laid down in case of **Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481 : AIR 2012 SC 100**. Therefore, in the instant case, interest @ 9% per annum is awarded on the compensation amount from the date of filing of the application till the date of payment. The claimants are entitled to receive the said compensation from the Insurance Company.

19. The Registry is further directed to communicate the claimant in writing the “amount enhanced in this appeal” as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language.
20. No order as to costs.

**Sd-
(Goutam Bhaduri)
Judge**

Balram