

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No.865 of 2011

Miss Arti D/o Babulal Sao, aged about 5 years, Through Babulal Sao (Father of the appellant) S/o Vasudeo Sao, aged about 38 years, R/o village Karpavand, Tahsil Bakavand District Bastar (C.G.).

---Appellant

Versus

1. Saheb Singh S/o Karm Singh Jat Panjabi, aged about 43 years, R/o Near Pandari Gate P.S.Pandari (Mowa) Raipur (C.G.). (Driver of the vehicle).
2. Anwar Ali S/o Saiyyad Ali, aged about 38 years, R/o Royal House C/18 Sector 05, Shailendra Nagar, Raipur (C.G.). (Owner of the vehicle).
3. The Oriental Insurance Co.Ltd., Through Branch Manager, Main road Jagdalpur, District Bastar (C.G.).

---Respondents

For appellant	:	Shri P.K.Tulsyan, Advocate.
For respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice P. Sam KoshyOrder on Board

04/01/2018

1. Present is an appeal by the claimant under Section 173 of the Motor Vehicles Act assailing the award dated 29/04/2011 passed by the learned 3rd Additional Motor Accident Claims Tribunal, Jagdalpur, District Bastar in Motor Accident Claim Case No.105/2009.
2. Vide the said impugned award, the Tribunal in an injury case has awarded a compensation of Rs.1,34,000/- with interest @ 6% per annum from the date of application.
3. The counsel for the appellant submits that, though the claimant in the instant case was a minor girl aged around 5 years, but the nature of injury

which the claimant had suffered was too grievous and that the compensation awarded is too meagre an amount as compared to the injuries sustained by the claimant. He further submits that, the claimant in the instant case by virtue of the accident has become totally bedridden and that she was not able to perform her daily courses also without the assistance of her family members. He further submits that by virtue of the accident and the injuries sustained, the claimant has suffered from paraparesis which has lead to the claimant being totally bedridden. He further submits that, even today after about more than 10 years from the date of accident, the claimant is bedridden and still under treatment and the parents of the injured are facing great difficulties in meeting the medical expenses which the claimant was still being provided with. The claimant has produced a series of bills and documents by way of an application under order 41 Rule 27 to show that, the treatment is still going on. He further submits that, the doctor was also examined who had discussed the nature of injuries and its gravity and the difficulties which the claimant has been facing after the accident as is discussed in paragraph 24 of the judgment. He further submits that, the doctor himself had assessed the physical disability of more than 75% and thus prayed for the compensation to be suitably enhanced.

4. The counsel for the Insurance Company however opposing the appeal submits that the bills have not been verified or put to test before any authority and therefore they cannot be relied upon at this juncture for grant of compensation. He further submits that, the claimant at the time of accident was aged only around 5 years and under the said circumstances the income

assessed by the Tribunal and the compensation awarded seems to be fair and reasonable and does not warrant any interference. He further submits that if at all if, these documents which has been brought on record is to be taken into consideration, then the matter may be remitted back to the Tribunal so that the Insurance Company gets an opportunity to verify the same so also cross-examine the doctor or the claimant who would enter appearance to prove these documents.

5. Having heard the contentions put forth on either side and on perusal of record, this Court prima-facie is of the opinion that, considering the fact that the appeal is of the year 2011 and the accident is of the year 2008, no fruitful purpose would be served at this juncture after about 10 years from the date of accident in remanding the matter back to the Tribunal for a fresh adjudication altogether.

6. So far as the accident, the vehicle involved in the accident and the vehicle being duly insured by the Insurance Company, there does not seem to be dispute on these. The only issue which is left to be decided is whether the amount of compensation awarded is just, reasonable and fair or not?

7. As regards the medical condition of the claimant is concerned, this Court does not find any reason to disbelieve the version of the doctor-V.K.Jha-AW/2 who had examined the claimant and was a member of the District Medical Board while issuing the disability certificate-Exhibit-A/10. He has specifically given the actual physical condition of the claimant which is reflected in paragraph 24 of the impugned judgment and the plain reading of

the observation of the doctor itself shows the physical condition of the claimant. In addition, what also cannot be lost sight is the fact that, the claimant in the instant case was a minor girl, aged around 5 years and today, she must be somewhere around about 15 years of age and that she is a growing girl. Even for her daily courses also, the assistance of her family members is necessary. She must have been incurring a frequent medical treatment and for which also there would be a regular expenditure incurred by her family members. The amount of pain and suffering and mental agony of the girl cannot even be imagined.

8. Keeping all these in mind, this Court intends to suitably compensate the claimant by awarding compensation as under:-

For pain and suffering which the claimant has undergone or undergoing, this court quantifies the compensation at Rs.1,50,000/-. So far as loss of amenity to the claimant is concerned, being a girl and who is being on a bed all through her childhood, this Court quantifies again an amount of Rs.1,50,000/-. So far as the expenses towards special diet and the incidental travelling allowances is concerned, this Court quantifies a compensation at Rs.50,000/-. So far as the medical expenses which has been incurred, though the Tribunal initially has awarded an amount of Rs.11,000/-, this Court considering the total facts and circumstances of the case and also taking note of the documents which have been brought on record under order 41 Rule 27 quantifies a compensation of Rs.2,00,000/- towards medical expenses. So far as the disability part is concerned, this Court assesses the notional income of Rs.3,000/- per

month i.e. Rs.36,000/- yearly of which if 40% is added towards future prospects, the amount would come to Rs.50,400/- of which if accepting 75% to be the disability as has been assessed by the Medical Board, the amount would come to Rs.37,800/- which if multiplied by applying multiplier of 15, since the claimant was a minor, the amount would become Rs.5,67,000/-.

9. Thus the total compensation payable to the claimant would become Rs.11,17,000/- instead of Rs.1,34,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. The appeal thus stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit