

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 154 of 2011

Smt. Laxmniya Bai W/o Somar Sai, Aged about 35 years, R/o Village Dandgaon, Police Station and Tahsil Lundra, District Sarguja (C.G.)

---- Appellant

Versus

1. Bhajan Ram S/o Shri Sumar Sai, aged about 43 years, R/o Village Saraidih, Police Station Dhoulpur, District Sarguja (C.G.)

(Driver of alleged vehicle bearing registration No. C.G.15A/2250)

2. Moh. Ziaul Haque S/o Late Moh. Sajjak, R/o Rajdhani Transport Kharsia Naka, Ambikapur, P.S. Kotwali, Ambikapur District Sarguja (C.G.)

(Owner of alleged vehicle bearing registration No. C.G.15A/2250)

3. The Branch Manager, the Oriental Insurance Company Ltd., Branch Office, M.D.G.R. Road Ambedkar Chowk, Ambikapur, District Sarguja (C.G.)

---- Respondent

For Appellant	:	Mr. Anil Gulati, Advocate.
For Respondent No.3.	:	Mr. R.N. Pusty, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02/09/2015

1. Challenge in this appeal is to the award dated 08/11/2010, passed in Claim Case No.10/2010, by the 4th Motor Accident Claims Tribunal (F.T.C.), Ambikapur, District Korea, whereby as against the claim made for Rs.2,80,000/-, an award of Rs.54,800/- was passed.
2. The appeal is filed by injured Smt. Laxmniya Bai, W/o Shri Somar Bai.

3. Briefly stated facts of the case are that on 13/04/2009 the injured, Smt. Laxmaniya Bai was traveling in a bus bearing no. C.G.15A/2250, which met with an accident and turned turtled. As a result, the Claimant sustained injuries on her hand and ultimately, the claim petition was preferred. At the relevant time, the bus was being driven by the original non-applicant no. 1, Bhajan Ram. The owner of the bus was Moh. Ziaul Haque. The Claimant contended that the accident occurred due to rash and negligent driving of the bus driver, wherein, she sustained injuries on her hand and was admitted to the hospital for the period 30/04/2009 to 11/05/2009, where, the doctors operated her hand. It was further contended that the Claimant used to earn Rs. 100-150 per day by selling vegetables and also by doing the labourer work which she could not perform after the injury and therefore on different heads an amount of Rs. 2,80,000/- was claimed.
4. The non-applicant no. 1, the driver of the bus contended that at the relevant time, the bus was being driven in moderate speed and all of sudden some cattle came on the road, and at the relevant time a motor cycle which was driven in un-controlled manner came from the opposite side, and in order to save him, the accident had occurred. The owner of the bus refused the averments made in the claim petition and contended that the Claimant was not traveling in the offending bus. The Insurance Company contended that at the relevant time, the bus was being driven under control and in order to save the motor-cycle, which was coming from opposite side, the bus has to leave the tar road, consequently, when it come out to the tar road, the claimants who was standing at the door of the bus fell down and sustained injuries. It was further stated that at the relevant time, the driver of the bus was not carrying the valid license and since there was breach of

terms committed, the Insurance Company is not liable to pay compensation.

5. The Tribunal after hearing the parties came to the conclusion that at the relevant time, the offending bus bearing no. C.G.15A/2250 was being driven in the rash and negligent manner, thereby the accident occurred. Since the said finding is not under any challenge by either of the parties, the same is affirmed.
6. Learned counsel for the appellant submits that the doctor in this case was examined and he has proved the fact that the claimant had sustained 50% of permanent disability. He further submits that the Tribunal, without proper assessment, has only assessed Rs. 300/- as loss of income, which is against the evidence on record, therefore, the quantum of compensation should be re-assessed.
7. Per Contra, learned counsel for respondent No. 3 submits that the award is well merited which do not call for any interference by this Court as just compensation has been awarded.
8. I have heard the learned counsel for the parties at length and have perused the documents and evidence on record.
9. The only question which arises for consideration in this appeal is about the quantum of compensation.
10. In the present case, the Claimant is examined. She has stated that because of the accident, she sustained injuries on her wrist and is not able to perform her job. The deposition sheet of the claimants shows that during the course of evidence, she was directed to pick-up a stamp pad with the injured hand, but she could not pick-up it. The Court had also observed that the left hand is not normal and she was not even able to pick the stamp pad. The Claimant has placed the

disability certificate, which has been marked as Ex-P-1. Apart from this, in order to prove the disability, the doctor, V.K. Shrivastava was examined as P.W.1. He stated in his evidence that the Claimant was treated by him and because of the injury which she sustained on her hand, the left wrist movements were fixed. He has proved the disability certificate which has been marked as Ex-P-10.

11. The Tribunal in its judgment had assessed the loss of income as Rs. 300/- per month. It had also been observed that after the injury on left hand, the injured was not capable to perform her job. The assessment of Rs. 300/- for loss of income has been made without any factual support of evidence on record. In order to assess the loss of income, the Tribunal should have assessed the same on the basis of the notional income.
12. In order to arrive at notional income, if the provisions of Second Schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles Act are looked into, it has fixed the notional income to the extent of Rs. 15,000/- in the year 1994. As the Central Government has failed to amend the second schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles Act, the Courts/Tribunal can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the second schedule in the year 1994 and the date of accident in the given case.
13. Perusal of the statement of the claimants would show that the injured belonged to unorganized sector, therefore, it would be difficult to expect that the income would have been documented and it could have been proved by any other factum except making oral statement.

In this case, the incident took place in the year 2009, therefore, taking into the account the wages of the labour which was ranging from Rs. 100-150 during the period 2009 and reverting to the present case, as the accident has happened in the year 2009, considering the increase in price of essential commodities during the period from 1994 to 2009, as also taking into the fact the wages which was prevailing for the labour according to the second schedule, in the opinion of this Court, the notional income of the injured would be Rs. 3,000/- per month in the facts and circumstances of the case. Consequently, the notional income of the injured is assessed to Rs. 3,000/- per month and thereby the annual income comes to Rs. 36,000/-.

14. According to the disability certificate and the statement of doctor, the claimants had sustained injuries to the extent of 50%. Perusal of the disability certificate would show that the disability is in relation to left upper limb, therefore, the disability of 50% cannot be taken as the same for the functional disability. The Claimant used to do the labour work, and consequently taking into the nature of injury in the opinion of this Court, it would be proper to assess the functional disability of claimant to the extent of 30% of the notional income. The 30% of Rs. 36,000/- comes to Rs. 10,800/-. The injured was stated to be 35 years aged at the time of incident, consequently, there would be multiplier of 16. After multiplying of 16 to Rs. 10,800/-, the amount for loss of income comes to Rs. 1,72,800/-. The Tribunal has further awarded Rs. 4,000/- for bodily pain which also requires to be reassessed in view of nature of injury, pain and agony, therefore, Rs. 4000/- is enhanced to Rs. 10,000/- and Rs. 4,000/- which was awarded for the loss of income sustained during the course of treatment is further assessed together with the amount of special diet and amount for

attending as Rs. 10,000/- consolidated. Thus, the total compensation to be reassessed is as follows:-

S.No	Heads	Calculation
(i)	Loss of earning	Rs. 1,72, 800/-
(ii)	For bodily pain and agony	Rs. 10,000/-
(iii)	For loss of income during the period of treatment together with the amount of special diet and attending (consolidated)	Rs. 10,000/-
	Total	Rs. 1,92,800/-

15. Thus, the total compensation is recomputed as Rs.1,92,800/-. After deducting Rs. 54,800/- as awarded by the Tribunal, the enhancement would be Rs.1,20,000/-.
16. In the result, the appeal is partly allowed. The appellant will be entitled to the said sum of Rs.1,20,000/- in addition to what is already awarded by the Claims Tribunal.
17. In the instant case, interest @ 9% per annum is also awarded on the compensation amount from the date of filing of the application till the date of actual payment. The claimants are entitled to receive the said compensation from the Insurance Company.
18. 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.
19. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge