

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1114 of 2013**

- Smt.Pramila Kapoor W/o Rajesh Kapoor Aged About 47 Years
R/o Gandhi Nagar Ward, Jagdalpur, Distt. Bastar C.G.

---- Appellant**Versus**

1. Rashid Kamal Khan S/o Avid Kamal Khan R/o Indira Colony
Ward No. 08, Baihar, P.S. Baihar, Distt. Balaghat M.P. Thru-
Proprietor Mahindra Travels, Pandari Raipur C.G.
2. New Jeewan Bus Service Thru- Proprietor Akash Singh Gill,
New Bus Stand, Pandari, Raipur, Distt. Raipur C.G.
3. The Oriental Insu. Co.Ltd. Thru- Branch Manager, Laxman
Avenue, Medical College Road, Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Appellant	:	Shri P.K. Tulsyan, Advocate.
For Respondents 1&2	:	None.
For Respondent No.3	:	Shri Raj Awasthy, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board**By Pritinker Diwaker, J****21/07/2017**

1. This appeal filed by the claimant/appellant arises out of the award dated 01.10.2013 passed by Motor Accident Claims Tribunal (for short the "Tribunal") Bastar at Jagdalpur in Claim Case No.229/2011 whereby in an injury case compensation of Rs.53,019/- has been awarded to the claimant/appellant

herein.

2. Facts of the case, in brief are that on 21.05.2011 the claimant was riding her two wheeler Hero Puch bearing registration No.CG-17-A-2797. When she reached near N.H.43, Reliance Petrol Pump, the offending vehicle i.e. Truck No.CG-04-E-1372 being driven by respondent No.1 herein rashly and negligently, came from opposite direction and gave dash to the motorcycle of the claimant, as a result of which, she suffered number of injuries including that of fracture in both leg and left hand. The appellant/claimant was hospitalized in Maharani Hospital, Jagdalpur from 21.05.2011 to 10.08.2011 i.e. two months and 20 days. A claim case was filed by the claimant/appellant claiming compensation to the tune of Rs.26,22,150/- under various heads, *inter alia*, pleading that after the accident, she was taken to Maharani Hospital, Jagdalpur where her right leg was operated twice and plate was inserted in her leg. It has been further pleaded that due to the said accident, the claimant is unable to perform her day to day work.

03. Pleadings of the claimant has, however, been denied by the respondent/insurance company.

04. The Claims Tribunal by the impugned award has awarded a compensation of Rs.53,019/- to the appellant under various head such as pain & suffering, loss of income and expenses incurred in the treatment. It is this award which has been

challenged by the appellant in this appeal.

05. Counsel for the appellant submits that:-

- The Claims Tribunal has erred in law in awarding very negligible compensation for the injuries sustained by the claimant.
- No amount has been granted under the head “future treatment”. The sum awarded under the head “pain & suffering” is also on the lower side.
- The appellant's popadum business affected due to the accident in question and is not able to do any work due to permanent disability, but nothing has been awarded by the Claims Tribunal under the head of permanent disablement.
- That in the incident appellant has suffered 55% permanent disability and has duly proved the medical certificate (Ex.A-9) issued by the Medical Board but the same has not been considered by the Tribunal. He further submits that under the conventional heads also the Tribunal has awarded very less compensation.

06. On the other hand, counsel for the respondent No.3- Insurance Company supports the award impugned.

07. Heard counsel for the parties and perused the material available on record.

08. Considering the fact that the claimant/appellant

remained hospitalized for more than two months in the hospital and during this period her right leg was operated twice and plate was inserted, it is apparent that the claimant would have suffered much pain and agony and would also be required to incur expenses in future treatment.

09. As regards the compensation towards permanent disability, this Court feels that the Tribunal has erred in not awarding the same. The claimant has placed on record permanent certificate indicating the claimant to have suffered 55% permanent disability. The disability certificate has been proved by examining doctor who issued the said certificate. In these circumstances, the Tribunal ought to have awarded some compensation.

10. Thus, keeping in view all the above things, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration.

11. True, the claimant/appellant pleaded that she used to earn Rs.15,000/- per month by doing popadum business, no cogent and reliable evidence was led before the Tribunal to establish her income to the extent of Rs.15,000/- per month. Therefore, we do not find any fault in the approach of the Tribunal in discarding the appellant's evidence about her income.

12. Considering that appellant/claimant Pramila Kapoor, on the date of accident, was doing her popadum business and

she could have easily earned Rs.200/- per day in the year 2011. We, therefore, propose to recompute the compensation taking the notional income of the claimant at Rs.6,000/- per month. Likewise, looking to the age of the claimant 47 years at the time of accident, loss of future income can be assessed to be Rs.1,800/- (30% of 6,000) which comes to Rs.7,800/- per month and Rs.93,600/- per annum. In the incident the claimants suffered 55% permanent disability, therefore, loss of future earning due to permanent disability can be assessed to be 30% which comes to Rs.28,080/- per annum. (30% of Rs.93,600/-).

13. Looking to the age of the claimant i.e. 47 years, at the time of accident and the fact that she suffered permanent disability to the extent of 55%, we are of the opinion that multiplier of 13 is to be applied as per the Schedule. Therefore, by applying the multiplier of 13 compensation is assessed to Rs.28,080/- x 13 = Rs.3,65,040/-. That apart, the amount awarded under the conventional heads also appears to be on lower side. Thus, keeping in view all these things, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimants/appellants are entitled for compensation in the following manner:-

Head		Amount enhanced
For Medical Expenses	:	45,000/-
Pain and suffering	:	50,000/-

Conveyance and special diet	:	50,000/-
Attendant	:	15,000/-
For future treatment	:	40,000/-
Total	:	Rs.2,00,000/-

14. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.5,65,040/- (3,65,040/- + 2,00,000/-) for which the claimant is entitled to receive as compensation. Since the Tribunal has already awarded Rs.53,019/-, after deducting the same the claimants/appellant is entitled for enhanced amount of Rs.5,12,021/- (Rs.5,65,040/- - Rs.53,019/-). This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization. The amount received by the claimant, if any, shall be adjusted in the enhanced sum.

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

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge