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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 661 of 2014

- Smt. Urmila Shukla W/o Ashok Shukla, aged about 55 years, R/o Infront of Santoshi Temple Tikarapara Kanker, District North Bastar Kanker (C.G.)

---- Appellant/Claimant

Versus

1. Hemlal Sahu S/o Harish Chandra Sahu, aged about 23 years, R/o Village Lakhanpuri, Tahsil Charama, District North Bastar Kanker (C.G.)
(Driver of the vehicle/Non-applicant No. 1)
2. Smt. Roshani Sahu W/o Harish Chandra Sahu, aged about 45 years, R/o Village Lakhanpuri Tahsil Charama, District North Bastar Kanker (C.G.)
(Owner of the vehicle/Non-applicant No. 2)
3. Bajaj Alliance General Insurance Co. Ltd. Plot No. 2/7 second floor Near Gandhi Chowk G.E. road Akash Ganga Supela Bhilai, District Durg (C.G.)
(Insurer//Non-applicant No. 3)

---- Respondents/Non-applicants

And

Miscellaneous Appeal (Civil) No. 662 of 2014

- Rajesh Joshi S/o Arjun Joshi, aged about 25 years, R/o Mahurband Para Kanker, P.S. Kanker District North Bastar Kanker (C.G.)

---- Appellant/Claimant

Versus

1. Hemlal Sahu S/o Harish Chandra Sahu, aged about 23 years, R/o Village Lakhanpuri, Tahsil Charama, District North Bastar Kanker (C.G.)
(Driver of the vehicle/Non-applicant No. 1)
2. Smt. Roshani Sahu W/o Harish Chandra Sahu, aged about 45 years, R/o Village Lakhanpuri Tahsil Charama, District North Bastar Kanker (C.G.)
(Owner of the vehicle/Non-applicant No. 2)
3. Bajaj Alliance General Insurance Co. Ltd. Plot No. 2/7 second floor Near Gandhi Chowk G.E. road Akash Ganga Supela Bhilai, District Durg (C.G.)
(Insurer//Non-applicant No. 3)

---- Respondents/Non-applicants

For Appellants	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondents No. 1 & 2	:	None
For Respondent No. 3	:	Shri Ghanshyam Patel, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.03.2019

1. Above both appeals arise out of the same accident occurred on 06.03.2012 involving the same vehicle- Bolera bearing registration No. CG-19/T/0689 (hereinafter referred to as "offending vehicle"), they are being disposed of by this

common judgment.

2. Both appeals arise out of separate award dated 04.04.2014 passed by the Motor Accident Claims Tribunal, North Bastar, Kanker (C.G.) awarding compensation in favour of Appellant/Claimant Smt. Urmila Shukla of Rs.2,98,500/- in Claim Case No. 104/2012 with interest @ 6% per annum from the date of application till realization and awarding compensation in favour of Appellant/Claimant Rajesh Joshi of Rs.2,14,000/- in Claim Case No. 103/2012 with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally in both claim petitions.

3. Brief facts necessary for disposal of both appeals are that the Claimants namely Smt. Urmila Shukla aged about 55 years (in Claim Case No. 104/2012) and Rajesh Joshi aged about 25 years (in Claim Case No. 103/2012) both were relatives and resided at Kanker. On the date of accident i.e. 06.03.2012 Rajesh Joshi and Smt. Urmila Shukla had gone to attend function of marriage anniversary of their relative. After attending the said function, at about 10:30 pm when Rajesh Joshi was returning along with Smt. Urmila Shukla by his motorcycle bearing registration No. CG-19/BA/5284 in which Smt. Urmila Shukla was the pillion rider, non-applicant No. 1, driver of the offending vehicle, owned by non-applicant No.2 and insured with non-applicant No.3, driving the offending vehicle in a rash and negligent manner, dashed the motorcycle. As a result thereof, both Rajesh Joshi and Smt. Urmila Shukla sustained grievous injuries and both of them suffered permanent disability.

4. Learned counsel for the Appellants/Claimants submits as under:-

Due to accident, as per Ex.-P/16, disability certificate, issued by District Medical Board, K.D. Hospital, Kanker, Claimant Smt. Urmila Shukla (in Claim Case No. 104/2012) had suffered 45% permanent disability and as per Ex.-P/20, disability certificate, issued by District Medical Board, K.D. Hospital, Kanker, Claimant Rajesh Joshi (in Claim Case No. 103/2012) had suffered 15% permanent disability, but in both claim petitions, the Tribunal has not considered disability of

both Claimants.

In M.A.(C) No. 661 of 2014 arising out of Claim Case No. 104 of 2012, at the time of accident, Claimant Smt. Urmila Shukla, aged about 55 years, was earning Rs. 10,000/- per month as a tutor of stitching & embroidery, but the Tribunal has wrongly considered the income of the Claimant as Rs.3,000/- and has wrongly awarded loss of earning for five months during treatment and her hospitalization. Therefore, without applying the multiplier, the Tribunal has awarded a lump sum compensation of Rs.2,98,500/- in all the heads which being meagre amount deserves to be enhanced suitably. He further submits that no future prospects has been granted by the Tribunal to the Claimant.

Similarly, In M.A.(C) No. 662 of 2014 arising out of Claim Case No. 103 of 2012, at the time of accident, Claimant Rajesh Joshi, aged about 25 years, was earning Rs. 15,000/- per month by running a Dhabha (Restaurant), but the Tribunal has wrongly considered the income of the Claimant as Rs.3,000/- and has wrongly awarded toward loss of earning for three months income during treatment and his hospitalization . Therefore, without applying the multiplier, the Tribunal has awarded a lump sum compensation of Rs.2,14,000/- in all the heads which being meagre amount deserves to be enhanced suitably. He further submits that no future prospects has been granted by the Tribunal to the Claimant.

5. On the other hand, learned counsel for non-applicant 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 in both claim petitions which needs no interference by this Court.

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

7. As submitted by the parties, no counter appeal has been filed by the Respondents.

8. M.A.(C) No. 661 of 2014 arises out of Claim Case No. 104 of 2012:

So far as non-consideration of disability of the Appellant/Claimant Smt.

Urmila Shukla to the extent of 45% by the Tribunal is concerned, as per Ex.-P/16, a certificate of disability issued by the District Medical Board, K.D. Hospital, Kanker, the Appellant had suffered 12% disability in relation to in her left upper limb; 23.3% in relation to in her right upper limb; 5% in relation to in her lumber spine and 5% in relation to in her right hand and as such sustained total permanent disability of 45% but it was not in relation to the whole body. Therefore, looking to the nature of job of the Claimant, this Court is of considered view that the Appellant has suffered in total 20% functional disability.

As regards income of injured/Claimant, the Claimant has pleaded that she was earning Rs.10,000/- per month as a tutor of stitching & embroidery but no documentary evidence is support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the Claimant is considered as Rs.4,500/- per month as per minimum wages at the relevant time. Therefore, this Court is of the opinion that looking to the treatment and period of hospitalization of the Claimant in Hospitals at Raipur, the amount of Rs.15,000/- @ Rs.3,000/- per month awarded by Tribunal toward loss of earning for five months is enhanced to Rs.22,500/- @ Rs.4,500/- per month.

Further, considering the age of Claimant i.e. 55 year, the nature of her job, functional disability i.e. 20% in future and the decisions of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***; ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, the Claimant is held entitled for compensation in the following manner:

Sl.No.	Head	Calculation (In rupees)
1	Income of the injured- Appellant/Claimant Smt. Urmila Shukla	Rs.4,500/- per month i.e. Rs.54,000/- per annum
2	10% towards future prospects added to annual income	(Rs.54,000/- + Rs.5,400/-) Rs.59,400/- per annum
3	Loss due to 20% functional disability	Rs.11,880/-
4	Multiplier of 11 applied	Rs.11,880/- x 11 = Rs.1,30,680/-

5	Loss of five months income to the Claimant @ Rs.4,500/- per month	Rs.22,500/-
6	For medical expenses during treatment and hospitalization	Rs.2,30,000/- (as awarded by the Tribunal)
7	For pain & suffering	Rs.20,000/- (as awarded by the Tribunal)
8	For special diets	Rs.3,500/- (as awarded by the Tribunal)
9	For conveyance	Rs.7,500/- (as awarded by the Tribunal)
	Total Compensation	Rs.4,14,180/-

Since the Tribunal has already awarded Rs.2,98,500/-, after deducting the same from the above amount, the Claimant/injured is held entitled for additional compensation of Rs.1,15,680/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

9. M.A.(C) No. 662 of 2014 arises out of Claim Case No. 103 of 2012:

So far as non-consideration of disability of the Appellant/Claimant Rajesh Joshi to the extent of 15% by the Tribunal is concerned, as per Ex.-P/20, a certificate of disability issued by the District Medical Board, K.D. Hospital, Kanker, the Appellant had suffered 15% disability in relation to the particular limb of the body and not in relation to the whole body, therefore, looking to the nature of job of the Claimant, this Court is of considered view that the Appellant has suffered in total 5% functional disability.

As regard income of injured/Claimant, the Claimant has pleaded that he was earning Rs.15,000/- per month by running a Dhabha (Restaurant) but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the Claimant is considered as Rs.4,500/- per month as per minimum wages at the relevant time. Therefore, this Court is of the opinion that looking to the treatment and period of hospitalization of the Claimant in Hospitals at Raipur, the amount of Rs.9,000/- @ Rs.3,000/- per month awarded by Tribunal toward loss of earning for

three months is enhanced to Rs.13,500/- @ Rs.4,500/- per month.

Further, considering the age of Claimant i.e. 25 year, the nature of his job, functional disability i.e. 5% in future and the decisions of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**; **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121**, the Claimant is held entitled for compensation in the following manner:

Sl.No.	Head	Calculation (In rupees)
1	Income of the injured- Appellant/Claimant Rajesh Joshi	Rs.4,500/- per month i.e. Rs.54,000/- per annum
2	40% towards future prospects added to annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/- per annum
3	Loss due to 5% functional disability	Rs.3,780/-
4	Multiplier of 18 applied	Rs.3,780/- x 18 = Rs.68,040/-
5	Loss of three months income to the Claimant @ Rs.4,500/- per month	Rs.13,500/-
6	For medical expenses during treatment and hospitalization	Rs.1,70,000/- (as awarded by the Tribunal)
7	For pain & suffering	Rs.20,000/- (as awarded by the Tribunal)
8	For conveyance	Rs.5,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.2,76,540/-

Since the Tribunal has already awarded Rs.2,14,000/-, after deducting the same from the above amount, the Claimant/injured is held entitled for additional compensation of Rs.62,540/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

11. No orders as to costs.

Sd/-
(Gautam Chourdiya)
Judge