

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1231 of 2009**

Manager, The New India Insurance Co. Ltd. Raigarh, Tehsil and District Raigarh (CG).

---- Appellant**Versus**

1. Smt. Vimla Sharma W/o Chhedilal Sharma, aged about 45 years, occupation, Business and House Wife, R/o village Kapu, Tehsil Dharamjaygarh, District Raigarh (CG).
2. Yadumani Yadav S/o B.M.Yadav, Occupation-Driver, R/o Vill.-Tamta, Tah.-Pathalgaon, Distt.-Jashpurnagar.
3. Ramdutt Joshi S/o H.D.Joshi, Occupation-Bus Owner, Bus No. C.G. 13 A 3227, R/o Vill.-Kapu, Tah.-Dhramjaygarh, Distt.-Raigarh (CG).

---- Respondents**MAC No. 1269 of 2009**

Smt. Vimla Sharma W/o Chhedilal Sharma, aged about 45 years, occupation, Business and House Wife, R/o village Kapu, Tehsil Dharamjaygarh, District Raigarh (CG).

---- Appellant**Versus**

1. Yadumani Yadav S/o B.M.Yadav, Occupation-Driver, R/o Vill.-Tamta, Tah.-Pathalgaon, Distt.-Jashpurnagar.
2. Ramdutt Joshi S/o H.D.Joshi, Occupation-Bus Owner, Bus No. C.G. 13 A 3227, R/o Vill.-Kapu, Tah.-Dhramjaygarh, Distt.-Raigarh (CG).
3. Manager, The New India Insurance Co. Ltd. Raigarh, Tehsil and District Raigarh (CG).

---- Respondents

For Insurance Company	:	Shri Pankaj Agrawal, Advocate.
For Claimant	:	Shri Amit Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.10.2017**

1. By this common award both the appeals are being disposed of as common facts & issues are involved in these appeals and arise out of the same accident.
2. Both the appeals under Section 173 of the Motor Vehicles Act have

been filed against the award dated 15.06.2009 passed by the 3rd Additional Motor Accident Claims Tribunal (FTC), Raigarh, in Claim Case No.17/2007. Vide the said impugned award, the Tribunal in a injury case has awarded a compensation of Rs.4,50,972/- alongwith interest @ 7 percent per annum from the date of application.

3. MAC No. 1231 of 2009 has been filed by the insurance company whereas, MAC No.1269 of 2009 has been filed by the claimant seeking enhancement of compensation.
4. The appeal of the insurance company is on the ground that the Tribunal has not taken into consideration the element of contributory negligence on the part of the claimant-injured as it is a case where the claimant herself had put her right hand outside the Bus in which she was travelling which had resulted in an accident. Further, except for the claimant, no other passengers have sustained any injury in the said accident and that too the injury sustained is on right elbow which was thrust out of window by the claimant herself. The FIR lodged was also against the unknown vehicle and report itself was lodged at a belated stage. Thus, the Tribunal should have deducted the said amount from the compensation on the ground of contributory negligence.
5. A perusal of record would show that the insurance company has not led any evidence before the Tribunal to substantiate any of the contentions which have been raised. The argument for applying contributory negligence is without any basis and the insurance company wants to draw an inference without leading any evidence in

this regard. The said ground raised by the insurance company is therefore unsustainable. The other ground which have been raised by the insurance company so far as the quantum is concerned, this court does not find any strong case made out on account of which the impugned award deserves interference. The appeal of the insurance company (MAC No. 1232 of 209) thus lacks merits and is rejected.

6. So far as claim of the claimant is concerned, the contention of the claimant is that the multiplier applied is not proper; the Tribunal has not granted any compensation towards transportation and special diet, neither has granted any amount for future medical expenses. Likewise, the income assessed by the Tribunal is also on the lower side and therefore, the amount of compensation deserves to be suitably modified.
7. Having considered the facts and circumstances of the case, this court finds that the Tribunal has accepted the annual income of the claimant at Rs.36000/- i.e. Rs.3000/- monthly. The accident took place on 11.02.2007 i.e. more than 10 years ago and at that point of time if the Tribunal has taken Rs.3000/- as monthly income of the claimant, the same cannot be said to be unreasonable. Further, no strong evidence is brought by the claimant to take a different view than what has been taken by the Tribunal. It is accordingly held that the annual income of the claimant assessed at Rs.36000/- is proper and justified.
8. So far as multiplier is concerned, if we look into the principle laid down by the Supreme Court in case of Sarla Verma & Ors. Vs. Delhi

Transport Corporation & Anr. 2009(6)SCC 121, the multiplier applicable in this case would be 14 instead of 13 as applied by the Tribunal. Further, if we look into the nature of injury which the claimant had sustained, it clearly reflects that her right elbow was hit by a Dumper coming from opposite direction as a result of which her elbow got completely damaged and she had undergone treatment for a considerable period of time and was later on also required to further undergo surgeries and operations for proper treatment of the injuries sustained.

9. The Tribunal has awarded compensation towards medical expenses incurred at Rs. 2,57,400/- on the basis of bills and vouchers which have been raised by the claimant before the Tribunal. However, no compensation has been awarded towards future medical expenses. Likewise, compensation awarded towards pain and suffering at Rs.5000/- is also unreasonably low for the reason that doctor himself who has examined the claimant has stated before the Tribunal that treatment went on for about an year time and that she had also undergone couple of surgeries in which she must have suffered pain and suffering. Thus, this amount of Rs.5000/- under pain and suffering deserves to be and is accordingly enhanced to Rs.30,000/- instead of Rs.5000/-.
10. Record also shows that the claimant had undergone her treatment at Raipur which is far away from the place where she otherwise resides. Travelling to Raipur and getting herself treated must have incurred great expenses and during the course of treatment she must

have required to have some nutritious and special diet for recovering the lost health at the earliest and for which also she must have incurred some expenses. Further, the claimant being a lady, must have accompanied by somebody while going for treatment which would have further incurred some expenses. Thus, this court is of the opinion that ends of justice would meet if the claimant is awarded a lump sum compensation of Rs.70,000/- towards travelling expenses, special diet and other miscellaneous expenses incurred.

11. The amount of compensation awarded by the Tribunal towards loss of earning capacity assessed at 55 percent disability was Rs.2,57,400/-which has been arrived at by applying the multiplier of 13 whereas, the multiplier applicable in the present case would be 14. It is ordered accordingly and which would increase the amount of compensation under loss of earning capacity by another Rs.19,800/- making total compensation towards loss of earning capacity at Rs.2,77,200/-instead of Rs.2,57,400/-. The amount of compensation towards medical expenses already incurred of Rs.1,88,572/- is ordered to remain intact.

12. Thus, the claimant shall be entitled for a total compensation of Rs.6,15,772/-instead of Rs.4,50,972/-. The enhanced amount shall also carry the same rate of interest as awarded by the Tribunal.

13. Resultantly, MAC No.1231 of 2009 filed by the insurance company is dismissed and MAC No.1269 of 2009 filed by the claimant is allowed.

Sd/-
(P. Sam Koshy)
Judge