NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 919 of 2013

1. Smt. Khorbahrin Bai Nishad aged about 50 years, (at present 52 years) W/o Ramji Nishad R/o Village Chandandih, PS Amanaka District Raipur, CG

---- Appellant/Claimant

Versus

1. Gurupal Singh S/o Gurbhajan Singh, aged 50 years R/o Biharo Mohalla Khursipar Bhilai through Raju Singh, PS Khursipar District Durg, CG **Respondent (Driver)**

2. Gyaneshwar Singh S/o R.K. Singh R/o Adarsh Construction, Nehru Nagar, District Durg CG **Respondent (Owner)**

3. National Insurance Company Limited through Branch Manager, Mobin Mahal, GE Road PS Golbazar, Raipur,

---- Respondent/Insurer

For Appellant	-	Shri Rohitashva Singh, Advocate.
For Respondents 1& 2	-	None appeared.
For Respondent No.3	-	Shri Gautam Khetrapal, Advocate

Hon'ble Shri Justice Pritinker Diwaker and Hon'ble Justice R.P. Sharma

Order on Board

24 /07/2017

This appeal arises out of the award dated 17.7.2013 passed by Additional Motor Accident Claims Tribunal (for short the "Tribunal") Raipur in Claim Case No. 06/2012 awarding a compensation of Rs. 2,79,200/- in favour of the appellant/claimant.

2. Facts of the case in brief are that on 10.9.2011 when the appellant/claimant was crossing the road, truck bearing registration No. CG-07-CA-2661 driven by respondent No.1 herein in a rash and negligent manner came there and hit her as a result of which she suffered serious injuries in her left hand and remained admitted in Dr. Bhimrao Hospital from 10.9.2011 to 22.9.2011.

3. A claim petition was filed by the appellant/claimant claiming a compensation of Rs. 19,50,000/- *inter alia* pleading that she being a vegetable vendor used to earn Rs. 200/- per day and that after the incident she has become permanently disabled on account of which it has become difficult for her to eke out her livelihood.

4. Pleadings of the claimant have, however, been denied by the respondent No.1 (Driver) and respondent No.3 (insurance company).

5. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs. 2,79,200/- in favour of the appellant/claimant taking her daily income as Rs. 100/- and monthly being Rs. 3,000/-. While passing the impugned award the Tribunal has however held that on account of amputation of her left hand above the elbow, she has become permanently disabled to the extent of 85%. Hence this appeal for enhancement.

6. Counsel for the appellant/claimant submits that the finding recorded by the Tribunal in taking the monthly income of the appellant/claimant as Rs. 3000/- is manifestly erroneous. Likewise, he submits that the Tribunal has committed an error in taking the age of the appellant/claimant at the relevant time as 65 years and then applying the multiplier of 7 whereas in fact her age at the

relevant time was about 50 years and therefore in these circumstances multiplier of 13 should have been applied. Compensation awarded on other heads is also agitated to be too much on the lower side.

7. On the other hand, counsel for the respondent/insurance company supports the award impugned.

8. Heard counsel for the parties and perused the documents on record.

9. From the pleadings of the respective parties and the overall evidence on record it is clear that on the fateful day the truck hit the appellant/claimant while she was crossing the road on foot. Said truck at the relevant time was insured with respondent No.3 and was being driven by respondent No. 1 in a rash and negligent manner. The finding of the Tribunal in assessing monthly income of the appellant/claimant as Rs. 3000/-, then taking the permanent disability to the extent of 85% and arriving at the loss of monthly income as Rs. 2550/- are against the benevolent provision. Disability has been defined in the case of **Ram Chandrappa v. Manager, Royal Sunderam Alliance Insurance Company (2011) 13 SCC 263** saying that the term “disability” as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of part of the body. If the physical efficiency because of the injury has been substantially impaired or if he or she is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was doing initially before injury, he will be entitled to suitable compensation. Disability benefits are ordinarily granted on the basis of the

character of the disability as partial or total and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in every case.

10. Further, in the case of **V. Sudha v. Ganpati Bhat** reported in **(2013) 7 SCC 400** it has been held that in routine personal injury cases compensation will be awarded only under the head – pecuniary damages but in serious cases of injury where there is specific medical evidence corroborating the evidence of the claimant, compensation will be granted under non-pecuniary damages including of permanent disability, future medical expenses, loss of amenities and loss of expectation of life.

11. The Tribunal has committed a manifest error in taking the monthly income of the appellant/claimant as Rs. 3000/- because even if the notional income is taken into consideration, it can be held that the deceased was earning Rs. 6000/- per month and annual being Rs. 72,000/-. Looking to the amputation of her left hand the permanent disability to the extent of 85% is assessed to have resulted in her functional disability to the extent of 50% leading to the loss of income of Rs. 36,000/-. On the basis of age mentioned in the medical documents the Tribunal has arrived at the conclusion that at the relevant time she was aged about 65 years and applied the multiplier of 7 while determining the compensation though in the pleading the appellant/claimant's age has been mentioned around 50 years. This Court is not in agreement of this finding recorded by the Tribunal and therefore taking her age at the time of accident as around 50 years, multiplier of 13 appears to be the correct one. As such the multiplier in this case would be of 13.

Applying the multiplier of 13 the total loss of income comes to Rs.4,68,000/-. Since the appellant/claimant did not produce the medical bills, the expenditure borne by her on her treatment has been denied however keeping in mind the discharge ticket a sum of Rs. 10,000/- has been awarded on that head. The amount awarded for medical treatment appears to be on the lower side and being so this Court thinks it proper to enhance the same to Rs. 30,000/-. Likewise a very meager amount of Rs. 5000/- has been awarded for the special diet which is hereby enhanced to Rs. 30,000/-. This apart, the appellant/appellant is also entitled to receive Rs. 1,00,000/- for pain and suffering and Rs. 1,00,000/- for loss of amenities as the Tribunal has not awarded even a single pie on these heads. This Court also thinks it proper to award Rs. 15,000/- for attendant and Rs. 15,000/- for transportation. Further, the doctor (AW-2) has clearly stated that on account of amputation of the left hand of the appellant/claimant she cannot do the work where she is required to carry weight with her. Looking to this, it appears just and proper for this Court to award Rs. 80,000/-for the artificial limb to enable her for earning her livelihood in an effective manner.

12. In the aforesaid view of the matter, the compensation for which the appellant/claimant is indeed entitled is determined as under:

1.	Total loss of income	Rs. 4,68,000
2.	Medical expenses	Rs. 30,000
3.	Special diet	Rs. 30,000
4.	Pain and suffering	Rs. 1,00,000
5.	Loss of amenities	Rs. 1,00,000
6.	For attendant	Rs. 15,000

7.	For transportation	Rs. 15,000
8.	For artificial limb	Rs. 80,000
	Total	Rs. 8,38,000

13. Thus, the total compensation including the amount awarded on conventional heads comes to Rs. 8,38,000/- i.e. (4,68,000/- +3,70,000/-). After deducting the amount of Rs. 2,79,200/- awarded by the Tribunal the enhanced sum comes to Rs. 5,58,800 rounded off at Rs. 5,60,000/- which the appellant/claimant is entitled to receive with interest @ 9% per annum from the date of application till realization. The amount received by the claimant, if any, shall be adjustable in the enhanced sum.

14. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/- Sd/-

(Pritinker Diwaker) (R.P. Sharma)
Judge Judge

Jyotishi