

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.3970 of 2014(O&M)

Date of decision: 23.5.2018

Nirmala DeviAppellant

VERSUS

ICICI Lombard General Insurance Co. Ltd.Respondent

CORAM: HON’BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod K. Kaushal, Advocate for the appellant.

Mr. A.S. Sidhu, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

The claimant is in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Hoshiarpur (in short ‘the Tribunal’) on account of injuries sustained by her in a motor vehicular accident that took place on 23.11.2011.

The Tribunal has awarded compensation of Rs.2,46,576/-, detailed hereunder:-

Medical Expenses	Rs.96,576/-
Special diet	Rs.15,000/-
Pain and sufferings	Rs.10,000/-
Attendant charges	Rs.3,500/-
Transportation	Rs.2,500/-
Compensation qua disability	Rs.80,000/-

Loss of earnings during period of treatment and recovery	Rs.15,000/- (Rs.2500 x 6)
Future treatment	Rs.15,000/-
Services of an attendant	Rs.9,000/-

Counsel for the claimant would argue that compensation awarded by the Tribunal under various heads is on lower side and needs enhancement. It is argued with vehemence that though the injured has suffered disability to the extent of 40% as per disability certificate, she would not be able to discharge her functions and render her services as a house maker. It is further argued that claimant is entitled to compensation qua loss of her services by applying multiplier method.

Counsel representing the insurance company has supported assessment made by the Tribunal.

Before advertng to the submissions made by counsel for the parties, it is appropriate to note that in pursuance of order dated 27.04.2018, Nirmala Devi – injured appeared in the Court and I had an opportunity to see her physical status as on date. She was finding some difficulty in walking even with a stick. Dr. Jaswinder Pal, MS Ortho Civil Hospital, Hoshiarpur AW-4 was one of the members of Medical Board that assessed disability of Nirmala Devi on 10.07.2012. He has deposed that Nirmala Devi had fracture of bilateral shaft humerus with open reduction and internal fixation with stiff shoulder with fracture radius distal end of left side with stiff wrist with fracture neck femur old. The disability was assessed at 50% but temporary in nature. The medical board advised for

re-assessment of disability after six months. On re-assessment made by the Medical Board comprising Dr. Upkar Singh Sooch AW-7, disability was assessed to the tune of 40%, permanent in nature. Dr. Upkar Singh has deposed that it was an old case of roadside accident with fracture shaft humerus bilateral with fracture greater tuberosity right humerus, injury is united with malunion with malunited fracture lower end of left radius with stiffness of both shoulder joints, more on the right side with stiffness of left wrist with mild stiffness of left hip joint. He has further stated that due to disability, patient cannot sit cross leg in squatting position. Due to stiffness of both shoulders, left wrist joint and left hip, the patient is unable to do any household work.

Nirmala Devi appeared in the witness box and narrated her agony with regard to her physical condition due to sustaining of injuries. She has also reiterated that she cannot do household work which is being looked after by her youngest daughter who also served her on account of sustaining injuries in the occurrence. Taking into consideration evidence on record discussed hereinbefore coupled with physical condition of the injured noticed at the time of her presence in the court, it can be safely concluded that the injured may not be able to perform her duties as a house maker. However, there is nothing on record suggestive of the fact that due to sustaining of injuries, it has adverse affect on her mental faculties, therefore, she would be available for satisfying the emotional needs of the family. Taking a clue from minimum wage of unskilled worker coupled with multifarious duties to be performed by a house-maker along with the fact that she can render necessary advise to members of the family,

monthly loss of her services is assessed at Rs.3,000/- per month. The injured was 52 years old at the time of occurrence and a multiplier of 11 is to be applied. In this view of the matter, claimants shall be entitled to loss of value of her services to the tune of Rs.3,96,000/- (Rs.3000/- x 12 x 11). The amount of Rs.80,000/- qua disability assessed by the Tribunal shall be adjusted out of compensation assessed qua loss of her services and the additional amount is Rs.3,16,000/-. The claimants shall be entitled to a sum of Rs.50,000/- towards loss of amenities of life. Compensation awarded by the Tribunal under other heads is ordered to be affirmed. In this manner, total compensation comes to Rs.6,12,576/- and the additional amount is Rs.3,66,000/- (Rs.6,12,576/- - Rs.2,46,576/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

MAY 23, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no