

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 91 OF 2009

Kumari Jyoti, D/o Ramkrishna Mahant, aged about 6 years, Minor, through natural guardian father Ramkrishna Mahant, S/o Kapildas Mahant, R/o Village- Ghana Dabari, Tahsil-Katghora, District Korba (C.G.)

... Appellant

Versus

1. Shivmurat Singh, aged about 39 years, S/o Ramnaresh Singh, R/o K.C. Camp, Kusumunda, P.S. Kusumunda, District Korba (C.G.)
2. Dharamveer, aged about 59 years, S/o Subsingh, R/o Gevra Project, Gevra, District Korba (C.G.)
3. Manager, Bajaj Alliance General Insurance Company Limited, Shivmohan Building, Vidhansabha Road, Pandri, Raipur, District Raipur (C.G.)

... Respondents

For Appellant	:	Mr. Goutam Khetrapal, Advocate.
For Respondent No.3	:	Mr. Sachin Singh Rajput and Mr. Sangeet Kumar Kushwaha, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/09/2017

1. The present is a claimant's appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Katghora, District Korba, vide its award dated 10.11.2008 passed in Claim Case No. 336 of 2007.
2. Vide the impugned award dated 10.11.2008, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in an injury case, has awarded a compensation of Rs.3,40,000/- to the appellant-claimant, with interest thereon at the rate of 8% per annum from the date of filing of the claim application.
3. Facts of the case in brief are that the on 30.11.2006, the appellant-claimant, who was aged around 6 years, while travelling with her parents on motorcycle, bearing registration no. CG12-H/6485, was dashed with a Hywa Truck, bearing registration no. CG12-C/1152. In the said accident,

the appellant-claimant suffered grievous injuries, while her mother who was also travelling in the said motorcycle died on the spot.

4. As a result of the accident, the appellant-claimant suffered injuries on her left hand and left leg. On account of the injuries sustained, the veins of her left hand and left leg had to be cut with which the strength of her left hand and the left leg has been lost. Two Doctors, namely, Dr. Gaurishankar Asathi and Dr. R.K. Thawait, were examined before the Tribunal, who have categorically deposed that there was no possibility of the appellant-claimant getting her left hand and left leg activated again and that the percentage of the disability would keep on increasing gradually by age and there is no possibility of bringing movements to her left hand and left leg.

5. Learned counsel for the appellant-claimant submits that it is a case where the injuries suffered by the claimant would have a life long impact, inasmuch as she has become totally handicapped and as a result of the accident she has undergone a considerable amount of pain and suffering. That the loss of income awarded by the Tribunal also is on the lower side particularly the notional income assessed is also on the lower side and that while quantifying the compensation, the compensation under the head of future prospects ought to have been taken note of. Further, the compensation for loss of amenities and the future treatment also should had been awarded. Thus, prayed for the award to be suitably modified.

6. Learned counsel for respondent no.3-insurance company, however, opposing the appeal submits that considering the fact that the appellant-claimant was aged around 6 years, the amount of compensation awarded is just and reasonable and that there is no scope of enhancement particularly when the claimant was not in employment.

7. Considering the arguments put forth on either side and on perusal of the record and also keeping in view the decision of the Hon'ble Supreme

Court in the recent past where for the accident that had occurred in the year 2006 the notional income assessed is Rs.30,000/-, this Court finds that the assessment made by the Tribunal assessing the notional income of the appellant-claimant at Rs.30,000/- to be just and reasonable.

8. However, the Tribunal should have added 50% towards future prospects while quantifying the compensation. Accordingly, if 50% of Rs.30,000/- is added, the income would become Rs.45,000/- on which applying the 50% disability as has been assessed by the Doctors, the income would become Rs.22,500/- which if multiplied by applying the multiplier of 15, the total amount becomes Rs.3,37,500/-.

9. Further, considering the gravity of injuries sustained by the appellant-claimant and the deformity which has occurred by virtue of the accident and the treatment which she had to face particularly that of the grafting of skin from one place to the place of injury also must have put the claimant to a considerable amount of pain and suffering. The Tribunal has awarded towards pain and suffering only Rs.50,000/- which this Court finds to be on a lower side. This Court therefore quantifies the said amount at Rs.1,50,000/-.

10. Considering the fact that the claimant is a minor girl aged around 6 years and that she had also lost her mother in the same accident, she would definitely be put to great loss of amenities also for the reason that because of the deformity which has occurred to her, she would not be able to live a life of a normal child which she was till now enjoying and that it would also affect her marriage prospects and other growth related problems by virtue of the injuries. Thus, under the head of loss of amenities, this Court feels that ends of justice would meet if the claimant is awarded an amount of Rs.2,00,000/- and it is ordered accordingly.

11. Furthermore, considering the nature of injuries and the amount of treatment which she has incurred and where the Doctors have stated that she may also develop further complications with age, this Court quantifies Rs.50,000/- towards her future treatment, in addition to the amount of Rs.25,000/- which has been awarded by the Tribunal is ordered to remain intact.

12. It is thus ordered that the appellant-claimant shall be entitled to receive a total compensation of Rs.7,62,500/- instead of Rs.3,40,000/- which has been awarded by the Tribunal. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

13. Let the enhanced amount be deposited in a fixed deposit in a nationalized bank in the name of the appellant-claimant, with a liberty to withdraw the interest that would occur on the amount periodically.

14. The respondent no.3-insurance company shall deposit the amount of compensation within a period of 45 days from today.

15. The appeal stands allowed accordingly.

Sd/-
(P. Sam Koshy)
Judge