

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.67 of 2011**

Ku.Aasha Miri D/o Dhansay Miri, aged about 06 years,
Through natural guardian father Dhansay Miri S/o Kriparam
Miri, aged about 29 years, R/o Nayapara, Sirgitti, Police
Station Tarbahar, Tahsil & District Bilaspur (C.G.).

---Appellant**Versus**

1. Dahru Ram Sahu S/o Late Asharam, aged about 30 years,
R/o Gautam Nagar, Ward No – 7, Kahuka, Kurud, Thana –
Supela, Bhilai, District Durg (C.G.).
2. Smt.Sona Devi Saw W.o Sujit Kumar Saw, R/o Kurud Road,
Kohka, Ward No.7, Bhilai, Thana Supela, Distirct Durg (C.G.).
3. Branch Manager, National Insurance Co.Ltd., Branch Office
Taha Complex, Vyapar Vihar Road, Tahsil & District Bilaspur
(C.G.).

---Respondents**AND****MAC NO.517 of 2011**

Branch Manager, National Insurance Co.Ltd., Branch Office
Taha Complex, Vyapar Vihar Road, Tahsil & District Bilaspur
(C.G.).

---Appellant**Versus**

1. Ku.Aasha Miri D/o Dhansay Miri, aged about 06 years,
Through natural guardian father Dhansay Miri S/o Kriparam
Miri, aged about 29 years, R/o Nayapara, Sirgitti, Police
Station Tarbahar, Tahsil & District Bilaspur (C.G.).
2. Dahru Ram Sahu S/o Late Asharam, aged about 30 years,
R/o Gautam Nagar, Ward No – 7, Kahuka, Kurud, Thana –
Supela, Bhilai, District Durg (C.G.).
3. Smt.Sona Devi Saw W.o Sujit Kumar Saw, R/o Kurud Road,
Kohka, Ward No.7, Bhilai, Thana Supela, Distirct Durg (C.G.).

---Respondents

Shri Goutam Ketrapal, Advocate for Insurance Company.
Shri Samir Singh, Advocate for appellant in MAC No.67/2011 &
for respondent No.1 in MAC No.517/2011.
Shri Shrawan Agrawal, Advocate for respondent No.2 in MAC
No.67/2011 & for respondent No.3 in MAC No.517/2011.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****15/11/2017**

1. These are the two appeals filed under Section 173 of the Motor Vehicles Act assailing the award dated 26/08/2010 passed by the learned 1st Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No.03/2010.

2. Vide the impugned award, the Tribunal in the case of amputation of right leg of the claimant – a 6 year old girl child has awarded a compensation of Rs.4,00,678/- with interest @ 7.5% per annum from the date of application.

3. MAC No.67/2011 is an appeal by the claimant seeking enhancement and MAC No.517/2011 is an appeal by the Insurance Company assailing the quantum of the compensation. For convenience sake, we are taking the appeal of the Insurance Company first.

4. The challenge is to the quantum part. The contention of the counsel for the Insurance Company is that, the compensation awarded by the Tribunal in the instant case is on the higher side so far as the loss of income is concerned so also on the other heads which have been awarded by the Tribunal. He further submits, that the notional income of Rs.30,000/- assessed by the Tribunal is on the higher side considering the fact, that the injured in the instant case was a minor aged around 6 years old. He further submits, that the disability of 65% assessed by the Tribunal also is on the higher side as it is a schedule injury under provision of Workman Compensation Act where the said injury

has been shown with 40% of disability and therefore the award deserves to be interfered with.

5. Perusal of record show, that the factual aspects of the case is undisputed so far as the accident which arose on 10/08/2009, the resultant injury which was caused to the present appellant and the injury being the amputation of the right leg below the knee. What is to be seen is that the accident is of the year 2009. The minimum income of even an unskilled labour during the said period would had been around Rs.100/- per day i.e. Rs.3,000/- per month and Rs.36,000/- yearly and if the Tribunal has assessed the notional income at Rs.30,000/- yearly, it cannot be said to be either on the higher side or erroneous. Therefore, the said ground raised by the counsel for the Insurance Company does not have much force. So far as the disability part is concerned, this court is of the opinion, that the assessment of 65% made by the Tribunal is based upon the medical experts opinion in as much as the disability certificate has been issued by the District Medical Board and a doctor to this effect was also examined before the Tribunal.

6. Thus, this court does not find any merits in the appeal filed by the Insurance Company and the same therefore deserves to be and is accordingly dismissed.

7. As regards the appeal of the claimant i.e. MAC No.67/2011 is concerned, the counsel for the appellant submits, that the Tribunal has not granted any compensation for fixation of an artificial limb which would be required by the claimant with which she can perform her duties without the assistance of any

attendant. Further, the amount of compensation awarded under pain and suffering also is on the lower side so also since, the child was 6 years old at the time of the accident and she had to be hospitalized considerably and it required engagement of an attendant all along, the amount of compensation for engaging attendant also is on the lower side. Further, the future medical treatment also has been quantified on the lower side. In addition, there were certain incidental expenses also like traveling expenses, special diet etc. which have been incurred by the claimant which required due appreciation by the Tribunal, having not done so, the award deserves to be suitably enhanced.

8. The counsel for the Insurance Company however opposing the appeal submits, that the Tribunal has taken into consideration the broad heads which could be awarded in a case of amputation and has awarded reasonable compensation and the said award being just and reasonable, does not warrant any interference.

9. Having heard the contention put forth on either side and on perusal of record, undisputedly, the claimant in the instant case was a 6 years old child. At that age itself, if the artificial limb is not provided, the claimant would always be dependent upon the family members for her movement and mobility. Therefore, the claimant shall be definitely requiring fixing of an artificial limb. Thus, this court quantifies an amount of compensation for expenses towards the artificial limb at Rs.2,00,000/-. Further as regards the compensation for the loss of marriage prospects, the Tribunal has awarded Rs.50,000/-. Considering the facts and circumstances of the case particularly, the victim being a girl

child, this court is of the opinion, that ends of justice would meet if the said amount is enhanced from Rs.50,000/- to Rs.1,00,000/-. It is ordered accordingly.

10. So far as mental agony and pain and suffering is concerned, an amount of Rs.10,000/- is awarded to a child aged around 6 years who has her entire life ahead seems to be unreasonably low. Thus, this court enhances the said amount from Rs.10,000/- to Rs.50,000/-. Likewise, the amount of compensation for engagement of the attendant also deserves enhancement from Rs.5,000/- to Rs.25,000/- as she has been subjected to treatment for a long time and in future also, she would be required for regular treatment.

11. So far as future treatment is concerned this court is of the opinion, that in addition to the expenses that has already been incurred by the claimant, she would be required regular checkup and treatment and also going to the hospital for change of the artificial limb which also would incur expenses, this court quantifies an additional amount of Rs.25,000/- which would make the total compensation towards future medical treatment at Rs.50,000/- instead of Rs.25,000/- as awarded by the Tribunal.

12. Further the claimant must have also incurred certain incidental expenses like transportation, special diet etc. for which also this court quantifies an amount of Rs.15,000/-. Thus, the claimant shall be entitled for an additional compensation of Rs.3,50,000/- in addition to what has already been awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

13. Thus, the appeal of the claimant stands allowed and the appeal of the Insurance Company stands rejected.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit