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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 657 of 2014

- Ku. Ayushi Nahata D/o Late Shri Shripal Nahata, Aged 19 years, R/o Amit Masala, Geedam Road, Jagdalpur, District Bastar (C.G.)

---- Appellant/Claimant

Versus

1. Hari Alias Harekrishna Naag, S/o Late Shri Dhansingh Naag, aged about 37 years, R/o Hikameepara, Near Verma Store, Ramaiah Ward, Jagdalpur, District- Bastar (C.G.)
(Driver)
2. Smt. Pushpa Devi Chandak, W/o Mohan Chandak, aged 32 years, R/o Near Kali Mandir, Moti Talaab Para, Jagdalpur, District Bastar (C.G.)
(Owner)
3. Branch Manager, New India Insurance Company Ltd., Near Jhankar Cinema, Jagdalpur, District Bastar (C.G.)
(Insurer)

---- Respondents/Non-applicants

And

Miscellaneous Appeal (Civil) No. 858 of 2015

- Vinit Kumar Nahta, S/o Rawalmal Nahta, aged about 20 years, R/o Moti Talab Para, Jagdalpur, District Bastar (C.G.) Through Rawalal Nahta S/o Late Nemichand Nahta (Natural guardian/Father) aged about 45 years R/o as above.

---- Appellant/Claimant

Versus

1. Hare Krishna Nag @ Hari S/o Late Dhansingh Nag, aged about 37 years, R/o Near Verma Stores Hikmi Para, Ramaiya Ward Jagdalpur, District Bastar (C.G.)
(Driver)
2. Smt. Pushpa Devi Chandak W/o Mohan Chandak through Mohan Chandak S/o Late Puran Chand Chandak aged about 36 years Near Kali Mandir Moti Talab Para, Jagdalpur, District Bastar (C.G.)
(Owner)
3. The New India Insurance Co. Ltd. Through Branch Manager, Near Jhankar Talkies Jagdalpur, District Bastar (C.G.)
(Insurer)

---- Respondents/Non-applicants

For respective Appellants	:	Shri Pravin Kumar Tulsyan and Shri Raza Ali, Advocates
For other Respondents 1 & 2	:	None
For Respondent No. 3	:	Shri Hanuman Prasad Agrawal, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

25.02.2019

1. Above both appeals arise out of the same accident occurred on 27.05.2008 involving the same vehicle- Tavera bearing registration No. CG-17/D/0951 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.

2. M.A.(C) No. 657 of 2014 arises out of award dated 26.03.2014 passed by First Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (C.G.) in Claim Case No. 33 of 2010 awarding compensation in favour of the Appellant/Claimant- Ku. Ayushi Nahata of Rs.1,12,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No.3 alongwith non-applicants No. 1 and 2 jointly and severally. M.A.(C) No. 858 of 2015 arises out of award dated 16.04.2015 passed by Additional Motor Accident Claims Tribunal (FTC), Jagdalpur (C.G.) in Claim Case No. 41 of 2013 awarding compensation in favour of the Appellant/Claimant- Vinit Kumar Nahta of Rs.21,80,000/- with interest @ 9% per annum from the date of application till realization, fastening liability on non-applicant No.3 alongwith non-applicants No. 1 and 2 jointly and severally.

3. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No. 3.

4. Brief facts necessary for disposal of both appeals are that on 27.05.2008 Claimants namely Ku. Ayushi Nahata and Vinit Kumar Nahta were coming towards Jagdalpur in the offending vehicle with their family members and relatives after enjoying picnic in summer vacation. Near Amla Chowki Gumli, the offending vehicle which was being driven by non-applicant No.1 in a rash and negligent manner, dashed against the goods-train at railway crossing. As a result thereof, Claimant- Ku. Ayushi Nahata sustained grievous injuries on her chest, face, right elbow, her both legs were fractured and after operating, steel plate was fitted in her right hand and steel rods were also fitted in both legs and on account of disability, she was unable to do any work.

Similarly, Claimant- Vinit Kumar Nahta sustained grievous injuries on his head, chest and other parts of the body and was taken to Maharani Hospital Jagdalpur for primary treatment, from where he was referred to Ram Krishna Care Hospital for better treatment where he remained in coma from 27.05.2008 to 20.07.2008. Thereafter, Vinit Kumar Nahta was shifted to Anurag Rehabilitation Centre Hyderabad and he was treated there w.e.f 17.09.2008 to 02.11.2008. Though Vinit Kumar Nahta was not in coma, but he had lost his memory and presently, he is in the same position. Vinit Kumar Nahta could not move anywhere due to permanent disablement.

5. In M.A.(C) No. 657 of 2014, Shri Raza Ali, Advocate appearing on behalf of Claimant- Ku. Ayushi Nahata aged about 15 years, submits that at the time of accident, the Claimant/Appellant was a student and had not started earning. He submits that the Tribunal has committed grave error in not assessing the notional income of the Claimant, therefore, no multiplier has been used and no amount towards future prospects has been granted to her. He further submits that both legs of Claimant were fractured and after operating, steel rods were fitted in both legs and as per Ex.-A-20, she had suffered 85% permanent disability and long life her work would be affected, therefore, she is required to have treatment in future also but the Tribunal has not considered this aspect of the matter. He further submits that amount of Rs.1,09,137/- has been spent towards medical expenses of the Claimant but the Tribunal has only awarded Rs.1,00,000/- under this head which is on the lower side and deserves to be enhanced suitably. He also submits that the amount awarded towards pain & suffering, special diet and conveyance also being on the lower side deserves to be enhanced suitably.

6. In M.A.(C) No. 858 of 2015, Shri Pravin Kumar Tulsyan, Advocate appearing on behalf of Claimant- Vinit Kumar Nahta aged about 20 years, submits that at the time of accident, the Claimant was the student of 12th Class in Chaitanya Junior College Hyderabad and got good rank and also cleared Amset Engineering Exam in Andhra Pradesh. He submits that due to injuries sustained and resultant

permanent disablement by the Claimant, his entire life is disturbed. He also submits that as per statement of Dr. Vivek Joshi (AW-6), the Claimant is unable to survive without attendant because he suffered 100% permanent disability and required to have attendant for 24 hours to even his routine. He further submits that the Claimant was selected in engineering course and the Tribunal has wrongly considered the loss of income of the Claimant as Rs.5,000/- per month whereas it should have been Rs.10,000/- per month. He submits that amount of Rs.5,87,543/- has been spent towards medical expenses and traveling expenses of the Claimant but the Tribunal has only awarded Rs.5,00,000/- under this head which is on the lower side deserves to be enhanced suitably. He further submits that the low amount has been awarded towards the future medical expenses by the Tribunal and no amount towards future prospects has been granted to the Claimant. He also submits that the entire life of the Claimant is affected due to 100% disablement, his marriage prospects is also affected and he would be required to have continuing treatment in future, expenses of attendant and physiotherapy, which was not considered by the Tribunal, therefore, low amount of compensation as awarded by the Tribunal may be enhanced suitably. In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Rekha Jain Vs. National Insurance Co. Ltd., AIR 2013 SC 3429*** and ***Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma & Another, (2015) 2 SCC 180.***

7. On the other hand, learned counsel for Respondent No.3/Insurance Company supports the impugned awards and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

8. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

9. I have heard the learned counsel appearing for the parties and perused the impugned awards including the records of claim petitions.

10. M.A.(C) No. 657 of 2014 arises out of Claim Case No. 33 of 2010:

Considering the facts and circumstances to the case, particularly the fact that it is not disputed by the parties that Appellant/Claimant (Ku. Ayushi Nahata) was aged about 15 years at the time of accident and had not started earning, in opinion of this Court, ends of justice would be served, if the loss of income of the Claimant is considered as Rs.3,000/- per month i.e. Rs.36,000/- per annum on notional basis. 40% will have to be added towards future prospect to her annual income and as such, her annual income comes to Rs.50,400/- (Rs.14,400/- + Rs.36,000/-).

So far as non-consideration of disability of the Claimant to the extent of 85% by the Tribunal is concerned, as per Ex.-A-20, a certificate of disability issued by the District Medical Board, Jagdalpur, the Appellant had suffered 45% disability in relation to in her left lower limb and 40% in relation to in her right lower limb and not in relation to the whole body, therefore, this Court is of considered view that the Appellant has suffered in total 50% functional disability regarding left and right lower limbs.

As per Ex.-P/13 to Ex.-P/19, bills details of treatment of the Claimant of Ramkrishna Care Hospital, Rs.1,09,137/- has been spent, but the Tribunal has awarded Rs.1,00,000/- to the Claimant. Therefore, this Court is of the view that the Claimant is entitled to Rs.1,09,137/- towards medical treatment and bills thereof during hospitalization in Ramkrishna Care Hospital from 29.05. 2008 to 13.06.2008.

So far as argument relating to low amount of Rs.5,000/- for pain & suffering; Rs.5,000/- for special diet and Rs.2,000/- for conveyance awarded by the Tribunal is concerned, in the given facts and circumstances of the case, this Court is of the view that amount of Rs.5,000/- for pain & suffering deserves to be enhanced to Rs.10,000/-; Rs.5,000/- for special diet be enhanced to Rs.10,000/- and Rs.2,000/- for conveyance be enhanced to Rs.5,000/-. Further, considering the fact that both legs of the Claimant were fractured and after operating, steel rods were fitted in both legs and she had suffered 50% functional disability and she will be required

future treatment, the Claimant is also entitled to Rs.20,000/- for future treatment.

Further, considering the age of the Claimant i.e. 15 years, functional disability i.e. 50% in future and the decisions of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** and **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, the Claimant/Appellant (Ku. Ayushi Nahata) is held entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation(In rupees)
1.	Income of the Claimant @ Rs.3,000/- per month	Rs.36,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/-
3.	Loss due to 50% functional disability	(Rs.50,400/- – Rs.25,200/-) Rs.25,200/-
4.	Multiplier of 18 applied	Rs.25,200/- x 18 = Rs.4,53,600/-
5.	For medical treatment and medical bills	Rs.1,09,137/-
6.	For pain & suffering	Rs.10,000/-
7.	For special diet	Rs.10,000/-
8.	For conveyance	Rs.5,000/-
9.	For future treatment	Rs.20,000/-
	Total Compensation	Rs.6,07,737/-

Since the Tribunal has already awarded Rs.1,12,000/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.4,95,737/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. M.A.(C) No. 858 of 2015 arises out of Claim Case No. 41 of 2013:

Considering the facts and circumstances to the case, particularly the fact that it is not disputed by the parties that Appellant/Claimant (Vinit Kumar Nahta) was aged about 20 years at the time of accident, was the student of 12th Class in Chaitanya Junior College Hyderabad, got good rank, also cleared Amset Engineering Exam in Andhra Pradesh and had not started earning, but he would

have a better future in terms of educational career to acquire basic or master degree, in opinion of this Court, ends of justice would be served, if the income of the Claimant is considered as Rs.7,000/- per month i.e. Rs.84,000/- per annum on notional basis. 40% will have to be added towards future prospect to his annual income and as such, his annual income comes to Rs.1,17,600/- (Rs.33,600/- + Rs.84,000/-).

So far as 100% permanent disability is concerned, Dr. Vivek Joshi (AW-6) stated in his evidence that he has examined the Claimant and found him feeble-minded and 100% disabled. This version was confirmed by Dr. S.N. Madhariya (AW-7). Both witness have stated that there was not any possibility of improvement. Thus, Dr. Vivek Joshi (AW-6) and Dr. S.N. Madhariya (AW-7) confirmed their certificate Ex.-A-191, Ex.-A-13 and Ex.-A-18 to Ex.-A-19. Dr. Amit Peeters (AW-3) and Dr. B.L. Soni (AW-4) both physiotherapist have also supported the versions of Dr. Vivek Joshi and Dr. S.N. Madhariya. Therefore, in these circumstances, the Claimant would be required to have attendant for 24 hours to pursue his work and in the opinion of this Court, the salary of attendant which will be required to be paid by Claimant is considered as Rs.2,000/- per month and Rs.24,000/- per annum. After applying multiplier of 18 to the said annual salary, the amount comes to Rs.4,32,000/- which the Claimant is entitled towards attendant.

It is mentioned in para-29 that the Claimant has filed medical and travelling bills of total amount of Rs.5,87,543/- but the Tribunal found that some bills are related to Ayurvedic medicines and products of the Amway Company and has awarded Rs.5,00,000/- to the Claimant. Therefore, this Court is of the view that the Claimant is entitled to Rs.5,87,500/- towards medical treatment and bills.

So far as argument relating to low amount of Rs.2,00,000/- for future medical expenses awarded by the Tribunal is concerned, this Court is of the view that amount of Rs.2,00,000/- for future medical expenses deserves to be enhanced to Rs.3,00,000/-.

Further, considering the age of the Claimant i.e. 20 years, permanent

disability i.e. 100% and the decisions of the Hon'ble Supreme Court in *Rekha Jain* and *Ashvinbhai Jayantilal Modi* (supra), ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121*** and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the Claimant/Appellant (Vinit Kumar Nahta) is held entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the Claimant @ Rs.7,000/- per month	Rs.84,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.84,000/- + Rs.33,600/-) Rs.1,17,600/-
3.	Multiplier of 18 applied	Rs.1,17,600/- x 18 = Rs.21,16,800/-
4.	For salary of attendant for 24 hours @2,000/- per month	Rs.24,000/- per annum
5.	Multiplier of 18 applied to salary of attendant	Rs.24,000/- x 18 + Rs.4,32,000/-
6.	Medical expenses	Rs.5,87,500/-
7.	For pain & suffering	Rs.2,00,000/- (as awarded by the Tribunal)
8.	For future medical expenses	Rs.3,00,000/-
9.	For loss of amenities and enjoyment of life and also for loss of marital prospect	Rs.2,00,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.38,36,300/-

Since the Tribunal has already awarded Rs.21,80,000/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.16,56,300/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. In the result, both appeals are allowed in part with modification in the impugned awards to the above extent.

13. No orders as to costs

Sd/-
(Gautam Chourdiya)
Judge