

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1170 of 2013**

- Kiske Kosi W/o Shri Sukda, Caste Gond, Age 40 years, R/o Chichorguda Para, Samsatti, Thana Sukma, District Sukma (C.G.).

---- Appellant**Versus**

1. Shri Firoz Kha S/o Shri Samsuddin, age 30 yers, Profession - Driver, R/o Old Market Near Gadar Bridge, Main Road, Dallirajhara, District Durg (C.G.)
2. Manish Kumar Jain, S/o Late Bhagchand Jain, aged about 36 years, R/o New Bus Stand, Main Road, Dallirajhara, District Durg (C.G.)
3. The Oriental Insurance Company Limited, Main Road, Jagdalpur, District Bastar (C.G.)

---- Respondents

For Appellant : Shri Alok Dewangan, Advocate.
 For Respondents 1&2 : None.
 For Respondent No.3 : Shri Pankaj Agrawal, 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 16.09.2013 passed by Motor Accident Claims Tribunal (for short the "Tribunal") South Bastar Dantewada in Claim Case No.203/2006 whereby in an injury case

compensation of Rs.8,000/- has been awarded to the claimant/appellant herein.

2. Facts of the case, in brief are that on 30.06.2005 when the claimant was getting down from the bus, the offending vehicle i.e. bus No.CG-07-E-0223 being driven by respondent No.1 herein rashly and negligently, moved away as a result of which she fell down and suffered number of injuries including fracture of tibia fibula bone. A claim case was filed by the claimant/appellant claiming compensation to the tune of Rs.9,50,000/- under various heads, *inter alia*, pleading that after the accident, she was taken to Maharani Hospital, Jagdalpur where she remained hospitalized for one month. 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.8,000/- 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 as under:-

- That the Claims Tribunal has erred in law in awarding very negligible compensation for the injuries sustained by the claimant.

- That the claimant/appellant has suffered 40-45% permanent disability but the Tribunal has not awarded reasonable compensation.
- That No amount has been granted under the head “future treatment”. The sum awarded under the head “pain & suffering” is also on the lower side. It has been argued that loss of future earning has also not been considered by the Tribunal.
- That under 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 suffered injuries including fracture of tibia fibula bone and remained hospitalized for one month, 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 disability certificate indicating the claimant to have suffered 40-45% 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.2500/- per month by doing labour work, no cogent and reliable evidence was led before the Tribunal to establish her income to the extent of Rs.2,500/- 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, on the date of accident, was doing labour work and she could have easily earned Rs.5000/- per month in the year 2005. We, therefore, propose to recompute the compensation taking the notional income of the claimant at Rs.5,000/- per month and Rs.60,000/- per annum. Likewise, looking to the age of the claimant 40 years at the time of accident, loss of future prospect can be assessed to be Rs.18000/- (30% of 60,000) which comes to Rs.78,000/- per annum. In the incident the claimants suffered 40-45% permanent disability, therefore, loss of future earning due to permanent disability can be assessed to be 15% which comes to Rs.11,700/- per annum. (15% of Rs.78,000/-).

13. Looking to the age of the claimant i.e. 40 years, at the time of accident and the fact that she suffered permanent disability to the extent of 40-45%, we are of the opinion that multiplier of 15 is to be applied as per the Schedule. Therefore, by applying the multiplier of 15 compensation is assessed to Rs.11,700/- x 15 = Rs.1,75,500/-. 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 Pain and suffering	:	1,00,000/-
Total	:	Rs.1,00,000/-

14. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.2,75,000/- (1,75,000/- + 1,00,000/-) for which the claimant is entitled to receive as compensation. Since the Tribunal has already awarded Rs.8,000/-, after deducting the same the claimants/appellant is entitled for enhanced amount of Rs.2,67,000/- (Rs.2,75,000-Rs.8,000). 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

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